

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1190 OF 2019**

**DISTRICT : THANE**

Shri Chulliparambil V. Nair. )  
Age : About 62 Yrs., Retired Higher Grade )  
Stenographer, Revenue & Forest Dept., )  
Mantralaya, Mumbai – 400 032 and )  
Residing at 901, Kaivali Park, Katemanavali,) )  
Kalyan (E), District : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Revenue & Forest Department, )  
1<sup>st</sup> Floor, Madam Cama Road, )  
Hutatma Chowk, Mantralaya, )  
Mumbai – 400 032. )  
2. Office of Accountant General, )  
Maharashtra State, Maharshi Karve )  
Road, Mumbai. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 05.10.2021**

**JUDGMENT**

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the order dated 04.01.2016 whereby after retirement sum of Rs.4,01,000/- were tentatively withheld on the

ground of some recovery, releasing Rs.1,88,615/- only as interim gratuity invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The Applicant was appointed as Lower Grade Stenographer (English) and was promoted as Higher Grade Stenographer by order dated 3<sup>rd</sup> April, 1990. Thereafter, Rules namely Maharashtra Civil Services (Compulsory Marathi Shorthand and Marathi Typing Examinations for English Stenographers and English Typists) Rules, 1991 (hereinafter referred to as 'Rules of 1991' for brevity) came in force from the date of publication of the Rules. In terms of Rule No.4(ii), the High Grade English Stenographers are required to pass Marathi Shorthand and Marathi Typing Examination within six years from the commencement of these Rules. However, admittedly, the Applicant did not pass these examinations as contemplated in 'Rules of 1991'. In view of his non-passing examinations, his increments were required to be withheld in terms of Rule 7 of 'Rules of 1991'. Despite this position, Applicant's increments were released regularly, as if he had passed the examinations though he was not entitled to the same. He enjoyed regular increments till his retirement upto 31.12.2015. It is only after retirement, the Respondents realized non-compliance of 'Rules of 1991'. On this background, initially, sum of Rs.4,01,000/- were tentatively withheld out of total gratuity of Rs.5,49,615/- and Rs.1,48,615/- was released as an interim gratuity.

4. Another development which had taken place after retirement is that the Government by order dated 04.05.2016 granted exemption to the Applicant w.e.f.22.12.2007 on completion of 50 years of age in terms of 'Rules of 1991' and ordered for recovery and re-fixation of pay and allowances of the Applicant. Ultimately, while granting final payment, sum of Rs.3,43,931/- are withheld/adjusted from DCRG. Admittedly, remaining benefits like regular pension, GPF, Leave Encashment, etc. are already released.

5. In view of above, the position boiled down that as to whether recovery of Rs.3,43,931/- from DCRG is legal. The Applicant has prayed for direction to refund the said amount. This is the only issue remains to be considered in the present O.A.

6. Shri M.D. Lonkar, learned Advocate for the Applicant fairly admits that the Applicant retired as Group 'B' employee but maintained that in view of the decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**, the recovery after retirement is totally impermissible in law. He further placed reliance on the decision of Hon'ble High Court in **Writ Petition No.3128/2018 (Smt. Nilam S. Naik Vs. Registrar General, High Court, Mumbai) decided on 8<sup>th</sup> March, 2019** and decision rendered by this Tribunal in **O.A.No.1102/2015 (Syed M. Hashmi Vs. State of Maharashtra) decided on 14.06.2016**. He has further pointed out that in **O.A.No.1102/2015**, the Tribunal has categorically recorded the finding that the decision in **Rafiq Masih's** case (cited supra) is not restricted to Group 'C' or Group 'D' employees, but also apply to Group 'B' employees equally. In that case, Applicant Syed Hashmi retired as Government Labour Officer and recovery was effected after retirement. The Tribunal allowed the O.A. in view of Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case.

7. The learned P.O. sought to justify the impugned action of recovery *inter-alia* contending that the Applicant knowingly availed the benefit of increments though not entitled to the same in law due to his failure to pass examinations in terms of 'Rules of 1991', and therefore, recovery is legal and valid.

8. In case of **Rafiq Masih**, the issue posed before Hon'ble Supreme Court was as to whether the recovery of excess amount which has been paid to employees during the course of service is permissible and Hon'ble Supreme Court culled out the following situations wherein recovery is held impermissible. In Para No.12, what is held is as under :-

- “(i) *Recovery from employees belonging to Class-III and Class-IV services (or Group ‘C’ and Group ‘D’ services).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”*

9. The perusal of Judgment in **Rafiq Masih’s** case makes it clear that it is not restricted to Group ‘C’ or Group ‘D’ employees and if matter falls within any of the category from (i) to (v), the recovery would be impermissible in law. As per Clause (ii), the recovery from retired employees or employees who are due to retire within one year is not permissible. Whereas, as per Clause (iii), the recovery from employee when excess payment has been made for a period in excess period of five years before order of recovery is also impermissible. Apart, as per Clause (v), in any other case, if the Court arrived at the conclusion that the recovery could be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover, in that event also, the recovery is impermissible.

10. As such, even if the Applicant retired as Group ‘B’ employee and Clause (i) is not attracted, still it falls under Clauses (i), (ii), (iii) and (v) of Para No.18 of Judgment of Hon’ble Supreme Court in **Rafiq Masih’s** case.

11. Suffice to say, in view of this Judgment, the Hon’ble Supreme Court in **Rafiq Masih’s** case, which is followed by Hon’ble High Court in

**Writ Petition No.3128/2018**, it is no more res-integra that recovery from Applicant's gratuity is impermissible. Admittedly, the excess payment was made on account of increments for a period in excess of five years i.e. from 1991. The increments were released by the Department at their own without attributing any fraud or mistake or representation to the Applicant. As such, where excess payment is made due to mistake of the Department for a long time, the recovery of the same after retirement will have to be quashed and set aside. The Applicant is, therefore, entitled to refund of Rs.3,43,931/- which is recovered from his DCRG account.

12. The totality of aforesaid discussion leads me to conclude that the impugned order dated 04.01.2016 is totally indefensible and liable to be quashed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 04.01.2016 is quashed and set aside.
- (C) The sum of Rs.3,43,931/- recovered from DCRG of the Applicant be refunded to him within a month from today.
- (D) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 05.10.2021  
Dictation taken by :  
S.K. Wamanse.

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