

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.161 OF 2016

DISTRICT : PALGHAR

Shri Kishor Hari Pimple. )  
Flat No.130, Mudra Residency, Palghar, )  
Mahim Road, Palghar (W), 401 404. )...**Applicant**

**Versus**


1. The State of Maharashtra. )  
Through the Addl. Chief Secretary, )  
Dairy Development Department, )  
Mantralaya, Mumbai - 400 032. )  
2. The Commissioner. )  
Dairy Development Department, )  
Worli, Mumbai 400 018. )  
3. Controller of Cattle. )  
Cattle Market, Goregaon (E), )  
Mumbai 400 063. )...**Respondents**

**Shri S.S. Dere, Advocate for Applicant.**

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

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 27.09.2016**

  
\_\_\_\_\_

## JUDGMENT

1. This OA made by a retired employee seeks the quashing of the order dated 4.8.2015 whereby the Time Bound Promotion given to the Applicant was sought to be withdrawn and recovery was ordered. The said order was made when the Applicant was almost on the verge of retirement and it is dated 4<sup>th</sup> August, 2015. A further direction is sought against the Respondents to release all the pensionary benefits of the Applicant as on the date of retirement and for release of all consequential service benefits.

2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

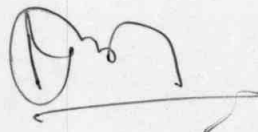
3. The facts are almost undisputed. The Applicant was given the benefit of 1<sup>st</sup> Time Bound Promotion on 23.3.1996 and it was sought to be withdrawn by the order dated 6.1.2016 as well as the earlier order referred to hereinabove.

4. By the order of 7.4.2016, the Hon'ble Chairman was pleased to observe that limited questions were involved



in this OA. The Respondents were directed to show by filing the Affidavit any overt act on the part of the Applicant in receiving the monetary benefits which are sought unless the Applicant's case would be governed by the Judgment of the Hon'ble Supreme Court in the matter of a large number of Civil Appeals beginning from **Civil Appeal No.11527/2017 arising out of SLP (C) No.11684/2012 (State of Punjab and others Vs. Rafiq Masih (White Washer) dated 18<sup>th</sup> December, 2014 (to be hereinafter called Rafiq Masih's case).**

5. I shall return to this Judgment presently. However, the crux of the matter was that the Hon'ble Chairman was pleased to be wanting to know as to whether any sharp practice was adopted by the Applicant which could be bracketed into the vice of fraud, etc. in securing the Time Bound Promotion. But it is a common ground that no such sharp practice was adopted and the Government of its own gave the benefits to the Applicant. The learned P.O. in this connection and in support of her case that an amount mistakenly given can always be recovered referred me to the Judgment of the 2<sup>nd</sup> Bench of this Tribunal to which I was also a party in **OA 639/2014 (Shri Santosh B. Khusare Vs. Superintendent of Police, Raigad and 2 others, dated 16.9.2016).**



6. That was a matter where the issue of such a recovery was not there much less was **Rafiq Masih** (supra) considered by the Tribunal. The only observation which the learned P.O. seeks to bank on is that the mistake can always be rectified which in that case was the mistaken inclusion of the Applicant therein in the select list. It is very clear that this particular Judgment has no application and in any case, this controversy is fully governed by **Rafiq Masih** (supra). The perusal of the concluding Paragraph of the Judgment of the Hon'ble Supreme Court wherein Para 12 (Pages 35 and 36 of the Paper Book) while indicating that it may not be possible to postulate all situations of hardship in the matter of recovery, certain guidelines were laid down with regard to the situations wherein recoveries by the employers would be "impermissible in law". For guidance, the same needs to be reproduced hereinbelow.

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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.

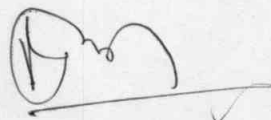


(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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."

7. This matter is fully covered by Clauses I to III of the above extract from the Judgment of the Hon'ble Hon'ble Supreme Court and there is no other-go but to quash and set aside the impugned order.

8. As the matter was being debated, the learned P.O. on instructions from Shri Ahire mentioned that the recovery has already been made. The said Officer informed that the recovery may have been made by the Accountant General from the pensionary benefits of the Applicant. It is not possible to believe as to how the A.G. can make such recovery without there is an advice to that effect by the concerned Office. But this aspect of the matter need not detain me much at all, because even if the recovery has been made, the same will have to be handed back to the Applicant.



9. The upshot, therefore, is that the orders herein impugned are hereby quashed and set aside and it is hereby held and declared that the Respondents are not entitled to make any recovery such as the one herein involved from the Applicant and in case, the recovery has been made, it must be restored back to the Applicant within four weeks from today. The Applicant also shall be entitled to all pensionary benefits including the regular monthly pension. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**27.09.2016**

Mumbai

Date : 27.09.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\9 September, 2016\O.A.161.16.w.9.2016.doc

16