

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.46 of 2021**

**District : THANE**

Shri Neha Aditya Tittal-Chavan )  
Age 58 years, Occ : Retired )  
R/at c/o Urmila Nitin Chavan, Ajinkya )  
Tara Soc. 32/225 Pokhran No.1, Shivaji )  
Nagar, Post : J. K. Gram, Thane 400606. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
Addl. Chief Secretary, Home Dept. )  
Mantralaya, Mumbai 32. )
2. The Commissioner of Police, Thane )  
City, Thane. )
3. The Commissioner of Police, Navi )  
Mumbai, Konkan Bhavan, CBD- )  
Belapur, Navi Mumbai. )...**Respondents**

Shri R. M. Kolge, learned Advocate for the Applicant.

Ms N. G. Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 02.07.2021.

**J U D G M E N T**

The Applicant has challenged the orders dated 04.12.2020 and 08.01.2021 directing recovery of Rs.3,02,875/-from her retirement benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant was appointed as Higher Grade Stenographer and stands retired on 31.12.2020 on attaining the age of superannuation. When her service book was sent for verification, the Pay Verification Unit raised certain objections about wrong fixation of pay-scale in terms of 6<sup>th</sup> Pay Commission recommendation. It was found that wrong scale was given to Applicant in 2008 and she was paid excess amount of Rs. 3,02,875/- during the period from 09.07.2008 to 31.12.2020. The Respondents, therefore, by impugned order dated 04.12.2020 and 08.01.2021 issued directions for recovery of Rs. 3,02,875/- from the retirement benefits of the Applicant which is under challenge in the present O.A.

3. Shri R. M. Kolge, learned Counsel for the Applicant sought to assail the impugned action of recovery *inter-alia* contending that no opportunity of hearing was given to the Applicant prior to issuance of recovery order and secondly in view of the decision of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer), decided on 18th December, 2014** recovery from retired employee held not permissible in law.

4. Per contra, Ms N. G. Gohad, learned Counsel for the Respondents sought to contend that the Applicant retired as Group-B officer and the decision of the Hon'ble Supreme Court in **Rafiq Masih's** case is restricted to Government servant of Class-III and Class-IV only. She, therefore, sought to justify the impugned action of recovery.

5. Indisputably, what is sought to be recovered from the Applicant is excess payment made to her from 09.07.2008 to 31.12.2020. It is noticed when the Applicant was at the verge of retirement. As such, no fraud or misrepresentation can be attributed to the Applicant. It was sheer mistake on the part of the department.

6. Admittedly, without taking impugned action of recovery by order dated 04.12.2020 and 08.01.2021, no notice or opportunity of hearing was given to the Applicant. Since it was affecting retirement benefits of the Applicant and had financial implication, the Respondents ought to

have given an opportunity of hearing to the Applicant as a principle of natural justice. However, admittedly no such notice or opportunity of hearing was given to the Applicant.

7. Apart the issue is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in **Rafiq Masih's** case. The Hon'ble Supreme Court after considering its various earlier decisions has culled out certain situations wherein recovery by the employer would be impermissible in law. In Para No.12 of the judgment, it is stated as under :-

*"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.*

- (i) Recovery from employees belong 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.*

8. As such, several parameters are laid down in which recovery is held impermissible. Clause (i) relates to employees belonging to Class-III and Class-IV. Whereas, Clause (ii) applies to recovery from the retired employees, or employees who are due to retire within one year from the

order of recovery. Clause (iii) attracted where recovery is from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. This being the position, the submission advanced by the learned P.O. that judgment of **Rafiq Masih's** case is applicable to Class-III and Class-IV employees only is totally misconceived. Here, Clause (ii) and Clause (iii) are squarely attracted since there is no such restriction of benefit to Class III and Class IV only in the applicability of Clause (ii) or Clause (iii) and there is no such limitation therein. Suffice to say, the present case is squarely falls within the parameter (ii) and (iii).

9. Apart parameter (v) is also attracted since now recovery made from retirement benefits of the Applicant which would obviously iniquitous or harsh or arbitrary. It would certainly far outweigh the equitable balance of the employer's right to recover.

10. The totality of the aforesaid decision leads me to conclude that action of recovery is totally impermissible in law and O.A. deserves to be allowed. Hence the following order :-

**ORDER**

(A) O.A. is allowed.

(B) Impugned orders dated 04.12.2020 and 08.01.2021 are quashed and set aside.

(C) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

