

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.525 OF 2017

DISTRICT : THANE

Smt. Megha R. Desai.)
Head Clerk in the Office of Commissioner of)
Police, Thane and R/o. E-8, Sadguru Apartment,))
Near Hotel United, 21, Thane (W),)
District : Thane – 400 601.)...**Applicant**

Versus

1. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai (Copy to be served through)
C.P.O, MAT, Mumbai).)
2. The Director General of Police.)
M.S, Shahid Bhagatsingh Road, Colaba,)
Mumbai.)
3. The Special Inspector General of Police.)
Konkan Range, Navi Mumbai.)
4. The Commissioner of Police.)
Thane.)
5. The Superintendent of Police.)
Thane (Rural), District : Thane.)...**Respondents**

Mr. V.P. Potbhare, Advocate for Applicant.

Mr. S.D. Dole, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.07.2019

JUDGMENT

1. The Applicant has challenged the impugned orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016 relating to recovery of Rs.6,53,898/- on account of excess payment made to her during the period of her service invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant had joined Government service in 1981 on the post of Junior Clerk in the Office of Respondent No.4. She had passed departmental examination in the year 1983. She was promoted to the post of Senior Grade Clerk in 2001. In 2007, it was noticed by the Department that the employees who have passed departmental examination in the year 1986 have been promoted to the post of Senior Clerk earlier to the promotion given to the Applicant. Having noticed the mistake, the Respondent No.4 by order dated 26.04.2007 granted deemed date of promotion to the Applicant and other employees w.e.f. 02.05.1988. Thereafter, it was noticed by the Department that the deemed date of promotion i.e. 02.05.1988 was granted to the Applicant and her colleagues on the basis of promoted granted to one employee viz. Shri N.A. Orpe, but it was revealed that Shri N.A. Orpe was senior to the Applicant and others, and therefore, deemed date of promotion granted to the Applicant and her colleagues w.e.f.02.05.1988 was incorrect. The Respondent No.3, therefore, by order dated 26.02.2014 cancelled deemed date of promotion i.e. 02.05.1988 and directed the Office to rectify the mistake. Consequent to it, by orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016, recovery was ordered. The Applicant was

granted regular promotion to the post of Senior Clerk on 01.08.2001 and stands retired on 31.07.2018. It was noticed that because of wrong date of deemed date of promotion, the excess payment of Rs.6,53,898/- paid to the Applicant by granting her promotional scale. Consequently, by impugned orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016, sum of Rs.6,53,898/- was ordered to be recovered from the pensionary benefits of the Applicant.

3. The Respondents resisted the claim of the Applicant and sought to justify the impugned action of recovery from the salary and retiral benefits of the Applicant. The Respondents contend that in view of grant of incorrect deemed date of promotion, the excess payment was made to the Applicant and having noticed the same, it has been corrected. The sum of Rs.6,53,898/- was paid to the Applicant in excess because of wrong deemed date of promotion, and therefore, the impugned order of recovery cannot be faulted with.

4. Shri V.P. Potbhare, learned Advocate for the Applicant urged that the impugned action of recovery from the pensionary benefits of the Applicant is unsustainable in law in view of Judgment of Hon'ble Supreme Court in ***AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer)***. He has pointed out that no mistake or fault can be attributed to the Applicant for grant of deemed date of promotion, and therefore, recovery from the pensionary benefits of the Applicant is iniquitous, arbitrary and not sustainable in law.

5. Per contra, Shri S.D. Dole, learned Presenting Officer sought to justify the impugned order stating that the excess payment was made due to sheer mistake, and therefore, the Respondents have issued orders or recovery from the pensionary benefits of the Applicant.

6. In view of pleadings and submissions, the simple question posed for consideration is whether the recovery orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016 are sustainable in law and the answer is in negative in view of the Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra).

7. The factual aspects are indisputable. There is no denying that earlier the deemed date of promotion was granted to the Applicant w.e.f.02.05.1988 but later it was noticed that the deemed date of promotion i.e. 02.05.1988 given to the Applicant was incorrect and consequent to it, the same was withdrawn and recovery has been directed by orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016. As such, it was because of mistake of the Department, the promotional scale was granted to the Applicant for which the Applicant was not responsible. No *malafides* or fraud are attributed to the Applicant. The regular promotion was granted to the Applicant w.e.f.01.08.2001. As such, now the Respondents sought to recover Pay and Allowances granted to the Applicant w.e.f.02.05.1988. The Applicant stands retired on 31.07.2018. Admittedly, she is Group 'C' employee. Now, the recovery ordered pertain to period more than a decade. This being the position, it would be iniquitous and harsh to recover the amount after retirement of the Applicant. The Applicant's case thus squarely falls within the parameters or situations laid down by Hon'ble Supreme Court in Para No.12 of the Judgment, which are as follows :-

“12. It is not possible to postulate all situation s 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, Clause Nos.1, 2, 3, 4 and 5 are squarely attracted and there is no escape from the conclusion that the recovery is impermissible. In other words, the Respondents' action being contrary to law laid down by Hon'ble Supreme Court, the impugned orders deserve to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 26.02.2014, 05.03.2016, 18.06.2016 and 08.09.2016 are hereby quashed and set aside.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.07.2019

Dictation taken by :

S.K. Wamanse.