

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.537 of 2019

DISTRICT : MUMBAI

Shri Sadashiv P. Patil,)
R/at. Soma Buddhi Chawl, Room No.13,)
Sonawala Wadi, Jayprakash Nagar,)
Goregaon (E), Mumbai 400 063.)..... **Applicant**

Versus

1. Govt. of Maharashtra, through the)
Principal Secretary, Dairy Devl. Department,)
Animal Husbandry & Fisheries Dept,)
Mantralaya, Mumbai 32.)
2. General Manager, Govt. Milk Scheme,)
Worli Sea Face, Mumbai 400 018.)
3. In-charge Manager, Mother Dairy, Nehru)
Nagar, Kurla East, Mumbai 400 024.)
4. Commissioner, Dairy Devlp. Department,)
O/at. Khan Abdul Gafar Khan Marg, Worli,)
Mumbai 400 018.)
5. Accountant General, Maharashtra State,)
Maharashi Karve Road, Mumbai.)...**Respondents**

Shri M. D. Lonkar, Advocate for the Applicant
Ms N. G. Gohad, Presenting Officer for the Respondents.

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 08.08.2019

ORDER

1. In the present O.A., small issue posed for consideration is whether the recovery of Rs.4,19,667/- from the gratuity and pension of the Applicant is permissible and the answer is in negative.

2. The Applicant stands retired from the post of Laboratory Assistant (Class-III) on 21.07.2018. While in service benefit of 1st Time Bound Promotion was given to him w.e.f. 01.11.1998 and accordingly monetary benefits were given to him. However, after retirement of the Applicant it was realized to the Respondents that the Applicant was not eligible for benefit of 1st Time Bound Promotion. Consequently, the Respondents by order dated 01.11.2018 cancelled the benefit of 1st Time Bound Promotion given to the Applicant w.e.f. 01.01.1998. Consequent to it, recovery of Rs.4,19,667/- is sought from the gratuity and pension.

3. Shri M. D. Lonkar, learned Counsel for the Applicant submits that the issue of recovery of excess payment from the retirement benefit of the employee is no more *res-integra* in view of judgment 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. He further contends that in fact, the Applicant was entitled to the benefit of 1st Time Bound Promotion and it was rightly granted so. In this behalf, he referred to the decision of this Tribunal in ***O.A.No.532/2013 (Ramkrupal S. Prajapati V/s. State of Maharashtra & Ors)***, dated 20.03.2015. However, he fairly concedes that at this stage, the submissions are restricted to the permissibility of recovery.

4. Per contra, Ms N. G. Gohad, learned Counsel for the Respondents submits that the Applicant found not eligible for 1st Time Bound Promotion and therefore, recovery was sought.

5. Thus, what transpires from the pleadings and submission that the issue is arose because of grant of 1st Time Bound benefit whereby the pay scale of the Applicant was increased. Admittedly, no fraud or misrepresentation can be attributed to the Applicant. The benefit was given

by the Respondents at their own. This being the position, the issue having been settled by the judgment of the Hon'ble Apex Court in **Rafiq Masih's** case (cited supra), the recovery of excess payment of Class-III employee from retiral benefits is not permissible.

6. At this juncture, it would be apposite to reproduce Para No.12 of the judgment which is as follows:-

“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.”*

7. In the present case, the Applicant's case is squarely covered by the situation (i), (iii) and (v). Suffice to say, the impugned action of recovery is impermissible in law and O.A. deserves to be allowed. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned action of recovery of Rs.4,19,667/- is declared unsustainable in law.
- (C) The amount recovered, if any, be refunded to the Applicant within one month from today.
- (D) In so far as legality of the impugned order and entitlement of the Applicant for benefit of Time Bound Promotion, fixation of pension is concerned, it is kept open with liberty to the Applicant to challenge it, in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Mumbai
Date : 08.08..2019
Dictation taken by. V. S. Mane