

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.1060/2022**

**DISTRICT:- JALGAON**

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Vivek s/o. Manohar Deshmukh,  
Age : 53 years, Occ : Service as Sub Auditor,  
R/o. 9B, Sharda Colony, Near Mahabal,  
Jalgaon.

**...APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through Secretary,  
Department of Co-operation,  
Mantralaya, Mumbai.
- 2) Divisional Joint Registrar,  
Co-operative Societies (Audit) Nashik Division,  
Nashik, Vishwanth Chambers, 1<sup>st</sup> Floor,  
60 feet Road, Ganjmal, Nashik-422 001.
- 3) Special Auditor Class II<sup>nd</sup>  
Co-operative Societies (Marketing) Pachora,  
Durga Nagar, Pachora, New Ring Road,  
Old Bhadgaon Road, Pachora-424 201,  
Tq. Pachora, Dist. Jalgaon. **...RESPONDENTS**

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APPEARANCE :Shri P.P.Dhorde, Counsel for  
Applicant.

:Shri B.S.Deokar, Presenting Officer  
for the respondents.

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**CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN**

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**Decided on: 13-10-2023.**

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**O R A L O R D E R :**

1. Heard Shri P.P.Dhorde, learned Counsel for the  
applicant and Shri B.S.Deokar, learned Presenting Officer  
appearing for the respondent authorities.

2. Aggrieved by the order dated 28-10-2021 and communication dated 28-03-2022 whereby the respondents have directed recovery of the amount alleging the same to have been wrongly paid to the applicant, the applicant has approached this Tribunal for quashment of the said orders.

3. Impugned orders reveal that according to the respondents the first and second benefits of Assured Career Progression Scheme (ACPS) were given to the applicant from some earlier date. It is the contention of the respondents that benefit of first ACPS could not have been given to the applicant unless he passes the departmental examination. The applicant has entered the Government service on 13-02-1991 as a Junior Clerk. Said appointment was given to the applicant on compassionate ground. The applicant passed the departmental examination on 04-08-2004. Applicant was, thus, entitled for the first ACPS benefit not before the said date, however, the same was granted in his favour w.e.f. 25-02-2003. Obviously, the second ACPS benefits was awarded to the applicant on 25-02-2015 computing the period of 12 years from the date of first ACPS. According to the respondents the applicant was thus wrongly paid

the benefit of first ACPS during the period from 25-02-2003 to 08-05-2004 and of the second ACPS during the period between 25-02-2015 to 31-12-2015. According to the respondents, thus, excess payment was made to the applicant for all these years due to mistake of the respondents. Said fact was revealed sometime in the year 2021 when the pay verification of the applicant was done and accordingly the impugned order came to be passed thereby directing recovery from the applicant.

4. Learned Counsel for the applicant submitted that before passing the impugned order the applicant was not given any opportunity of hearing. Learned Counsel submitted that though the order of granting first ACPS benefit was passed on 25-02-2003, benefits were made payable only after passing of the departmental examination and accordingly the benefits are appropriately paid to the applicant and applicant has not received any excess amount. Learned Counsel submitted that though the applicant does not possess all such particulars, still in view of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) & Ors.** reported in [(2015) 4 SSC 334] &

[**AIR 2015 SC 696**], recovery as has been directed against the applicant is wholly impermissible.

5. Learned Counsel submitted that respondents have not alleged that in receiving the alleged excess payment the applicant had played any active role or misrepresented the respondents resulting in making him payment in excess of his entitlement. Learned Counsel submitted that after long 16 years period such recovery has been directed against the applicant. Learned Counsel submitted that when the impugned order was passed, the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih, *cited supra*, was holding the field, and as such, no recovery could have been directed against the applicant. Learned Counsel has pointed out that as yet recovery has not been done on the strength of the impugned order. Learned Counsel submitted that the impugned order, therefore, deserves to be set aside.

6. Shri B.S.Deokar, learned P.O. has opposed the submissions made on behalf of the respondents. In the affidavit in reply filed on behalf of the respondents, it has been contended that the first and second ACPS benefits were paid to the applicant from some earlier date which

has resulted in making excess payment to the applicant than his entitlement. Learned P.O. submitted that from the documents on record it is quite evident that when the applicant passed the departmental examination on 04-08-2004, no benefit of first ACPS could have been given to the applicant prior to the said date. Learned P.O. submitted that this fact was also within the knowledge of the applicant, however, he did not bring it to the notice of the higher authorities. According to the learned P.O., silence on the part of the applicant requires to be considered and it would amount to suppression of material facts. According to the learned P.O. in the circumstances, the case of the present applicant cannot be said to be falling under the criteria as laid down in the case of Rafiq Masih, (*cited supra*). Learned P.O., therefore, prayed for dismissal of the O.A.

7. I have duly considered the submissions made on behalf of the applicant as well as the respondents. The Hon'ble Supreme Court in the case of Rafiq Masih, *cited supra*, has carved out certain circumstances wherein recovery is made impermissible. In paragraph 18 of the said judgment reference of the said circumstances is there.

I deem it appropriate to reproduce hereinbelow said paragraph 18 of the judgment above as it is:

*“18. 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 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 the 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 employees, 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. It is not in dispute that the applicant is a Class-III employee. It is also not in dispute that the alleged excess payment is allegedly made because of the mistake on the part of the then officers concerned. In the affidavit in reply respondents have not come out with any case alleging fraud on the part of applicant or any misrepresentation being made by the applicant. It is further not in dispute that the payment which is alleged to have been made in excess of entitlement of the applicant was during the period from 2003 to 2016 i.e. for the period of more than five years.

9. Having considered the facts and circumstances noted hereinabove involved in the present matter, it is evident that the present case is squarely covered by the aforesaid judgment. O.A., therefore, deserves to be allowed. Hence, the following order:

ORDER

[i] Impugned order dated 28-10-2021 and impugned communication dated 28-03-2022 are quashed and set aside.

[ii] O.A. is allowed in the aforesaid terms, however, without any order as to costs.

**Place : Aurangabad**

**Date : 13.10.2023.**

**VICE CHAIRMAN**