

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.937 of 2018**

**District : PUNE**

Shri Yashwant Bhalurao Chavan )  
Age 56 years, Occ : working as )  
Yantrik (Mechanic), R/at Post Khadakwasala, )  
Taluka Haveli, Pune – 410024. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
Principal Secretary, Industries, Energy & )  
Labour Department, Mantralaya, )  
Mumbai 400 032. )
2. The Director, Government Printing & )  
Stationary, Netaji Subhash Chandra Road,) )  
Mumbai – 400 004. )
3. The Manager, Government Photozinco )  
Printing Press, Pune – 411 001. )...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

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

DATE : 28.01.2021.

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

The Applicant has challenged the orders of recovery dated 29.03.2017 and 02.11.2017 (Page Nos.35 and 41 of PB). The Applicant joined on 10.02.1986 as Carpenter then he was promoted on the post of Assistant Mechanic w.e.f. 01.06.1995 then again second promotion was granted on the post of Mechanic w.e.f. 01.10.1997. Thereafter, the benefit of Time Bound Promotion was also given to the Applicant.

However, abruptly by order dated 29.03.2017 and 02.11.2017, the recovery of Rs.99,240/- was sought from pay and allowances stating that the Applicant was granted benefit of Time Bound Promotion for the post of Head Mechanic though the said post does not exist on the said establishment. The post of Head Mechanic is said equivalent to Maintenance Supervisor. However, the Respondents' contention is that the Applicant does not possess requisite educational qualification for the post of Maintenance Supervisor, and therefore, not entitled to non-functional promotion on the post of Maintenance Supervisor. During the pendency of Original Application, the Applicant recently made representation to the Respondent No.2 to grant benefit of Time Bound Promotion to the post of Maintenance Supervisor relaxing educational qualification as done in the matter of Shri B. K. Karape and Shri R. H. Shaikh. The Applicant stands retired on 31.12.2020.

2. As such, in the present O.A. the issue is twofold. First one, recovery of Rs.99,240/- and second, benefit of Time Bound Promotion for the post of Maintenance Supervisor relaxing necessary conditions.

3. In so far as recovery is concerned, the issue 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**. In para No.12, the Hon'ble Supreme Court held 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."*

4. Turning to the facts of the present case, admittedly the Applicant is Class-III employee and his case is squarely covered by Clause Nos.1, 2 and 3 of Para No.12 of the decision in the **Rafiq Masih's** case (cited supra). Admittedly, there was no misrepresentation or suppression of facts by the Applicant. It is the department who wrongly granted the benefit of Time Bound Promotion which was later withdrawn and recovery has been sought.

5. Learned P.O. for the Respondents also fairly concedes the legal position about the recovery.

6. In view of above, there should be no recovery of the excess payment made to the Applicant on account of mistake of the department.

7. In so far as, entitlement of the Applicant for Time Bound Promotion benefit to the post of Maintenance Supervisor is concerned, he has already made representation on 27.01.2021 *inter-alia* praying for relaxation on the ground of parity.

8. Learned Counsel for the Applicant fairly stated that the matter be disposed of with suitable directions to the Respondent No.1 to decide the representation dated 27.01.2021 within stipulated period. The submission is quite fair and acceptable.

9. In view of above, Original Application is disposed of in following terms:-

(a) The orders of recovery dated 29.03.2017 and 02.11.2017 are quashed and set aside.

(b) Respondent No.1 is directed to refund the amount recovered from the Applicant within a month from today, failing which it will carry interest @8% per annum from the date of this order till actual payment.

(c) Respondent No.1 is directed to consider the representation dated 27.01.2021 made by the Applicant within two months from today and the decision as the case may be, shall be communicated to the Applicant within two weeks thereafter.

(d) The Applicant, if felt aggrieved by the decision, he may avail further legal remedy as available in law.

(e) No order as to costs.

**Sd/-**

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

Date : 28.01.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane  
Uploaded on :

