

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.198 OF 2023

DISTRICT : PUNE

Shri Bhagwan Narayanrao Gite,)
Age 57 years, Head Clerk, Expenditure Reconciliation)
& Audit Branch, Women & Child Development)
Commissionerate, 3, Church Road, Pune 411 001)..Applicant

Versus

1. The State of Maharashtra,)
Through Chief Secretary, Govt. of Maharashtra,)
Mantralaya, Mumbai)
2. Principal Secretary,)
Women & Child Development Department,)
Mantralaya, Mumbai)
3. The Commissioner,)
Commissionerate of Women & Child Development)
Pune 411 001)
4. Deputy Commissioner (Establishment),)
Commissionerate of Women & Child Development)
Pune 411 001)
5. Accounts Officer,)
Commissionerate of Women & Child Development)
Pune 411 001)..Respondents

Shri K.S. Jadhav holding for Shri S.N. Vaidya – Advocate for the Applicant
Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 29th August, 2023

PRONOUNCED ON: 4th September, 2023

J U D G M E N T

1. Heard Shri K.S. Jadhav holding for Shri S.N. Vaidya, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant who is working as Head Clerk in the office Women & Child Development Commissionerate, Pune challenges the orders dated 8.2.2023, 11.1.2023 and 12.4.2021 whereby all the benefits given under the Assured Career Progression Scheme (ACPS) to the applicant are to be taken back and recovery of Rs.3,23,232/- has been imposed on the applicant.

3. Ld. Advocate for the applicant submits that the applicant was initially appointed as Junior Clerk on 18.12.1985 in Government Boys Hostel, Jalna. The applicant was promoted as Senior Clerk on 7.8.2000. From 17.11.2016 the applicant is working as Head Clerk in the office of respondent no.3. Ld. Advocate for the applicant submits that the applicant denied the promotion to Head Clerk by his letter dated 31.8.2013 for personal reasons. The respondent no.4 issued letter dated 12.4.2021 to the applicant informing that since the applicant had refused the promotion therefore, the payments made under the ACPS be stopped

and the amounts paid from the period 18.12.2009 to 23.12.2015 be recovered from the applicant.

4. Ld. Advocate for the applicant submits that applicant made representation dated 25.5.2021 to respondent no.3 against the said letter dated 12.4.2021 not to recover the any amount. The respondent no.3 by his letter dated 9.8.2021 rejected the said representation of the applicant. On 8.9.2021 the respondent no.2 wrote a letter to the respondent no.3 to take decision on the representation of the applicant on the basis of GR dated 2.3.3019 issued by the Finance Department. However, the respondent no.5 passed the order dated 11.1.2023 for recovery of the amount from the salary of the applicant. The applicant filed representation dated 17.1.2023 to respondent No.5 consider the provisions of GR dated 2.3.2019. The respondent no.5 issued the impugned order dated 8.2.2023 rejecting his representation dated 17.1.2023 and directed that an amount of Rs.3,23,232/- should be recovered from the applicant in 15 monthly instalments from the salary. Against the said order applicant has made representation dated 9.2.2023. The applicant prays that said orders dated 8.2.2023, 11.1.2023 and 12.4.2021 be quashed and set aside.

5. Ld. Advocate for the applicant refers to and rely on para 3 of the GR dated 2.3.2019 issued by the Finance Department, which reads as under:

“(३) या योजनखाली पहिला, दुसरा व तिसरा अथवा तिन्ही लाभ मंजूर केल्यानंतर प्रत्यक्ष पदोन्नती नाकारलेल्या अथवा पदोन्नतीस अपात्र ठरलेल्या कर्मचाऱ्यांना देण्यात आलेले लाभ काढून घेण्यात येतील, तथापि अशा लाभांची वसुली करण्यात येणार नाही. तसेच असे लाभ काढून घेतल्यानंतर संबंधिताची वेतननिश्चिती ही त्यांना जणू काही या

योजनेचे लाभ देण्यात आले नव्हते असे समजून, महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील नियम १२ च्या तरतुदीनुसार करण्यात येईल.”

6. Ld. Advocate for the applicant also rely on the judgment and order dated 18.12.2014 passed by the Hon'ble Supreme Court of India in **Civil Appeal No.11527 of 2014 State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.**

7. Per contra Ld. PO opposes the submissions made by the Ld. Advocate for the applicant. He relied on the affidavit in reply dated 28.3.2023 filed by Varsha Sakharam Pawar, Deputy Commissioner (Administration), Women & Child Development Department, MS, Pune. He states that the GR dated 2.3.2019 has been issued for 3 benefits of ACPS after completion of 10, 20 and 30 years of regular service during the period of 7th Pay Commission since 1.1.2016 and applicant's second benefit has been withdrawn from the period from 18.12.2009 during the 6th Pay Commission. He states that during the period of the 6th Pay Commission and according to the provisions of GR dated 1.4.2010 the applicant has rightly been imposed with the recovery. He further states that the judgment in **Rafiq Masih** (supra) is related to retired employees.

8. I have considered the submissions of both the sides. I refer to the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra). Para 12 of the judgment reads 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, summarise 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 employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.”

9. It is clearly see that the applicant belongs to Class-III. In view of the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra), I hold that the impugned orders dated 8.2.2023, 11.1.2023 and 12.4.2021 requires to be quashed and set aside. Hence, I pass the following order.

10. The Original Application is allowed and the impugned orders dated 8.2.2023, 11.1.2023 and 12.4.2021 are quashed and set aside. Interim relief granted by this Tribunal on 15.2.2023 is made absolute. No recovery should be made from the applicant. No orders as to cost.

**Sd/-
(Medha Gadgil)
Member (A)
4.9.2023**

Dictation taken by: S.G. Jawalkar.