

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO. 17 OF 2015  
In  
ORIGINAL APPLICATION NO. 603 OF 2013**

**DISTRICT:- THANE**

Smt. Shanta Vishvanath Kharat )  
Major, Service (Retired), )  
Craft Instructor, working in the )  
Female Beggar Home, Chembur, )  
R/o. A-11, Gandharwa Co-Op. So., )  
Shrinagar, Wagle Estate, Thane. )...**Applicant**

**VERSUS**

1. The Secretary, )  
Social Welfare Department, )  
Mantralaya, Mumbai. )
2. The Secretary, )  
Women & Child Welfare Department, )  
Mantralaya, Mumbai. )
3. The Director of Social Welfare, )  
M.S. Pune - 1. )
4. The Divisional Social Welfare Officer, )  
Mumbai Division, Konkan Bhavan, )  
Navi Mumbai. )
5. The Director of Social Welfare )  
Mumbai City, )  
Administrative Bldg, 4<sup>th</sup> floor, )



R.C. Chemburkar Marg, )  
Chembur, Mumbai - 400 071. )

6. The District Women & Child Development )  
Officer, Mumbai City, Administrative Bold, )  
1<sup>st</sup> floor, R.C. Chemburkar Marg, )  
Chembur, Mumbai 400 071. )

7. The Superintendent, )  
Women's Beggar Home, )  
R.C. Marg, Near Jain Temple, )  
Chembur, Mumbai - 400 071. )

) **Respondents**

Shri V.P. Potbhare, the learned Advocate for the Applicant.

Ahri A.J. Chougule, learned Presenting Officer for the Respondents.

**CORAM : Shri R.B. Malik (Member) (J)**

**DATE : 29 .02. 2016**

**ORDER**

1. This is an application for review of the order dated 11<sup>th</sup> December, 2014 disposing of O.A.No.603 of 2013 made by the learned Member (A).

2. I have perused the record and proceedings of the R.A. and the record furnished at the bar and heard Mr. V.P. Potbhare, the learned Advocate for the Applicant and Shri

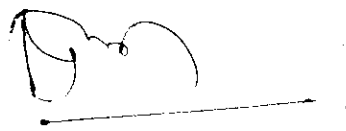


A.J. Chougule, the learned Presenting Officer (P.O.) for the Respondents.

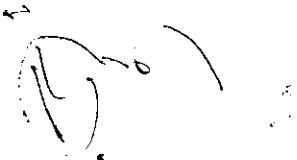
3. The points that arise for determination are as to whether this Review Application (R.A.) can be entertained within the parameters of law and if yes whether there is merit in the case of the Applicant for success. My findings on both the points are in affirmative for following reasons.

4. The Applicant in fact retired as Craft Teacher in Woman and Child Welfare Department on 30<sup>th</sup> September, 2002. The matter really pertains to the period from 1995 to 2002. According to the Respondents upon pay fixation, it was found that the Applicant was over paid. The cause being that she was not entitled to the pay scale of 5000 to 8000 while considering Time Bound Promotion.

5. It appears that the same over payment was in fact recovered from her gratuity and it worked out to Rs.50,000/-. The Applicant brought O.A.No.636 of 2010 which came to be disposed of by this Tribunal with directions to issue the show cause notice and hear her before making the order. The said formalities were complied with. However, the claim of the Applicant was rejected leading her back to this Tribunal with O.A.No.603 of 2013. It was finally decided on 11<sup>th</sup> December, 2014 and for the reason set out in the said judgment the O.A. was dismissed. The Applicant has filed this Review Application there against.

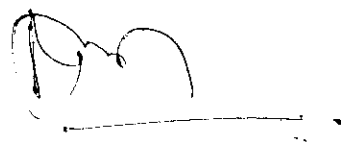


6. The learned Member who rendered the order on the O.A. has since retired and therefore this Review Application has been placed before me for final disposal. I am conscious of the limitation that inheres the court, hearing the review matter. The ambit is provided by Section 22(3) (f) of the Administrative Tribunals Act, 1985 read with rules thereof. Basically the principle underlying Section 114 read with order 47 of the Code of Civil Procedure will also govern such matters and not unless the facts fall therewithin the Review Application could be successfully maintained. Even if the review court were to find that the judgment was erroneous or even not entirely correct still the review court may not interfere there with. However, even if was found that the judgment in question could fall within the limited category of cases where review can be made like for instance, the same being erroneous on the face of it about which it is not necessary for me to enter into any academic discussion then the review could be considered. Here it is found that some judgments of the Hon'ble Supreme Court were considered and in fact passages were quoted but as I can read the said judgment, the factual finding was not rendered except the observation in paragraph nos.17 and 18. With utmost respect, I think that in paragraph no.18 the essence of the law laid down by the Hon'ble Supreme Court did not receive the kind of treatment that it ought to have. Therefore, the law laid down by the Hon'ble Supreme Court has not been properly applied and it has lead to momentous



consequents. I do not think that in such circumstances still immunity from the review jurisdiction could be claimed howsoever limited or constricted the jurisdiction be.

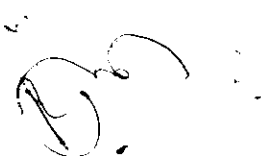
7. There is a judgment of the Hon'ble Supreme Court in disposing of a large number of Civil Appeals including Civil Appeal No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012 (State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc. at 18<sup>th</sup> December, 2014. It is disputable that this judgment was yet to be rendered when the judgment in the O.A. was rendered a week before that on 11.12.2014. It is equally disputable that application of law laid down therein by the Hon'ble Apex Court furnishes answers to all the questions that the Respondents might want to pose. Learned P.O. for the Respondents sought to contend that this judgment could not have been considered by the learned Member (A) while deciding the O.A. and therefore may be it was his contention that it may not be applicable. As to the above submission of the learned P.O. for the Respondents I find that to me it appears to be incorrect. In the context of the facts such as they are the Review Application having been filed and pending though in all fairness it was not based on Rafiq Masih case but several other judgments of the Hon'ble Apex Court came to be discussed in the judgment of the O.A. I am in duty bound in deciding this Review Application which is a live proceeding, to apply the principles laid down by the Hon'ble Supreme Court in Rafiq Masih Case. The test would



be as to whether in deciding this Review Application it is possible for me to ignore the law laid down by the Hon'ble Supreme Court it just is not possible because it might amount to impropriety, incongruity of the highest degree and may be even worse. I can not ignore to the judgment of Hon'ble Supreme Court when found fully applicable to the facts. Having said so let me now reproduce paragraph no.12 from that particular judgment.

"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 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. From the above paragraph it should become absolutely clear that the Applicant having retired from Group - 'C' post and there being no allegations at all of any sharp practice applied by the application of the law laid down by the Hon'ble Supreme Court in the above referred matter, will have to be made.

9. Now, having said so I turn to the Finance Department's G.R. dated 20<sup>th</sup> July, 2001, a copy of which is furnished to me by learned Advocate Mr. Potbhare in so far as 8<sup>th</sup> clause is concerned. While laying down that the benefits of the said G.R. would not be applicable to those employees who refuse promotion and that the said benefit would be withdrawn in case of those employees who refused to accept promotion after getting the higher pay scale but then whatever benefit were given could not be recovered



from them. Words in Marathi are “ मात्र दिलेल्या लाभांची वसूली करण्यात येणार नाही.”

10. Further the judgments in the matters of **Syed Abdul Qadir & others Vs. State of Bihar Civil Appeal No.3355 of 2013 rendered by Hon'ble Supreme Court on 16<sup>th</sup> December, 2008 and Col. B.J. Akkara (retd). case** came to be cited. It is not possible to see as to how the principles laid down by Hon'ble S.C. in those two matters could alter the outcome hereof. In my view merely because there were no allegations of fraud etc against the Applicant in the matter of pay fixation and the consequent payment it can not be held that the Applicant would be liable to repay. In fact, both these judgments came to be considered by Hon'ble Supreme Court in **Rafiq Masih** case. Here the recovery sought to be made is spread over a period of six years no less and that being the state of affairs in my opinion the present facts are such as to be fully governed by the judgment of Rafiq Masih as well as interpretation of Syed Abdul Qadir and Col. B.J. Akkara (retd) made in that judgment. This is not recovery for a short period of time.

11. The manner in which the representation of the Applicant came to be dealt with after the judgment of 1<sup>st</sup> O.A. was apparently not canvassed with a proper focus before the bench and so also the facts with regard to the events pertaining to the pay fixation committee.





12. Therefore, on 1<sup>st</sup> principles of law even while remaining within the confines of the review jurisdiction I am very clearly of the opinion that a case for interference is made out for relief to the Applicant.

13. The action of recovery of the amount above referred to by the order dated 9.1.2013 and recovery is hereby quashed and set aside. The Respondents are directed to refund the amount to the Applicant within four weeks from today failing which the said amount would carry interest at the rate 9 %. from today till actual payment. The order of the O.A.No.603 of 2013 dated 11.12.2014 is therefore affected hereby and the Review Application 17 of 2015 is allowed with no order as to costs.

Sd/-

**(R.B. MALIK)**  
**(MEMBER) (J)**

**Date : 29.02.2016**

**Place : Mumbai**

**Dictation taken by : SBA**

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