

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.05 OF 2023
IN
ORIGINAL APPLICATION NO.834 OF 2019**

- 1) The State of Maharashtra,)
Through Secretary,)
Forest Department, Mantralaya,)
Nariman Point, Mumbai 32.)
- 2) The Additional Chief Conservator of)
Forest, (Human Resources))
Van Bhavan, Ramgiri Road,)
Civil Line, Nagpur.)
- 3) Chief Conservator of Forest,)
Forest Department, Opp. Post Office,)
Tarabai Park, Kolhapur.)
- 4) The Deputy Conservator of Forest (T))
Forest Campus, Hanuman Nagar,)
Kupwad, Tal Miraj, Dist. Sangli.)... **Applicants**
(**Ori. Respondents**)

Versus

Mr. Sangramsingh Bhausahab Patil)
Age : 59 years, residing at Plot No.11,)
Parshwanathnagar, Sangli Kupwad Road,)
Sangli - 416 415.)...**Respondent**
(**Ori. Applicant**)

Smt. A.B. Kololgi, Presenting Officer for Applicants (Ori. Respondents)

Smt. Rajnana Todankar, Advocate for Respondent (Ori. Applicant)

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.08.2023

JUDGMENT

1. Original Respondents have filed this application to review the order passed by the Tribunal on 30.09.2022 in O.A.No.834/2019 whereby Respondents were directed to refund the amount of Rs.4,71,918/- to the Applicant within six weeks from the date of order, invoking Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of Code of Civil Procedure.

2. The Applicant stands retired on 31.05.2019 from the post of Lower Grade Stenographer. He joined service as Steno-typist and later promoted to the post of Lower Grade Stenographer. After his joining service, he was required to pass Marathi Language Examination within four years from the date of appointment, but failed to do so. Therefore, he was not entitled for increments and those were required to be withheld. However, increments were wrongly released. The said aspect was noticed by the Department when Applicant was on the verge of retirement. The Department, therefore, issued notice dated 22.05.2019 seeking recovery of Rs.4,71,918/- towards excess payment paid to him by way of increments. The Applicant challenged the recovery by filing O.A.No.834/2019 *inter-alia* contending that in view of Judgment of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**, recovery is impermissible. During the pendency of O.A, the Department recovered the said amount from his retiral benefits. The Applicant, therefore, amended the O.A. and sought direction to refund the amount. The Tribunal decided the O.A. on merit by Judgment dated 30.09.2022. In O.A, the Applicant restricted his claim to the recovery and has not challenged re-fixation of pay. The Tribunal observed that Applicant falls in Group 'C' and held that in view of Judgment in **Rafiq Masih's** case, recovery is impermissible. Accordingly, directions were issued to refund

the amount to the Applicant. Being aggrieved by it, the original Respondent – Department has filed this Review Application.

3. The learned Presenting Officer sought to contend that in fact, the post of the Applicant held by him at the time of retirement i.e. Lower Grade Stenographer falls in Group 'B', and therefore, Applicant is not entitled to the benefit of decision in **Rafiq Masih's** case. She has tendered Recruitment Rules, which shows that the post of Lower Grade Stenographer falls in Group 'B'. She, therefore, tried to contend that there is apparent error on the face of record and order passed by the Tribunal be reviewed.

4. Per contra, learned Advocate for the Applicant opposed Review Application *inter-alia* contending that the post of Lower Grade Stenographer falls in Group 'C' as per staffing pattern (Akrutibandh) of the Department. She further submits that even if Applicant falls in Group 'B' category, in that event also, the Judgment of **Rafiq Masih's** case is applicable, since amount is recovered after retirement.

5. In first place, the original Respondents are required to establish that matter falls within the parameters laid down in Order 47 Rule 1 of CPC for review of order and in the present case, the matter does not fall within the ambit of parameters under Order 47 Rule 1 of CPC. Order 47 Rule 1 of CPC is as under :-

“1. Application for review of judgment.-(1) Any person considering himself aggrieved.-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the

record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

(Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.)”

6. Thus, review is permissible where it is necessitated from the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of party or could not be produced by it at the time when order was passed. In the present case, the ground put forth for review is that the original Applicant falls in Group ‘B’ cadre. Notably, this plea was not at all taken by the Department while deciding O.A. There is absolutely no such explanation in Review Application that why the said plea was not taken or why no such documents were tendered in O.A. The Department was well aware, but did not raise this plea nor produced any such record though it was within the knowledge. This being so, merely for asking of review is not permissible. Unless it is established that party could not produce it despite exercise of due diligence or was not within it’s knowledge, review is not permissible. In the present case, no such case is made out. The learned P.O. also fairly states that no such explanation or ground is mentioned in Review Application as to why said documents were not tendered while deciding O.A. As such, on this ground alone, Review Application is liable to be dismissed.

7. That apart, the contention raised by the learned P.O. that the decision in **Rafiq Masih’s** case is applicable to Group ‘C’ and Group ‘D’ only is totally misconceived. Hon’ble Supreme Court culled out 5

situations wherein recovery would be impermissible. In Para No.12, 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, summarise 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.”*

8. As such, it is apparent that the recovery is impermissible not only against Group 'C' and Group 'D' employees, but it is also impermissible if it falls within Clause Nos.(ii), (iii), (iv) and (v) of the Para 12 of the Judgment in **Rafiq Masih's** case. In the present case, the amount was recovered after retirement and the excess payment was made during the period from 1997 to 2021. Noting of these aspects, the Tribunal while deciding O.A. specifically held that Applicant's case is covered by the parameters laid down by Hon'ble Supreme Court. It is thus explicit that even if original Applicant falls in Group 'B', his case falls in Clauses (ii), (iii) and (v) of Para No.12 of the decision in **Rafiq Masih's** case. The Tribunal specifically held that it would be iniquitous and harsh to recover the amount to such an extent as would outweigh the equitable balance of the employer's right to recover the excess payment.

9. For the aforesaid reason, I find no merit in the Review Application and is liable to be dismissed. Hence, the order.

ORDER

The Review Application is dismissed. No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.08.2023

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\August, 2023\R.A.05.23 in O.A.8234.19.w.8.2023.doc

Uploaded on