

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.898 OF 2022

DISTRICT : THANE

SUB : Recovery

Smt. Nutan Sanjay Vaidya, Aged 64 Years,)
Occ : Service (at present retired from the post of)
'Head Clerk' from the office of Commissioner of)
Police, Thane. R/o : 101, Shivaji, A-Wing, Co-)
Operative Housing Society, Plot No.66, S. V.)
Road, Irla Bridge, Andheri (W), Mumbai 400058.)... **Applicant**

Versus

1. Additional Chief Secretary, Home Dept.)
Mantralaya, Mumbai 32 through the Chief)
Presenting Officer, M.A.T. Mumbai.)
2. Director General of Police, M.S. Shahid)
Bhagat Singh Road, Colaba, Mumbai.)
3. The Special Inspector General of Police,)
Konkan Range, Navi Mumbai.)
4. The Commissioner of Police, Thane)
Commissionerate, Dist. Thane.)
5. The Superintendent Of Police, Thane,)
Rural, Thane.)...**Respondents**

Shri M. B Kadam, learned Advocate for the Applicant.

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

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Member (J)

Reserved on : 14.01.2025

Pronounced on : 16.01.2025

JUDGEMENT

Heard Shri M. B. Kadam, learned Advocate for the Applicant and
Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. The Applicant was appointed as Junior Clerk on 25.05.1981. By order dated 25.02.1996 1st Time Bound Promotion was given to her w.e.f. 21.12.1994. By order dated 26.04.2007, the Applicant and 5 Others were held entitled to such benefit w.e.f. 02.05.1988. By order dated 26.02.2014, the order granting benefits of scale of Senior Clerk w.e.f. 02.05.1988 to the Applicant and others was cancelled. Regular promotion was given to the Applicant on 21.12.1994. By orders dated 03.12.2015 and 05.03.2016 recovery of Rs.4,93,033/- was directed to be made from the Applicant towards excess payment. As per order dated 05.03.2016 from salary payable to the Applicant for the months' of February 2016 to May 2016, an amount of Rs.10,000/- per month was to be deducted towards recovery and as she was to retire on superannuation on 31.05.2016, the remaining amount was to be recovered from her retiral benefits. According to the Applicant, such recovery was impermissible. Hence, this Original Application.

3. It may be stated at the outset that the Applicant has challenged only recovery and not refixation of pay based on order dated 26.02.2014. During the course of final hearing, learned Counsel for the Applicant, on instructions made this statement.

4. Though, the Respondents have tried to support the orders directing recovery, in view of legal position laid down in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**, it will have to be held that the impugned recovery was impermissible. In this case it is held :-

“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 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.

(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."

5. The Applicant retired as Class-III/Group 'C' employee. The recovery started when retirement of the Applicant was less than a year away. The amount of excess payment made for a period for more than five years was directed to be recovered. Thus, clauses (i) to (iii) of **Rafiq Masih** (Supra) are attracted rendering the recovery impermissible. Hence, the order :-

ORDER

The Original Application is allowed in the following terms –

- (A) The impugned recovery is held to be impermissible in law.
- (B) The amount recovered pursuant to the impugned orders of recovery shall be refunded to the Applicant within three months from today failing which the unpaid amount shall carry interest @ 6% per annum from today till repayment.
- (C) No order as to costs.

Sd/-
(M. A. Lovekar)
Member (J)