

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 175 OF 2018

DISTRICT : PALGHAR

ORIGINAL APPLICATION NO. 175 OF 2018

1. Geeta Raghunath Mukane,)
B.204, Poonam Orchid, Yashwant Nagar,)
Virar (W), Tal:- Vasai,)
Dist: Palghar:- 401403.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through Secretary Tribal Development)
Department, Mantralaya Mumbai-32.)
2. The Commissioner of Tribal,)
Tribal Development Commissionerate)
Adidas Vikas Bhavan, 1st Floor,)
Old Agra Road, Nashik 422 002.)
3. The Additional Commissioner)
Add. Tribal Development Commissionerate)
Varsan Sankul, 9th Floor, Wagale Estate,)
Thane (W) 400604.)
4. The Project Officer)
Integrated Tribal Development Project)
Dahanu, Dist. Thane.)..**Respondents**

Shri S. S. Dere, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar

DATE : 29.03.2019

Shri S. S. Dere

J U D G E M E N T

1. Heard Shri S. S. Dere, learned Advocate for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. The short issue posed for consideration in the present O.A. is whether the Respondents are entitled to recover the amount paid to the Applicant towards pay and allowances during the period of her purported reemployment.

3. The factual matrix is as follows:-

The Applicant was appointed as Teacher by order dated 10.09.1981. In due course, she was promoted to the post of Lady Superintendent, Government Tribal Ashram School. On 02.09.2010, she had submitted an application for voluntary retirement. The Respondent No.3 i.e. Additional Commissioner, Tribal Development Commissionerate, Thane accepted the voluntary retirement notice of the Applicant w.e.f.30.11.2010. However, again on 06.02.2011, the Applicant had submitted an application to the Respondent No.3 to reemployment on the ground of family difficulties. In pursuance of her application, the Respondent No.3 by order dated 22.02.2011 again reappointed her on the same post. Accordingly, the Applicant joined the service on 23.02.2011. She continued on that post till attaining the age of superannuation on 30.04.2014. After her superannuation when the matter was processed for grant of retiral benefits, the objection was raised by the office of Accountant General (A.G.) as to how the Applicant came to be reemployed after acceptance of her resignation. The office of the

Respondent No.3 and 4 tried to convince the office of A.G. stating that the services of the Applicant were required by the administration and, therefore, she was reappointed. Finally, the matter was referred to the Government to regularize the reemployment of the Applicant as a special case. However, the Government by letter dated 29.04.2017, passed the following order.

“वित्त विभाग व सामान्य प्रशासन विभाग यांचे उक्त अभिप्राय विचारात घेता श्रीमती गीता रघुनाथ मुकणे, तत्कालीन अधिकाऱ्या यांच्या स्वेच्छा सेवा नंतरच्या पुनःस्थापनेस शासन मान्यता देता येणार नाही. यास्तव अपर आयुक्त, आ. वि. ठाणे यांच्या दि. १६.११.२०१० च्या आदेशान्वये दि. ३०.११.२०१० पासून श्रीमती मुकणे यांची मंजूर केलेली स्वेच्छा सेवा निवृत्ती कायम करण्यात यावी. तसेच त्यांच्या स्वेच्छा सेवानिवृत्तीनंतरही त्यांना पुनः पदस्थापना देवून त्यांच्या सेवा विभागाने वापरल्या असल्याने त्यांना त्यांच्या पुनः स्थापनेनंतर प्रदान करण्यात आलेल्या वेतनातून त्यांना सदर कालावधीत देय असलेले निवृत्तिवेतनाची रक्कम वजा करावी व सदर कालावधीत त्यांना देण्यात आलेल्या वेतनातून निवृत्ती वेतनाची रक्कम वजा केल्यानंतर जी रक्कम अति प्रदान झाली असेल ती रक्कम त्यांचे सेवा निवृत्ती नंतरच्या अनुषंगिक देय रक्कमांतून वसूल करण्यात यावी.

तरी उक्त शासन निर्णयाप्रमाणे तात्काळ कार्यवाही करावी व केलेल्या कार्यवाहीचा अहवाल शासनास सादर करावा.”

4. In the above background, the Applicant has challenged the order dated 29.04.2017 in this O.A.

5. The Respondent Nos.3 and 4 resisted the application by filing Affidavit-in-Reply denying the entitlement of the Applicant to the relief claimed in the O.A..

6. Thus, the facts as discussed above are very peculiar and the Applicant was reemployed even after acceptance of her resignation. The act of the Respondent No.3 to reemploy the Applicant is ex-facie illegal. Once the Applicant tendered the resignation, the said post was required to be filled in by due process of law. The civil post cannot be filled in, in the manner

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done by the Respondent No.3. This being the position, the reemployment of the Applicant was in blatant violation and illegal.

7. However, the fact remains that she was appointed and worked on the said post till attaining the age of superannuation i.e. 30.04.2014. When the matter was referred to the Respondent No.1 by the impugned order dated 29.04.2017 as reproduced above, the Respondent No.1 has rightly rejected the proposal to regularize the reemployment of the Applicant. However, by the same order, the directions were issued to treat the service of the Applicant after resignation as re-employment and to deduct the pension from the pay and allowances paid to the Applicant and if excess payment is found made, it be recovered from the retiral benefits.

8. However, admittedly during the period of reemployment after resignation, the Applicant was getting only pay and allowances as if regular employee and no pension was paid. It is an admitted position that the services of the Applicant after resignation were treated by the Respondent No.3 as a regular service and she was paid pay and allowances monthly.

9. Now, the question comes whether the recovery as contemplated in order dated 29.04.2017 can be made from the retiral dues of the Applicant in view of her retirement on 30.04.2014. Admittedly, the service of the Applicant were extracted though the order of reemployment was illegal. She worked on the said post continuously till attaining the age of superannuation i.e. 30.04.2014 and received monthly salary. This being the position, it would be unjust, iniquitous and arbitrary to recover the salary paid to her. In fact, it was illegal on the part of

the Respondent No.3 to issue re-employment order in favour of the Applicant, but now it is a case of *fait accompli*. The Applicant had already worked on the said post and was paid during the period of her service of re-appointment from 22.02.2011 to 30.04.2014. This being the position, if the amount is ordered to be recovered, then it would be amounting to extracting the work without paying salary or remuneration. Therefore, the proposed action for recovery from the salary cannot be upheld.

10. Learned P.O. for the Respondents has fairly stated that now, the Government does not want to recover the salary paid to the Applicant during the period of her service of re-employment and the Government's submission is restricted that the extended service of the Applicant from 23.02.2011 to 30.04.2014 should not be treated as service for pensionary benefits and the Applicant is entitled to the pensionary benefits as if her services came to be an end on 30.11.2010. The submission is quite fair and acceptable. Learned Advocate for the Applicant also fairly concedes this position.

11. Learned Advocate for the Applicant sought to place reliance on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer)etc., decided on 18th December, 2014**, wherein the Hon'ble Supreme Court made the following observations :-

"First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Quadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the

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action is arbitrary. All arbitrary action are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages; it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Bases on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee."

12. Though the **Rafiq Masih's** judgment is arising from the context of excess payment made to the employees due to wrong fixation of pay and allowances, the principle underline is squarely attracted in the present case with more force in view of rendering of the services by the Applicant during the period of re-employment.

13. The totality of aforesaid discussion leads me to conclude that the O.A. deserves to be allowed partly. Hence the following order.

ORDER

- (a) The O.A. is allowed partly.
- (b) The impugned order dated 29.04.2017 is quashed and set aside.
- (c) There shall be no recovery of the pay and allowances paid to the Applicant during the period of re-employment from 23.02.2011 to 30.04.2014.

(d) The Applicant, will not be entitled to any other service benefits on account of her services from 23.02.2011 to 30.04.2014.

(e) The Applicant will be entitled to the pensionary benefits treating her voluntary retirement w.e.f. 30.11.2010 only and her pension papers be processed as per her last drawn pay.

(f) The provisional pension, if any, paid to the Applicant be deducted from pension payable to her.

(g) The retiral benefits of the Applicant as per her entitlement be released within two months from today.

(h) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 29.03.2019

Place : Mumbai

Dictation by :V. S. Mane

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