

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5793 OF 2015

The State of Maharashtra and another .. Petitioners

Versus

Narayan Mahadu Wani .. Respondent

Mrs. M. S. Patni, A.G.P. for Petitioners.

Shri A. S. Deshpande, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 16TH JULY, 2015.

PER COURT :

. Mrs. Patni, the learned Assistant Government Pleader for the State submits that, the Tribunal has not considered the fact that, the petitioner was not eligible for promotion considering his past record. The petitioner joined service as junior clerk in the year 1983. The first benefit under the time scale promotion scheme was granted to him vide order dated 12.12.1997 with effect from 10.06.1995. The second benefit under the time scale promotion scheme was extended to him vide order dated 14.10.2011 with effect from 01.06.2007. The respondent was prosecuted under the provisions of the Prevention of Corruption Act. The learned A. G. P. submits that, as the respondent was not eligible to be promoted, the benefit of second time scale

promotion scheme could not have been granted. The Tribunal has failed to consider this aspect.

2. Mr. Deshpande, the learned counsel submits that, the Tribunal has considered all the relevant aspects of the matter in its correct perspective. There is no legal foundation of the alleged non eligibility. The Tribunal has rightly quashed and set aside the impugned order. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab Vs. Rafiq Masih (White Washer) etc.** reported in (2015)4 S.C.C. 334 and more particularly para 12 of the said judgment.

3. It is not disputed that, the said recovery is claimed after the petitioner has retired from service. The same was also after five years of retirement. The recovery is of the period prior to 2013. In the light of the above, the judgment of the Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer) etc.** referred supra squarely applies in the present case. The impugned order is passed on the verge of retirement.

4. The learned A. G. P. submits that, cost has been saddled on the original respondent No. 2 without assigning any reason. Mr. Deshpande, the learned counsel for the respondent submits that, considering manner in which the order is passed the cost is rightly imposed.

5. The cost imposed is in the nature of exemplary cost within Sec. 35-B of the Code of Civil Procedure and for the said order reasons are to be given.

6. In the light of the above, the writ petition is partly allowed. The impugned order extent of imposing cost is set aside. Rest of the order passed by the Tribunal stands confirmed.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 15