

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11247 OF 2014

Sanjay s/o. Kamalchand Rathod,
Age 49 years, occ. service,
r/o. H.No.496, Darji Bazar,
Cantonment, Aurangabad,
Tq. and Dist. Aurangabad ..Petitioner

Versus

- 1] The State of Maharashtra
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai
- 2] The Registrar (Administration),
High Court, Bench at Aurangabad
- 3] The Principal District Judge,
District and Sessions Court,
Aurangabad ..Respondents

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Mr.A.R.Borulkar, advocate for petitioner

Mr.S.K.Kadam, AGP for respondent no.1

Mr.R.S.Deshmukh, advocate for respondent nos.2 and 3

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**CORAM : S.S. SHINDE AND
M.T. JOSHI, JJ.**

DATE : SEPTEMBER 10, 2015

ORAL JUDGMENT (Per S.S. Shinde, J.):

Heard.

2] Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing forthwith.

3] This petition has two fold prayers. Firstly, it is prayed by the petitioner that the respondents may be directed to give promotion to the petitioner on the post of Senior Clerk from 14th January, 2011 with all monetary benefits. It is further prayed that the impugned order may be set aside and respondent no.3 may be restrained from recovering the monetary benefits of the petitioner, as directed by respondent no.3 vide it's order dated 17th October, 2011.

4] We have heard learned counsel for the petitioner; learned AGP for respondent no.1; and

learned counsel appearing for respondent nos.2 and 3.

5] Perused the documents placed on record so far. The directions to the respondents to give promotion to the petitioner cannot be acceded to. Hence, the said prayer is hereby rejected.

6] So far as recovery from the petitioner is concerned, it is not the case of the respondents that, the amount, which was paid to the petitioner, was on account of misrepresentation or fraud played by the petitioner.

7] Learned counsel appearing for the parties fairly conceded that, the issue raised in this petition is covered by the ratio laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and ors. Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 696***, wherein recovery was found

impermissible in law from a Class-III and Class-IV (or Group `C' and Group `D' service) employee.

8] The petitioner is serving as a Clerk i.e. from Class-III posts. In that view of the matter, in view of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafiq** (detailed supra), the recovery from the petitioner by the respondents, is impermissible.

9] The petition is partly allowed in terms of prayer clause (C). The petition stands disposed of accordingly. Rule partly made absolute

[M.T. JOSHI, J.]

[S.S. SHINDE, J.]

kbp