

WRIT PETITION NO. 7404 OF 2016

V/s.

Shri Balkrishna Babu Naikam ... Respondent

Mr. C.P. Yadav for the petitioner.
Ms. Chaitnali Deshmukh i/b. Leena Patil for respondent no.1.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

3rd October, 2016.

P.C.

The petitioner-State challenges the order passed by the Maharashtra Administrative Tribunal, Mumbai Bench in O.A. No.923/2015 dated 18th February, 2016. Respondent was initially appointed as Armed Police Constable on 15th June, 1985. He was then appointed as a Police Constable Driver w.e.f. 1st September, 1989. He was granted Time Bound Promotion after twelve years i.e. on 15th June, 1997. It is the case of the petitioner that he was mistakenly given time bound promotion by the petitioner no.3 and the pay verification unit pointed out this mistake by

an order dated 19th January, 2015. The Tribunal referred to judgment of Hon'ble Apex Court in Civil Appeal No. 11527/2014 {State of Punjab & ors. v/s. Rafiq Masih}. In Paragraph-12 thereof, the Hon'ble Apex Court had carved out four situations wherein the recovery from the employee would be impermissible. Paragraph 12 (i) to 12(v) reads as under:

“12.

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

2. Learned Counsel appearing for petitioner-State submits that State is not recovering any amount from the respondent but re-fixing the emoluments of respondent which he received for the purposes of benefit of services.

3. The State has taken 25 years to realise that some mistake occurred in counting 12 years period of giving time bound promotion to respondent, that also when the pay verification unit raised this issue.

4. The Maharashtra Administrative Tribunal after perusing the record and considering the submissions formed its opinion. The view adopted by the Tribunal cannot be termed as unreasonable or perverse. In the facts we are not inclined to interfere into the view adopted by the Tribunal in exercise of our writ jurisdiction. There is no merit in the petition. It is dismissed.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)