

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9860 OF 2016**

Mrs. Sandhya Prakash Shiralkar Petitioner

Versus

The State of Maharashtra & Ors. Respondents

- Mr. Ameet Anand Palkar for Petitioner.
- Mr. N.C.Walimbe, AGP for Respondents/State.

**CORAM : R. M. BORDE AND
 A. S. GADKARI, JJ.
DATE : MARCH 07, 2017.**

P.C.

. Heard.

2. Rule. With consent of the parties, petition is taken up for final disposal at the admission stage.

3. The Petitioner is objected to the judgment and order dated 30th April 2015 passed by the learned Member (A), Maharashtra Administrative Tribunal Mumbai in Original Application No. 487 of 2013. The Tribunal was pleased to dismiss Original Application presented by the Petitioner and thereby confirmed the order dated 3rd December 2012 passed by the Respondent No.2 whereunder the benefits for time bound

promotion scheme extended to the Petitioner was cancelled and recovery of excess amount allegedly paid to the tune of Rs.1,85,097/- was directed to be made.

4. The Petitioner was appointed as Lower Grade English Stenographer in the office of Respondent No.2 w.e.f. 28th March 1988 by an order dated 21st March 1988. The Petitioner was confirmed during employment and was made permanent in the post of Lower Grade Stenographer w.e.f. 28th March 1991 in view of the letter dated 6th August 1998 issued by Respondent No.1. In view of the Government Resolution dated 6th May 1991, passing of Marathi Shorthand and Typing examination was made compulsory for English Stenographers and they were required to pass Marathi Shorthand examination within four years from 6th May 1991 i.e. on or before 6th May 1995. Since the Petitioner failed to pass Marathi Shorthand examination within the time stipulated, Respondent No.2 proceeded to pass an adverse order thereby withdrawing of certain financial benefits accrued to the Petitioner.

5. The Petitioner was served with order dated 3rd December 2012 issued by Respondent No.2, thereby directing the office to calculate an excess payment made to the Petitioner during the period from 1st March 1996 to 31st August 2005 as well as cancellation of the first time bound promotion granted to her on 28th March, 2000 and recovery of an excess payment made during the aforesaid period. The order passed by Respondent No. 2 was

the subject matter of the Original Application presented by the Petitioner before the Maharashtra Administrative Tribunal Mumbai. The Tribunal was pleased to dismiss the Original Application.

6. The Petitioner contends that she was not instrumental in securing the financial benefits wrongfully, neither any misrepresentation nor fraud can be attributed to her. She has already retired on attaining her age of superannuation. If at all there is any excess payment, it is on account of bonafide mistake on the part of the concerned authority, for which the Petitioner cannot be held responsible. So far as the instant matter is concerned, it can be considered as a bonafide mistake of the authority. It was also impermissible for the authority to take such action in view of the circular issued by the Registrar (Legal) High Court of Bombay (Appellate Side) on 3rd December 2004. The Government Resolution dated 6th May 1991 issuing directions to English Stenographers to acquire Marathi Typing/Shorthand proficiency and to pass requisite examination has been declared to be inapplicable in case of employees of High Court from the date of issuance of order i.e. 3rd December 2012.

7. It is contended on behalf of State that the instructions issued by the High Court are not applicable to the State Government employees and since Petitioner was employee under the State Government, such direction issued by High Court cannot be made applicable in her case. The argument is liable to be

rejected for the simple reason that Petitioner was required to function as a Stenographer in the office of Rent Controller. The functions performed by the Rent Controller are of quasi judicial in nature since Petitioner was required to render service in Rent Controller's Office and her job requirement and functioning assigned to her are similar to High Court employees and that Rent Controller comes within the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, it cannot be said that the policy prescribed by the High Court under instructions/circular dated 3rd December 2004 issued on administrative side cannot be made applicable to the Petitioner.

8. Even on application of principle laid down by the Supreme Court in *State of Punjab and Others V/s Rafiq Masih (Whitewasher)*, reported in AIR 2015 SC 696, Petitioner is entitled to succeed and recovery as directed by the Respondents need to be quashed and set aside. The Hon'ble Supreme Court has laid down the principles in respect of permissibility of recovery of service benefits from employees of State in paragraph 12 of the judgment and held that it would be impermissible to recover financial benefits in following circumstances.

- “ (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 the 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."*

9. In the instant matter, Petitioner is covered by the paragraphs (i), (ii) and (iii) and also paragraph (iv) as quoted above. The Petitioner is an employee belonging to Class-III cadre and recovery that has been directed to be made is for a period in excess of five years before the order of recovery was issued. The recovery that has been directed is in case of a retired employee i.e. the Petitioner which is surely iniquitous, harsh and arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

10. Considering the parameters laid down in paragraph 12 of the Supreme Court judgment in *State of Punjab and Others V/s Rafiq Masih (cited supra)*, the order passed by the Maharashtra

Administrative Tribunal dismissing the Original Application presented by Petitioner deserves to be quashed and set aside and accordingly the same is quashed and set aside.

11. The order dated 3rd December 2012 passed by the Respondent No.2 impugned in the petition annexed at *Exh.'W'* as well as the judgment and order dated 30th April 2015 passed by the Maharashtra Administrative Tribunal in Original Application No. 487 of 2013 in the petition at *Exh.'AA'* are quashed and set aside. Rule is accordingly made absolute. There shall be no order as to costs.

12. As a consequence of quashment of the order dated 3rd December 2012, time bound promotions which were granted to the Petitioner and those were withdrawn subsequently by the State need to be restored and those are accordingly directed to be restored.

13. The amount recovered wrongfully shall be repaid to the Petitioner, as expeditiously as possible, preferably within a period of six months.

[A. S. GADKARI, J.]

[R. M. BORDE, J.]