

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3940 OF 2016

Kamalakar Ravji Rokade	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Kedar P. Lad for Petitioner.
Mr. N. C. Walimbe - AGP for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 23 APRIL 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 30th November 2015 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 962 of 2015 instituted by the petitioner seeking *inter alia*

restraint upon recovery of an amount of Rs.4,34,312/- being allegedly the excess payment made to the petitioner in the matter of implementation of the Time Bound Promotion Scheme (TBPS).

4] Mr. Kedar Lad, the learned counsel for the petitioner submits that by order dated 5th February 1996, time bound promotional scale came to be granted to the petitioner. After almost 16 years, by an order dated 13th August 2012, the order dated 5th February 1996, was withdrawn on the ground that the petitioner has not passed the Marathi Steno Typist Examination and therefore was ineligible for grant of time bound promotional scale. By the same order, at the stage when the petitioner was about to retire on superannuation in the following year, recoveries of the alleged excess amount of Rs.4,34,312/- were sought to be made from the petitioner. The petitioner's representation dated 3rd September 2012 was rejected by order dated 27th February 2013. By this order, even the pension payable to the petitioner was withheld until the petitioner deposits the amount of Rs.4,34,312/-. Ultimately, this amount, was recovered from the retiral benefits payable to the petitioner.

5] Mr. Lad submits that at no stage, the petitioner was informed that he was required to clear Marathi Steno Typist Examination for the purpose of grant of time bound promotional scale. He submits that the respondents, despite the fact, that the petitioner had not cleared such a examination / test, granted the petitioner time bound promotional scale by order dated 5th February 1996. There was no case of any misrepresentation or fraud on the part of the petitioner. Mr. Lad points out that by order dated 27th November 2012, it was clarified that the employees who have attained the age of 50 years, were in fact exempted from clearing the Marathi Steno Typist Examination. He submits that all these aspects have not been considered by the MAT in making the impugned judgment and order.

6] Finally, Mr. Lad submits that the recoveries ordered were in gross breach of the principles of natural justice and fair play and contrary to the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334***, in which it is clearly laid down that no recovery should be

ordered from employees belonging to class III and class IV and further, no recovery should be ordered from employees who are due to retire within one year from the order of the recovery and no recovery should be ordered when the excess payment has been made for a period in excess of five years before the order of recovery is received. Mr. Lad submits that for all these reasons, the impugned judgment and order is liable to be quashed and set aside and the reliefs claimed by the petitioner in the original application, liable to be granted.

7] Mr. Walimbe, the learned AGP for the State submits that the requirement of clearing Marathi Steno Typist Examination was mandatory and since, the petitioner had not cleared the same, the petitioner was not entitled to be paid time bound promotional scale. He submits that the exemption from passing such examination / test applies from 5th February 2005, by which date, the petitioner attained the age of 50 years, but not from any period prior to the said date. For all these reasons, Mr. Walimbe submits that there is no infirmity whatsoever in the view taken by the MAT in the impugned judgment and order and therefore,

this petition may be dismissed.

8] The rival contentions now fall for our determination.

9] The petitioner was appointed as a steno typist on 16th February 1979. After completion of 12 years of service, by order dated 5th February 1996, the petitioner was given the benefit of time bound promotional scale of Rs.1640-2900 with effect from 1st February 1995. At this stage, neither was the petitioner informed that he was required to clear Marathi Steno Typist Examination / test nor was the time bound promotional scale denied to the petitioner on the ground of failure to pass Marathi Steno Typist examination. There is not even any allegation that the petitioner misrepresented anybody or practised any fraud. This position continued for at least 8 years, when, for the first time, by memo dated 19th November 2003, the petitioner was informed that he is required to clear Marathi Steno Typist examination, failing which, further increments would be withheld. Again, there was no reference to withdrawal of the time bound promotional scale already granted to the petitioner with effect from 1st February 1995.

10] The petitioner vide responses dated 24th November 2003 and 1st February 2005, informed the respondents that he was willing to clear the Marathi Steno Typist Examination within one year and sought for details of examinations and modalities for answering the same. No such details were ever furnished to the petitioner for a period of almost 7 to 8 years thereafter. However, by order dated 13th August 2012, without complying with principles of natural justice, the order dated 5th February 1996 by which the petitioner had been granted time bound promotional scale, was summarily withdrawn and the alleged excess payment was sought to be recovered from the petitioner.

11] The petitioner addressed representation dated 3rd September 2012 protesting against the order dated 13th August 2012. In response, by order dated 27th February 2013, the petitioner, was directed to deposit the excess amount of Rs.4,34,312/-. It was stated that this corresponds to the time bound scale benefits received by the petitioner between 6th May 1996 to 4th February 2005. This indicates that even the respondents accepted that post 4th February

2005, when the petitioner, attained the age of 50 years, there was no requirement that the petitioner clears the Marathi Steno Typist examination.

12] The petitioner, in the meanwhile, retired on attaining the age of superannuation. No pension was paid to the petitioner until the petitioner agreed to deposit the alleged excess amount of Rs.4,34,312/-. Ultimately, this amount was recovered from the retiral benefits payable to the petitioner and only thereafter, pension and other retiral benefits were released to the petitioner.

13] From the aforesaid, it is quite clear that the very grant of TBPS to the petitioner was not a result of any fraud or misrepresentation practised by the petitioner. In such a situation, the question is whether the respondents were justified in effecting recoveries after almost 16 years and the petitioner, was on the verge of retirement upon attaining the age of superannuation ?

14] In *Rafiq Masih* (supra), the Hon'ble Supreme Court has explained the legal position in such matters and has also

summarized some situations where recoveries by the employers would be impermissible in law. In paragraph 18, the Hon'ble Supreme Court has held as follows :

*“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. **Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:***

(i) Recovery from 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."

[Emphasis supplied]

15] In the present case, there is no dispute that the petitioner is a class III or a group 'C' employee. There is also no dispute that the recovery from the petitioner was sought to be made within one year from the date he was to retire on attaining the age of superannuation. There is also no dispute that the recovery from the petitioner was in respect of excess payment allegedly made between 6th May 1996 to 4th February 2005. Since, this recovery was sought to be made by order dated 13th August 2012, it is clear that the recovery was in respect of excess payment which had been made for a period in excess of five years, before the order of recovery was issued.

16] This means that situation (i), (ii) and (iii) as pointed out by the Hon'ble Supreme Court in the case of *Rafiq Masih* (supra) were clearly attracted to the case of the petitioner and yet, the respondents, have chosen to effect recoveries from the petitioner. This is also not a case where the petitioner secured the TBPS benefits by practising any misrepresentation or fraud. Such recoveries, are therefore,

unsustainable and contrary to the law laid down by the Hon'ble Supreme Court in the case of *Rafiq Masih* (supra). The MAT, has not properly appreciated the scope and import of the ruling of the Hon'ble Supreme Court in *Rafiq Masih* (supra).

17] Accordingly, for all the aforesaid reasons, we allow this petition. Rule is made absolute in terms of prayer clause (a) and the respondents are directed to refund amount of Rs.4,34,312/- recovered from the petitioner within a period of three months from today. If, the amount is not refunded within three months from today, then, the same shall carry interest at the rate of 7% per annum from the date such amount was recovered till the date such amount is actually refunded to the petitioner.

18] There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)