

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

WRIT PETITION NO. 10401 OF 2018

Shri Tukaram Rajba Phavade }	Petitioner
Versus	
The Regional Dairy }	
Development Officer, Pune }	
Region and Anr. }	Respondents

Mr.Gaurav Bandiwadekar i/b. Mr.Bhushan Arvind
Bandiwadekar for the petitioner.

Ms.N.M.Mehra-AGP for State.

Mr.Anant Kumar Balwantrao Yelne, Office
Superintendent, Class III, Government Milk
Scheme, Pune present.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JULY 29, 2021

PC :-

1. The Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal" for short) by its judgment and order dated 2nd February 2018 dismissed an original application. Aggrieved thereby, the original applicant has presented this writ petition before this Court.

2. The original applicant (hereafter "the petitioner", for short) was a Government employee, who retired on attaining the age of superannuation on 30th June 2016. While the petitioner was in service, an order dated 3rd September 2005

was issued granting him first timebound promotion as Stenographer (Higher Grade) with effect from 1st October 1994. By an order dated 25th October 2011, he was granted second timebound promotion with effect from 5th July 2010. As a result of conferment of such promotional benefits, the petitioner was obviously benefited financially. More than a month after his retirement on superannuation, the petitioner was served with an order dated 24th August 2016. Such order recorded that the timebound promotions granted to the petitioner were not in accordance with law and that the financial benefits received by the petitioner as a result thereof were required to be recovered from his retiral benefits. The order dated 24th August 2016 was the subject matter of challenge before the Tribunal, which was upheld by it on the grounds that we propose to advert to hereafter.

3. We find from the order of the Tribunal that a plea was raised on behalf of the petitioner, citing the decision of the Supreme Court in **State of Punjab and Ors. vs. Rafiq Masih (Whitewasher) and Ors.**, reported in (2015) 2 SCC (L&S) 33, that recovery of any amount from the retiral dues of employees belonging to Class III/Group C and Class IV/Group D services is impermissible in law. The Tribunal recorded that the petitioner was a Group 'C' employee and therefore, there could be no recovery of excess amount from him; however, curiously, the Tribunal refused relief to the petitioner on the specious ground that relief of recovery (sic. release) had not been claimed by the petitioner. The Tribunal then proceeded to record that in view of Government

Resolution dated 8th June 1995, the petitioner was not eligible to receive timebound promotional benefits and in fact the same were given to him erroneously.

4. It has not been disputed before us that the petitioner was a Group 'C' employee when he retired on superannuation on 30th June 2016. Having regard to the law laid down in **Rafiq Masih** (supra), the Tribunal was right in observing that no recovery of amount paid to the petitioner in excess of his entitlements upon retirement could have been made. However, we hold that the Tribunal was entirely unjustified in observing that the petitioner had not sought for the relief of release of any amount that was withheld and, thus, was not entitled to succeed. Prayer (a) of the original application was to the effect that the order impugned dated 24th August 2016 be set aside and the petitioner be granted all consequential service benefits, as if the impugned order had not been passed. We are of the considered opinion that the relief sought in such terms did include a relief of release of withheld amounts as if the order dated 24th August 2016 had ceased to have any effect. We, therefore, hold that the Tribunal fell in error in not granting relief to the petitioner on the ground as assigned by it.

5. In any event, the Tribunal failed to appreciate that the petitioner obtained the benefits of the two timebound promotions without practicing fraud on the respondents. If indeed the Government Resolution dated 8th June 1995 required the petitioner to attain a particular speed of shorthand writing and the petitioner was deficient, it was open

to the respondents not to grant him such benefit. However, having granted the benefit and the petitioner having been allowed to continue in service ever after grant of the benefits of timebound promotions till his superannuation without any process for recovery initiated against him, the respondents were not quite justified in invoking the provisions of the said Government Resolution to deny the benefits which had been given to him with effect from 1st October 1994.

6. We have been informed that amounts of Rs.4,89,390/- on account of gratuity and Rs.1,72,643/- on account of encashment of leave, totaling Rs.6,62,033/-, have been withheld from the petitioner as a consequence of the impugned order dated 24th August 2016.

7. Having held that the Tribunal was in error in dismissing the original application, we set aside the impugned order dated 24th August 2016 as well as the impugned judgment and order dated 2nd February 2018, which we find to be indefensible. Also, we direct the respondents to release the said amount of Rs.6,62,033/- together with interest at the rate of 12% p.a. (with effect from 1st July 2016) in favour of the petitioner as early as possible but not later than 3 (three) months from date of receipt of a copy of this order. Should the respondents fail to pay the said amount of Rs.6,62,033/- together with interest within the aforesaid period, they shall be liable to pay additional interest at the rate of 5% p.a. on the unpaid amount.

8. We also declare that the petitioner shall be entitled to all other retiral benefits, if not paid, on the basis of the last pay actually drawn by him on the date of his retirement.

9. The writ petition stands allowed accordingly. There shall be no order as to costs.

SALUNKE
J V

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by SALUNKE J V
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(G. S. KULKARNI, J.)

(CHIEF JUSTICE)