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

WRIT PETITION NO. 5400 OF 2018

Dilip Baburao Karande

..... Petitioner

Vs.

The Director,
Government Printing, Stationery
and Publication Directorate & Ors.

..... Respondents

Mr. Omkar M. Kulkarni for the Petitioner
Mr. M. M. Pabale, AGP for the State

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : FEBRUARY 16, 2023

P.C.

1. The Petitioner had filed Original Application before the Tribunal against the order recalling the ACPS benefits granted to the Petitioner and the recovery claimed. The Tribunal dismissed the Original Application. Aggrieved thereby, the present petition.

2. The learned Counsel for the Petitioner submits that the ACPS benefit was rightly granted to the Petitioner in the year 2007. In fact, the Petitioner was promoted only once. The Petitioner was never granted benefit of second promotion. According to the learned Counsel, even the Respondents in the affidavit admitted that the promotion granted to the Petitioner as a Senior Assistant is the first

promotion. Said aspect ought to have been considered by the Tribunal. The learned Counsel further submits that the benefit of the post of Supervisor (Planning) has been denied to the Petitioner on the ground that the Petitioner does not possess the diploma qualification. According to the learned Counsel, the other colleagues of the Petitioner have been extended the said benefit though they are not holding diploma qualification. The Petitioner is discriminated.

3. The learned Counsel for the Petitioner, in the alternate, submits that the Petitioner retired as a Class-C employee. The recovery could not have been made from the retiral benefits of the Petitioner. The Respondents have recovered an amount of Rs.1,35,906/- (Rs. One Lac Thirty Five Thousand Nine Hundred Six only) from the retiral benefits of the Petitioner. Same is illegal. Reliance is placed on the judgment of the apex court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334.***

4. The learned AGP submits that the Petitioner was extended the benefit of promotion twice. In view of that he was not entitled for the ACPS benefits. The Petitioner is also not eligible for promotion on the post of Supervisor (Planning), as the Petitioner does not possess the qualification required under the Rules. The Petitioner has participated in the process. The Petitioner wrongly claimed the

ACPS benefits. As such, the Petitioner is not entitled for the refund of the amount recovered.

5. We have considered the submissions. It appears that the Petitioner was appointed as a Mono Casting Machine Operator thereafter was promoted to the post of Senior Mono Caster on 1st April 1985. On or about 1st July 1992, the Petitioner was promoted as a Senior Assistant. The Petitioner, also in Application dated 6th July 2004 has stated this fact. The Petitioner, as such, had already availed the benefit of two promotions.

6. Moreover, the Petitioner cannot be entitled for any benefit of post of supervisor (Planning) as the Petitioner does not possess the qualification for the said post. The Petitioner does not possess the Diploma, which is a necessary qualification for the post of Supervisor (Planning).

7. In light of the above, we do not find any error on the part of the Tribunal in upholding the action of the Respondents in withdrawing the ACPS benefits. This takes us to next issue of recovery.

8. The Petitioner, admittedly, on the date of his retirement was Class-III employee. The Petitioner retired on or about 17th September 2011. The recovery is claimed from the retiral benefits of the Petitioner. It would be iniquitous to claim recovery from the

retiral benefits. All the parameters laid down by the apex court in the case of Rafiq Masih (Supra) are attracted in the present case.

9. In light of the above, we pass the following order:

a. The order of the Tribunal and the Respondents to the extent of withdrawing the ACPS benefits is upheld and not interfered with, however, the recovery made, is set aside.

b. The Respondents shall refund the amount of Rs.1,35,906/- (Rs. One Lac Thirty Five Thousand Nine Hundred Six only) recovered from the retiral benefits of the Petitioner within four months.

c. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)