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

WRIT PETITION NO. 6429 OF 2025

The State of Maharashtra and ors. ... Petitioners
Versus
Shri Bhagwan Narayanrao Gite Respondent

Smt. R.A. Salunkhe, AGP for the Petitioners- State.
Mr. Kailas Sambhaji Jadhav, for the Respondent.

**CORAM : M.S.KARNIK AND
N.R.BORKAR, JJ.**

DATE : 09th JUNE, 2025

ORAL ORDER (PER M.S. KARNIK, J.) :

1. Heard learned AGP appearing for the petitioners and learned counsel for the respondent.
2. The challenge in this writ petition is to the order dated 04/09/2023 passed by the Maharashtra Administrative Tribunal ('MAT', for short) in an application filed by the present respondent challenging the recovery initiated by the petitioners-State of Maharashtra. The facts in brief are as under :
3. Respondent was appointed as a Junior Clerk on 18/12/1985 in

the Government Boy's Hostel, Jalna. The respondent was promoted as a Senior Clerk on 07/08/2000. The respondent refused the promotion to the post of Head Clerk by the letter dated 31/08/2013. Consequently, petitioner No.4 – Dy. Commissioner (Establishment) Women and Child Development Department by orders dated 12/4/2021, 11/1/2023 and 8/2/2023 directed that the benefits given under the Assured Career Progression Scheme to the applicant be withdrawn and the amount of Rs.3,23,234/- for the period from 18/12/2009 to 23/12/2015 be recovered.

4. The respondent approached the Maharashtra Administrative Tribunal ("MAT", for short) challenging the recovery. The Tribunal for the following reasons, allowed the application.

"8. I have considered the submissions of both the sides. I refer to the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra) Para 12 of the judgment reads as under:

12. 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 retired employees, or 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."

9. It is clearly see that the applicant belongs to Class-III. In view of the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra), I hold that the impugned orders dated 8.2.2023, 11.1.2023 and 12.4.2021 requires to be quashed and set aside. Hence, I pass the following order.

10. The Original Application is allowed and the impugned orders dated 8.2.2023, 11.1.2023 and 12.4.2021 are quashed and set aside. Interim relief granted by this Tribunal on 15.2.2023 is made absolute. No recovery should be made from the applicant. No orders as to cost."

5. Learned AGP assailing the impugned order submits that the present is not a case which is covered by the decision of the Supreme Court in ¹**State of Punjab and ors Vs. Rafiq Masih (White Washer) & ors.** It is submitted that the recovery was in terms of the conditions set out as per ACP Scheme. It is submitted that the respondent having refused the promotion was not entitled to the payment made under the Scheme. The respondent was aware about the consequences of refusal of the promotion. Learned AGP relied upon the decision of the Supreme Court in ²**High Court of Punjab and Haryana and ors. Vs. Jagdev Singh**, more particularly, paragraph 11 of the said decision whereby it is held as under :

"11. The principle enunciated in Proposition (ii) above cannot

1 (2015) 4 SCC 334

2 (2016) 14 Supreme Court Cases 267

apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

6. Learned AGP relied upon the undertaking which was furnished by the respondent on 12/04/2022 made prior to his application for voluntary retirement wherein he had undertaken to return any excess amount to the State Government if it is found that he is not entitled to such excess amount.

7. On the other hand, learned counsel for the respondent-employee argued in support of the impugned order. Our attention is invited to the findings recorded by the Tribunal. Learned counsel extensively relied upon the observations of the Supreme Court in **Rafiq Masih** (*supra*). It is submitted that the respondent is not at fault and any order effecting recovery from him would be unfair and arbitrary.

8. We have heard learned counsel. It is pertinent to note that the recovery which is sought to be made is for the amount paid to the respondent in terms of ACPS Scheme for the period from 18/12/2009 to 23/12/2015 which according to the petitioners, the respondent having refused the promotion was not entitled in terms of the said

Scheme. It is only in 2021 that the respondent realised that the respondent was not entitled to the said amount on the ground of he having refused the promotion.

9. The respondent is Class III employee. No doubt, the Scheme had a provision that on refusal of promotion, the employee concerned is not entitled to the payment as made to the respondent. There is no fault on the part of the respondent or any representation made by him that he was entitled to such payment. It took almost six years for the petitioners to realise that in terms of the policy, the respondent was not entitled to the said excess amount. The undertaking which is relied upon by learned AGP is furnished at the time when the respondent had made an application for voluntary retirement. It is not as if an undertaking was given by the respondent at the time of grant of the excess benefit. There is hardly any material on record to indicate that the respondent was aware that he was paid an excess amount which he was not entitled as a consequence of refusal of promotion. In our opinion, the observations of the Hon'ble Supreme Court in **Rafiq Masih** (*supra*) will squarely apply in the facts of the present case. An amount of Rs.3,23,232/- which was paid to the respondent between the period 18/12/2009 and 23/12/2015 is sought to be recovered after a period of six years and that too when an application for voluntary retirement of

the respondent was under consideration. An undertaking in the form submitted by the respondent at the time of considering the application for voluntary retirement cannot be used against the respondent in the manner sought to be done by the petitioners. The Supreme Court in paragraph 12 of the **Rafiq Masih** (*supra*) has broadly laid down the circumstances under which payments which have been mistakenly made by the employer in excess of the entitlement should not be recovered. Paragraph 12 of the said decision of the Supreme Court reads thus:

“12. 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 an 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 retired employees, or 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.”

10. In our opinion, in the facts and circumstances of the present case, the recovery of the payment 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. Moreover, we find in terms of clause (iii) of the parameters laid down in paragraph 12, recovery from respondent has been made for a period in excess of five years, before the order of recovery is issued which is impermissible. We do not find the approach of the Tribunal perverse to warrant interference in the writ jurisdiction of this Court. We therefore do not find any merit in this petition. The petition is dismissed.

(N.R.BORKAR, J.)

(M.S.KARNIK, J.)