

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 420 OF 2020

DISTRICT : AHMEDNAGAR

Anish S/o Sunil Patel,)
Age : 49 years, Occu. : Service,)
R/o. Nivara Housing Society, Near Sumangal)
Apartment, Opp. Gaikwad Floor Mill, Nivara,)
Tq. Kopargaon, Dist. Ahmednagar.).. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through : Secretary,)
Cooperation Department,)
Mantralaya, Mumbai – 32.)
2. **Director Divisional Joint Registrar,**)
Cooperative Societies (Audit),)
Nashik Division, Nashik.)
3. **District Special Auditor, Class-I,**)
Co-operative Department, Ahmednagar.).. **RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, Advocate for Applicant.

: Smt. M.S. Patni, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **28.04.2023**

Pronounced on : **21.06.2023**

O R D E R
(Per : Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenge is made to

the impugned order dated 31.08.2020 (received on 21.09.2020) (Annexure A-6) issued by the respondent No. 2 i.e. the Divisional Joint Registrar, Co-operative Societies (Audit), Nashik, thereby withdrawing / cancelling first and second time bound promotions / ACPS granted by the orders dated 03.06.2006 and 27.11.2017 (Annexure A-1 collectively) and thereby ordering recovery of excess payment paid to the applicant.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant joined the service with the respondents as a Clerk on 04.08.1993. He passed GDC & A examination in May, 1993. He was granted exemption from passing Marathi Examination on 20.12.1995. He also completed typing in Marathi @ 30 WPM and English typing @ 40 WPM in 1997. He had also undergone account training at Nashik during 07.07.2003 to 29.04.2003.

(b) Upon completion of 12 years' of continuous service, the applicant got first benefit of ACPS / time bound promotion by the order dated 03.06.2006 w.e.f. 04.08.2005 in the pay scale of Rs. 4000-100-6000. Similarly upon completion of 24 years of service, he got second ACPS /

time bound promotion by the order dated 27.11.2017 w.e.f. 4.8.2017 in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/-. Both these orders dated 03.06.2006 and 27.11.2017 are at Annexure A-1 collectively.

(c) The applicant applied for getting exemption from passing Hindi examination on attaining age of 45 years on 20.11.2017. However, he was informed that the said exemption can be granted on attaining the age of 50 years. Hence, at the age of 47 years, the applicant appeared for the said examination and successfully passed the Hindi examination conducted by the Ad-hoc Board for Hindi examination equivalent to SSC level Hindi examination. Hence, he made application dated 01.03.2019 (Annexure A-2) to the respondent No. 3 for taking entry in the service book. Accordingly, entry of passing Hindi examination is ordered to be taken in his service book as recorded in communication dated 19.11.2019 (Annexure A-3) sent by the respondent No. 2 to respondent No. 3.

(d) Surprisingly, the applicant received show cause notice dated 22.05.2020 (Annexure A-4) from the respondent No. 3 to show cause as to why his annual

increments should not be stopped from 04.08.1996 on account of his failure to pass Hindi examination by that requisite date upon completion of three years of continuous service. The applicant submitted his reply dated 04.06.2020 (Annexure A-5) explaining the facts and circumstances and requested not to stop the increments.

(e) However, thereafter the respondent No. 2 issued the impugned order dated 31.10.2020 (Annexure A-6) ordering recovery of excess amount paid to the applicant on the ground that both the ACPS benefits / time bound promotions granted to the applicant were erroneous, as the applicant had not passed Hindi examination within stipulated period of continuous service of three years and holding that the applicant would be entitled for first time bound promotion / ACPC w.e.f. 01.09.2018 in the pay matrix S-8 of Rs. 25500-81100 from pay matrix of S-6 of Rs. 1990-63200.

(f) It is the contention of the applicant that the said impugned order of recovery and grant of first ACPS / time bound promotion from 01.09.2018 is erroneous and Government Resolution dated 18.05.2007 (Annexure A-7)

prescribes that duty is cast upon the Head of department to implement the decision of getting passed Hindi examination in time and on failure to stop the increments. Review is also directed to be taken after every two years by bringing to the notice to the concerned employee of necessity of passing Hindi examination. Such intimation / notice was never given to the applicant.

(g) Further Government Resolution dated 25.09.2001 (Annexure A-8) directs that the concerned Head of the offices should take prompt action to take entries in respect of passing of Hindi / English examination in the service book of the employee concerned. Moreover, Government Resolution dated 27.01.1983 and 22.01.1988 (Annexure A-9) directs to release the annual increments withheld on account of not passing Hindi examination till 30.06.1982 & 30.12.1991 respectively and to pay the arrears.

(h) In view of above, it is submitted that the applicant was never communicated about passing of Hindi examination within requisite period and only after the applicant made application for seeking exemption for passing Hindi examination on attaining the age of 45 years

on 20.11.2017, the respondent No. 3 issued show cause notice dated 22.05.2020 (Annexure A-4) as stated earlier. The applicant has already passed the Hindi examination and entry is also taken in the service book as stated earlier. In view of the same, stopping annual increments w.e.f. 04.08.1996 and making recovery of excess amount as per the impugned order dated 31.10.2020 (Annexure A-6) is totally illegal and it is clear cut violation of principles of natural justice. In fact, in show cause notice dated 22.05.2020 (Annexure A-4), there was no whisper of cancellation of first and second time bound promotions, but the same are withdrawn and cancelled.

(i) The monetary benefits of annual increments and two time bound promotions / ACPS benefits were granted by the respondents on their own volition and not upon any representation of the applicant. Hence, in view of the citation of the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**, recovery is impermissible. In this regard, the applicant has also placed reliance on decision of this Tribunal dated

14.12.2017 (Annexure A-10) in O.A. No. 784/2016 in the case of Shaikh Mehboob Yakubsab Vs. Superintendent of Police, Nanded & Ors. Hence, the present Original Application.

3. (a) The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 3 by one Rajendra Nikam S/o Fakir Nikam working as the District Special Auditor Class-I, Cooperative Societies, Ahemednagar, thereby he denied all the adverse contentions raised in the present Original Application and specifically contended and admitted that the applicant has not passed the requisite Hindi examination within stipulated period of three years from his joining of service on the post of Clerk as per the appointment order dated 02.08.1993 (part of Annexure R-1 collectively at page Nos. 75 and 76 of the paper book).

(b) Moreover, the applicant was granted exemption from passing Marathi subject only as being one of the subjects in the SSC examination by the order dated 20.12.1995 (Annexure R-2 at page No. 81 of the paper book). However, Hindi subject exemption was not granted to the applicant,

as in SSC examination his second language subject is Sanskrit instead of Hindi. Hence, the applicant failed to satisfy the terms and conditions as stipulated in G.Rs. dated 10.06.1976 and 25.05.1981 (part of Annexure R-1 collectively at page Nos. 77 to 80 of the paper book) in that regard.

(c) In view of the same, the applicant was not entitled for annual increments from 04.08.1996. However, benefits of increments were given to him inadvertently. The applicant passed Hindi examination only on 11.12.2018. Thereafter, entry into service book is taken on 19.11.2019 (Annexure R-5).

(d) It is further submitted that the respondent No. 2 found in the office inspection of respondent No. 3 on 31.03.2019 (Annexure R-6) that when the applicant was not exempted from passing Hindi language examination, he was not entitled for first and second ACPS / time bound promotions and yearly increments, which were already awarded to the applicant and asked to comply with the inspection report dated 31.03.2019 (Annexure R-6 at page Nos. 89 to 91 of the paper book). Hence, the respondent No.

2 passed the impugned order dated 31.08.2020 (Annexure R-8 at page No. 101 to 103 of the paper book) cancelling first and second ACPS benefits / time bound promotions and yearly increments and also ordered the respondent No. 3 to revise the pay fixation and to recover the excess payment of salary made to the applicant.

(e) It is specifically stated that the applicant was fully aware that he was only granted exemption from passing Marathi examination and that he had not passed the school examination of Hindi language subject and therefore, he had to bring the matter to notice of the then authorities. The applicant, however, misled the respondents or the then officials by initially hiding information. His Secondary School Certificate Examination (Annexure R-3 at page no. 84 of the paper book) would show that he had not taken Hindi subject as one of the subjects of language therein. It was the responsibility of the applicant to bring the said fact to the notice of the respondent authority. The applicant went on taking annual increments and even first and second time bound promotions / ACPS benefits by misleading the respondents.

(f) Moreover, at the time of pay fixation of 5th pay commission, the applicant had given undertaking dated 24.03.1999 (Annexure R-4 at page Nos. 85 to 87 of the paper book) thereby undertaken to refund the excess amount, if any paid to him.

(g) It is further submitted that the applicant made application on 01.03.2019 to the respondent No. 3 and requested to take entry of passing Hindi examination and to release withheld increments. Entry of passing Hindi examination is taken in service book, which is at Annexure R-5 at page No. 88 of the paper book.

(h) First and second ACPS / time bound promotions were granted to the applicant as stated earlier inadvertently and erroneous in view of the G.Rs. dated 08.06.1995, 20.07.2001 and 01.04.2010 (Annexure R-7 collectively, page Nos. 92 to 103 of the paper book).

(i) The impugned order of cancellation of first and second ACPS / time bound promotions and annual increments and recovery order is issued only after giving show cause notice dated 22.05.2020 (Annexure R-9, page No. 104 of the paper book). Therefore, there is no violation

of principles of natural justice. In these circumstances, there is no merit in the present Original Application and the same is liable to be dismissed.

4. We have heard the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant on one hand and Smt. M.S. Patni, learned Presenting Officer for the respondents on the other hand.

5. After having considered the rival pleadings, documents and submissions on record, it is evident that the applicant was appointed to the post of Clerk with the respondents as per appointment order letter dated 04.08.1993 and he joined the said post on 04.08.1993. He completed three years of service on 04.08.1996. The G.R. Dated 10.06.1976 (part of Annexure R-1, page Nos. 77 to 79 of the paper book) provides for passing Hindi language subject within a stipulated period of three years of continuous service on that post. Para No. 1 of the said G.R. is as follows :-

“१) पूर्वीच्या नियमांनुसार विहित केलेल्या निम्नस्तर, उच्चस्तर व बोलभाषा हिंदी परीक्षा प्रत्येक शासकीय कर्मचा-यास उत्तीर्ण होणे आवश्यक राहिल. या परीक्षा शासकीय सेवेत रुजू झालेल्या दिनांकापासून तीन वर्षांच्या मुदतीत किंवा शासनाने काही कारणास्तव मुदत वाढविल्यास त्या मुदतीत उत्तीर्ण होणे आवश्यक राहिल. पूर्वीच्या नियमानुसार जे कर्मचारी ह्या परीक्षा यापूर्वी उत्तीर्ण झालेले असतील त्यांनी परीक्षा उत्तीर्ण होणे आवश्यक राहणार नाही. मात्र जे कर्मचारी ह्या परीक्षा अद्यापि उत्तीर्ण झालेले नसतील त्यांना परीक्षा उत्तीर्ण होणे अनिवार्य आहे.”

Para No. 2 of the said G.R. provides exemption upon completion of 45 years, which is as follows :-

“२) दिनांक १ ऑक्टोबर १९७६ रोजी ज्या कर्मचा-यांच्या वयाची ४५ वर्षे पूर्ण होतील किंवा ज्या वेळी त्यांच्या वयाची ४५ वर्षे पूर्ण होतील अशा कर्मचा-याला विहित हिंदी परीक्षा उत्तीर्ण होण्यापासून सुट राहिल.”

Consequences of not passing of such examination or getting exemption are provided in para No. 5 of the said G.R., which is as follows.

“५) जे शासकीय कर्मचारी विहित मुदतीत किंवा त्यांच्या वयाची ४५ वर्षे पूर्ण होईपर्यंत या परीक्षा उत्तीर्ण होणार नाहीत त्यांची वार्षिक वेतनवाढ उक्त मुदत संपल्यानंतर ही परीक्षा उत्तीर्ण होईपर्यंत किंवा वयाची ४५ वर्षे पूर्ण झाल्यामुळे सुट मिळेपर्यंत रोखण्यात येईल.

या नियमानुसार रोखून धरण्यात आलेली वार्षिक वेतनवाढ शासकीय कर्मचारी ज्या दिनांकास परीक्षा उत्तीर्ण होतील किंवा त्यांच्या वयाला ४५ वर्षे पूर्ण होतील त्या दिनांकापासून त्यांना देय होईल व पुढील सर्व वेतनवाढी कोणतीही वेतनवाढ रोखून धरण्यात आली नव्हती असे मानून त्यांना मिळतील. मात्र वेतनवाढ रोखून ठेवल्यामुळे कर्मचा-यांना ज्या प्रत्यक्ष वेतनास मुकावे लागेल त्याची थकबाकी मिळण्याचा हक्क राहणार नाही.”

The employee should pass such Hindi language subject examination conducted by Ad-hoc Committee in terms of subsequent G.R. dated 25.05.1981 (part of Annexure R-1 collectively, page No. 80 of the paper book).

6. Admittedly the applicant did not pass out the said examination of Hindi language subject within a period of three years continuous service. Admittedly further the applicant's

Secondary School Examination Certificate (Annexure R-3, page No. 84 of the paper book) shows that the Marathi was his first language, whereas the Sanskrit was second language. He had not taken Hindi language subject in that examination. Hence, it was incumbent upon the applicant to pass the said Hindi examination.

7. It is also further a matter of record that the applicant upon attaining the age of 45 years on 20.11.2017 made application seeking exemption from passing Hindi examination. He was however, informed that such exemption can be granted on attaining the age of 50 years. In this regard, the respondents have not specifically placed on record any specific G.R. showing that the age of exemption from passing Hindi language examination is extended from 45 years to 50 years. During the course of arguments, Government Corrigendum dated 01.02.2020 and G.R. dated 11.08.2022 are placed on record by the learned Advocate for the applicant. However, those G.Rs. speak about departmental examination and qualifying examination. Those G.Rs. do not speak about passing of Hindi examination.

8. It is pertinent to note here that during the course of arguments, learned Advocate for the applicant placed on record a

copy of G.R. dated 22.09.1988. Contents of the said G.R. is as under :-

“शासन निर्णय

शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक-हिंभाप-१०८३/९०७/प्र. २०३/२०, दिनांक २७ जानेवारी, १९८३ अन्वये हिंदी भाषा परीक्षा उत्तीर्ण होण्याची मुदत दिनांक ३० जून, १९८२ पर्यंत वाढविण्यात आली होती. शासनाने आता असा निर्णय घेतला आहे की, ही मुदत दिनांक ३० डिसेंबर, १९९१ पर्यंत वाढविण्यात यावी. ॐ अधिकारी कर्मवारी दि. ३० डिसेंबर, १९९१ पर्यंत सदर परीक्षा उत्तीर्ण होणार नाहीत त्यांना दिनांक ३० डिसेंबर १९९१ च्या पुढे मुदतवाढ मिळणार नाही.

२. पूर्वीची मुदतवाढ असलेल्या दिनांकापर्यंत म्हणजेच दिनांक ३० जून, १९८२ पर्यंत हिंदी भाषा परीक्षा उत्तीर्ण न झाल्यामुळे अथवा हिंदी भाषा परीक्षेतून सूट न मिळाल्यामुळे त्याची वेतनवाढ रोखण्यात आलेली आहे अशा अधिका-यांना आणि कर्मचा-यांना दि. ३० डिसेंबर, १९९१ पर्यंत देय असलेली वेतनवाढ देण्यात यावी व ज्यांच्याबाबत वेतनवाढ रोखली गेली होती त्यांना वेतनवाढीची थकबाकी देण्यात यावी असेही आदेश देण्यात येत आहेत.

३. हे आदेश वित्त विभागाच्या सहमतीने त्या विभागाचा अनौपचारिक संदर्भ क्रमांक सीआर-६९०/८७/सेवा-२, दि. ३-७-८७ अन्वये निर्गमित करण्यात येत आहेत.”

Plain reading of the contents of the abovesaid G.R. would show that passing of Hindi examination period was extended up to 30.06.1991 and till then withholding or stoppage of increments for not passing Hindi examination was relaxed and the increments were ordered to be released. It is not known as to whether this date of 30.06.1991 was extended further or not. But it clearly shows deviation from passing Hindi examination

within a period of three years and relaxing the said condition up to 30.12.1991.

9. It is also a matter of record that the applicant appeared for Hindi examination at the age of 47 years. He passed that examination in the year 2019. The applicant made application dated 01.03.2019 (Annexure A-2) to the respondent No. 3 for taking on record passing certificate and mark sheet of Hindi examination. As per the letter dated 19.11.2019 (Annexure A-3) addressed by respondent No. 2 to respondent No. 3, entry into service book in that regard was taken. However, subsequently show cause notice dated 22.05.2020 (Annexure A-4) was issued to the applicant to show cause as to why his annual increments should not be withdrawn / stopped w.e.f. 04.08.1996 for not passing Hindi examination within a period of three years continuous service or seeking exemption at the age of 45 years. The applicant submitted his reply dated 04.06.2020 (Annexure A-5). However, the respondent No. 2 issued the impugned order dated 31.08.2020 (Annexure A-6) cancelling first and second time bound promotions/ ACPS benefits granted to the applicant as per the orders dated 03.06.2006 and 27.11.2017 (Annexure A-1 collectively) respectively upon completion of 12 years and 24 years of service. By the said order, the respondent No. 2 directed

the respondent No. 3 to grant first time bound promotion w.e.f. 01.09.2018 i.e. to be taken into consideration of passing date of Hindi examination of the applicant and further ordered recovery of excess amount. There is no mention for withdrawal of annual increments w.e.f. 04.08.1996, for which, in fact show cause notice dated 22.05.2020 (Annexure A-4) was given to the applicant. In the said show cause notice dated 22.05.2020 (Annexure A-4) there is no reference regarding intending action of withdrawing or cancelling first and second time bound promotions specifically.

10. So far as subject of passing Hindi examination is concerned, the applicant has placed reliance on communication dated 18.05.2007 (Annexure A-7) made by the Secretary, Government of Maharashtra to all Head of Departments of Mantralaya, Mumbai and Government Circular dated 25.09.2001 (Annexure A-9). The contents of communication dated 18.5.2007 and Government Circular dated 25.09.2001, are as follows :-

“महाराष्ट्र शासन

क्रमांक-संकीर्ण-२००७/२९८/प्र.क्र.४९/०७/२०

सामान्य प्रशासन विभाग,

मंत्रालय, मुंबई-४०००३२,

दिनांक- १८ मे, २००७

प्रति,

सर्व मंत्रालयीन विभागाचे अ.मु.स./प्र.स./सचिव,
मंत्रालय, मुंबई-४०००३२,

विषय - एतदर्थ मंडळाची मराठी/हिंदी भाषा परीक्षा उत्तीर्ण होण्यापासून सूट मिळणेबाबत तसेच परीक्षा उत्तीर्ण न झाल्याने त्यांच्या वेतनवाढी रोखणेबाबत.

संदर्भ- १) शासन निर्णय क्र-मभाप-१०८७/१४/प्र.क्र.२/८७/२०, दिनांक ३०/१२/१९८७

२) शासन अधिसूचना- क्र-मभाप-१०९७/१६५२/प्र.क्र.७२/९७/२००, दिनांक ०७/०२/२००१.

३) शासन निर्णय क्र.मभाप-२०९२/१५७०/प्र.क्र.१४३/९२/२०, दिनांक ०१/०१/१९९३.

४) शासन निर्णय क्र- मभाप -१००२/प्र.क्र.३८/०२/२००, दिनांक ०८/०५/२००३.

महोदय,

एतदर्थ मंडळाची मराठी/हिंदी भाषा परीक्षा उत्तीर्ण केली नसल्यामुळे एका प्रकरणी सेवानिवृत्ती उपदानातून वसूल करण्यात येणा-या रकमेच्या अनुषंगाने मा. उप लोक आयुक्त यांचेकडे तक्रार प्राप्त झाली होती. सदर तक्रारीवर सुनावणीच्यावेळी क्षेत्रिय कार्यालयाने असे सांगितले कि, एतदर्थ मंडळाच्या मराठी / हिंदी भाषा परीक्षेबाबतचे सामान्य प्रशासन विभागाकडून निर्गमित करण्यात आलेले दिनांक ३०/१२/१९८७, दिनांक ७/२/२००१, दिनांक १/१/१९९३ व दिनांक ८ मे २००३ चे आदेश / अधिसूचना / परिपत्रक त्यांच्या कार्यालयात उपलब्ध नसल्यामुळे किंबहुना त्यांच्या कार्यालयास प्राप्त झालेले नसल्यामुळे संबंधीत प्रकरणावर वेळीच कार्यवाही करता आली नाही. सदर सुनावणीच्या वेळी सामान्य प्रशासन विभागाने असे निदर्शनास आणून दिले कि, सामान्य प्रशासन विभागाने निर्गमित केलेले उपरोक्त आदेश सर्व मंत्रालयीन विभागांना तसेच विभाग प्रमुखांना चिन्हांकित केलेले आहेत. संबंधित मंत्रालयीन विभागांनी तसेच त्यांच्या अधिपत्याखालील विभागप्रमुखांनी सदर आदेश सर्व संबंधितांच्या निदर्शनास आणून त्याची अंमलबजावणी करणे ही जबाबदारी संबंधित विभाग प्रमुखांची तसेच मंत्रालयीन विभागाची आहे. याबाबतचा स्पष्ट उल्लेखही दिनांक ८/५/२००३ च्या आदेशामध्ये

केलेला आहे. मात्र मंत्रालयीन विभागांनी सदर आदेश क्षेत्रिय कार्यालयाच्या किंवा संबंधीत अधिकारी/कर्मचा-यांच्या निदर्शनास न आणल्यामुळे कशी प्रकरणे उपस्थित होत आहेत.

२. याबाबत सर्व मंत्रालयीन विभागांना पुनश्च अशा सूचना देण्यात येत आहेत की, एतदर्थ मंडळाच्या मराठी/हिंदी भाषा परीक्षेच्या संबंधात शासनाने वेळोवेळी निर्गमित केलेले आदेश अधिसूचना/परिपत्रक सर्व संबंधितांच्या पुन्हा एकदा निदर्शनास आणून द्याव्यात. तसेच यापूढे दर दोन वर्षांनी आस्थापनेवरील सर्व कर्मचारी/अधिकारी यांच्या निदर्शनास त्या सूचना आणून त्यांना मराठी हिंदी भाषा उत्तीर्ण होणे ही कर्मचाऱ्यांची / अधिका-यांची वैयक्तिक जबाबदारी असून सदरहू परीक्षा उत्तीर्ण होणे सक्तीचे असल्याबाबतची जाणीवही करून द्यावी.

वरील सूचना सर्व मंत्रालयीन विभागांनी त्यांच्या अधिपत्याखालील कार्यालयांच्या निदर्शनास आणाव्यात. या संदर्भामध्ये नमुद केलेले सर्व शासन निर्णय यापूर्वीच महाराष्ट्र शासनाच्या वेबसाईटवर उपलब्ध करण्यात आले आहेत, याचीही प्रशासकीय विभागाने नोंद घ्यावी.

हे पत्र, महाराष्ट्र शासनाच्या वेबसाईटवर उपलब्ध करण्यात आले असून त्याचा संगणक सांकेतांक २००७०५१९१६०८०५००१ आहे.

आपला,

सही/-

(अ.ना.कुलकर्णी)

अवर सचिव, महाराष्ट्र शासन.”

“शासन परिपत्रक:-

शासनाने शासकीय कार्यालयातील सर्व अधिका-यांना व कर्मचा-यांना शासन निर्णय सामान्य प्रशासन विभाग- मभाप १०८७/१४/सीआर-२/८७/२०, दिनांक ३०.१२.१९८७ व शासन निर्णय सामान्य प्रशासन विभाग, क्रमांक हिभाप-१०७६/२८, दिनांक १०.६.१९७६ नुसार अनुक्रमे मराठी भाषा परीक्षा नियमावली / हिन्दी भाषा परीक्षा नियमावली लागू केलेली असून भारतीय सेवेतील अधिका-यांसह, सर्व अधिकारी व कर्मचारी यांनी एतदर्थ मंडळाच्या मराठी भाषा (निम्नस्तर व उच्चस्तर) परीक्षा तसेच हिन्दी भाषा परीक्षा टप्या टप्याने विहित मुदतीत उत्तीर्ण होणे अगर त्यामधून सूट घेणे बंधनकारक आहे. सदर नियमावलीनुसार परीक्षा उत्तीर्ण होणे अगर त्यामधून सूट मिळणे याबाबीची नोंद अधिका-यांच्या / कर्मचा-यांच्या सेवापुस्तकात संबंधीत विभाग प्रमुखांनी घेणे

आवश्यक आहे. अशा नोंदी सेवापुस्तकात घेण्याची खबरदारी संबंधीत विभाग प्रमुखाकडून घेतली गेली नसल्याने सेवानिवृत्तीनंतर सेवानिवृत्त कर्मचा-यांच्या बाबतीत वेतन पडताळणी पथकाने आक्षेप घेतल्याने बरीच प्रकरणे प्रलंबित असल्याचे व परिणामी सदर कर्मचारी त्यांच्या देय निवृत्ती वेतन आदी लाभापासून वंचित राहत असल्याचे या विभागाच्या निदर्शनास आले आहे. निवृत्तीवेतन वेळेवर न मिळाल्याने असे सेवानिवृत्त कर्मचारी / अधिकारी न्यायालयीन दाद मागण्यासाठी न्यायालयाकडे धाव घेत असल्याचेही निदर्शनास येत आहे.

याबाबत सर्वसाधारण आदेश काढावेत असेही मुख्य सचिव यांनी सूचित केले आहे. त्यानुसार सर्वमंत्रालयीन विभागांना पुन्हा कळविण्यात येत आहे की, एतदर्थ मंडळाची मराठी हिन्दी भाषा परिक्षा उत्तीर्ण होण्याबाबतचे अथवा या परिक्षेतून सूट मिळण्याबाबतच्या नोंदी, मराठी / हिन्दी भाषा परीक्षा नियमावलीनुसार तपासून, आवश्यकता भासल्यास सामान्य प्रशासन विभागाची अनुमती घेऊन सेवा पुस्तकात वेळीच घ्याव्यात. सेवानिवृत्त अधिका-यांच्या/ कर्मचा-यांच्या बाबतीत से सेवानिवृत्त झाले आहेत, केवळ याच सबबीखाली त्यांना सूट किंवा सवलती देण्याचे टाळावे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,”

In view of abovesaid documents, it is the contention of the applicant that the respondents never brought on record any of the Circulars as regards passing of Hindi examination issued from time to time to the notice of the applicant in terms of above-said documents. Therefore, failure of the respondents has resulted into the applicant not clearing Hindi examination within stipulated period. In the affidavit in reply, the respondents have contended that it was responsibility of the applicant to find out information and direction regarding passing of Hindi examination. However, the thing is otherwise. In view of the

same, the contentions raised on behalf of the respondents cannot be accepted.

11. In view of above, had the applicant was made aware about terms and conditions of passing Hindi examination as per the guidelines, the applicant would not have faced this unpleasant situation, which is resulted into causing monetary loss to the applicant. In that regard, the respondents have failed to file their any Circulars and G.Rs. The applicant ultimately cleared the said Hindi examination in the year 2018 / 2019. Only because the applicant approach the respondent in the year 2017 seeking exemption of passing Hindi examination cannot lay owns upon the applicant in that regard. In fact, failure of the respondents to follow instructions of letter dated 18.05.2007 (Annexure A-7) and Government Circular dated 25.09.2001 (Annexure A-8) the situation has arisen and the applicant is at the receiving end.

12. That apart as stated earlier though stoppage of annual increments from 04.08.1996 was contemplated by issuing show cause notice dated 22.05.2020 (Annexure A-4). In fact, the impugned order dated 31.08.2020 (Annexure A-6) is issued withdrawing and cancelling first and second time bound promotions. It is pertinent to note here that though the

respondents have raised contention that the first and second time bound promotions / ACPS benefits were granted to the applicant upon applicant misleading the respondents, the said averments are baseless. Except the bare words, there is nothing on record to substantiate that the applicant himself misrepresented or played fraud on the respondents to seek first and second time bound promotions. In view of that, the learned Advocate for the applicant has rightly placed reliance on the case law of the Hon'ble Supreme Court in the matter of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**

(cited supra), wherein it is observed as follows :-

“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, summarize 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 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 employees, 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."

In terms of the above-said citation, the applicant belongs to Class-III category. The recovery is beyond five years, as it is contemplated from 2006. In view of the same, ratio laid in para No. 12(i), (iii) and (v) of the said citation, the said recovery of excess amount is impermissible. Even withdrawal of first and second time bound promotional benefits is done without giving any opportunity of hearing to the applicant. Hence, it violates the principles of natural justice. Moreover, the respondents have failed to take appropriate steps informing about passing Hindi examination to the applicant. In these circumstances, the impugned order dated 31.08.2020 (Annexure A-6) is not sustainable in the eyes of law and the same is required to be quashed and set aside. Hence, the following order :-

ORDER

- (A) The Original Application No. 420 of 2020 is allowed in terms of prayer clause 9(B), which is as follows :-

“(B) The impugned order dated 31.08.2020 cancelling grant of second benefit of ACP granted to the applicant and recovery of increments granted to him from 1996 onwards and other consequential actions be quashed and set aside. It be declared that there shall not be any recovery from the pay and allowances of the applicant.

(B) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 420/2020 VDD & BK 2023 withdrawal of ACPS benefits and recovery