

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 438 OF 2017

DISTRICT: - DHULE

Dr. Archana Umesh Tiwari,
 (Archana Girdhar Shukla)
 Age: - 54 years, Occu.: - Service
 (as Medical Officer, ESIS
 Hospital, Nashik),
 R/o. 68-B, Vaibhav Nagar,
 Jamnagiri Road, Dhule.

.. APPLICANT

V E R S U S

- 1] The State of Maharashtra,
 Through its Secretary,
 Public Health Department,
 Mantralaya, Mumbai – 32.
- 2] The Commissioner (Administration),
 Employees' State Insurance Scheme,
 Govt. of Maharashtra,
 Panchdeep Bhavan, N.M. Joshi Marg,
 Lower Parel, Mumbai – 13.
- 3] The Administrative Medical Officer,
 Employees' State Insurance Scheme
 Hospital Premises, Survey no. 689/690,
 Bibvewadi, Pune – 37.

.. RESPONDENTS

APPEARANCE : Shri Avinash S. Deshmukh, learned
 Advocate for the applicant.

: Shri M.P. Gude, learned Presenting Officer
 for the respondents.

CORAM : **J.D. KULKARNI, VICE CHAIRMAN**
AND
ATUL RAJ CHADHA, MEMBER (A)

DATE : **24th August, 2018**

J U D G E M E N T

(Per : Atul Raj Chadha, Member (A))

1. The applicant was appointed as a Medical Officer in ESIS Hospital, Solapur on ad-hoc and temporary basis and the said appointment of the applicant for a period of 90 days was continued on various occasions. The applicant, who was initially appointed as a Medical Officer on ad-hoc & temporary basis, later on was appointed as a Medical Officer on regular basis upon her selection and recommendation by the M.P.S.C. on 10.12.1997. During the period of temporary appointments, the applicant had appeared for Secondary School Certificate Examination with Marathi as a Lower Standard Subject and had secured 61% marks therein.

2. The res. no. 2 on 24.2.2015 communicated to the applicant that since she has not passed the requisite Marathi Language Examination as per the provisions of Rule 4 (4) of the Govt. Notification dtd. 13.12.1987 and, therefore, till she passes the necessary examination, her annual increments would be stopped. Applicant submitted representations to the res. no. 2 on 23.3.2015 & 27.6.2015 that she had complied with the requirement of Government Notification of 1987. However, the said request of the applicant was rejected by the res. no. 2 on 7.10.2015.

3. Being aggrieved by the said rejection, the applicant had approached this Tribunal and filed O.A. no. 110/2016 on 3.2.2016. The said O.A. was partially allowed by the Tribunal vide order dtd. 9.12.2016. The operative part of the said order is reproduced herein below :-

“ORDER

- i. The Original Application is partly allowed.*
- ii. The impugned communication dated 16.11.2015 issued by the Respondent no. 3 is quashed and set aside.*
- iii. The applicant is given liberty to file comprehensive representation for exemption from passing of Marathi language examination to the competent authority i.e. Government as required as per notification dated 30.12.1987. On receiving such representation the Government shall take necessary decision considering the circumstances already referred in this order. Such decision shall be taken within two months from the date of receipt of representation and the same shall be communicated to the applicant in writing. In view of this, the direction in the letter dated 24.2.2015 issued by respondent no. 2 shall not be executed, till such decision is taken and communicated to the applicant on her representation.*
- iv. The applicant will be at liberty to approach the Tribunal, if her representation is not favourably considered.*
- v. There shall be no order as to costs.”*

4. Pursuant to the above order, the applicant submitted a representation on 13.2.2017 that she should be granted

exemption from passing Marathi Language Examination and her withheld increments be released.

5. The res. no. 1, however, conveyed by letter dtd. 13.4.2017 to the applicant that, she could not be granted exemption in view of Rule 4 (1) (four) and Rule 3 (one) & (two) of Govt. Notification dtd. 30.12.1987, as she had passed the lower standard Marathi Language Examination of 100 marks as Second Subject and she was to pass Ad-hoc Board Marathi Language Examination as a Lower Standard before 31.3.2000 and Higher Standard Examination before 31.3.2002 and hence the action of the respondents regarding stoppage of her increments is as per the Rules. Being aggrieved by the said order, the applicant has filed the present O.A. with following prayers :-

“A. This Original Application may be allowed thereby quashing & setting aside the impugned decision dtd. 13.4.2017 (Annex. A-18) of the Resp. No. 1.

B. This Original Application may kindly be allowed thereby directing the Resp. No. 1 to grant exemption to the applicant from passing of the Marathi Language Examination.

C. This Original Application may kindly be allowed thereby further directing the Respondents to extend to the applicant all the consequential service benefits to which she would become entitled in view of the grant of Prayer Clauses “A” & “B” in her favour.”

6. The applicant also relied on Maharashtra Government Servants (Other than Judicial Department Servants) Marathi

Language Examinations Rules, 1987 along with amendment made thereto in the year 1999. According to the said Rules, the applicant is not required to pass S.S.C. examination with Marathi subject as higher standard. This Tribunal has passed interim order in the present O.A. on 16.3.2018 directing once again the res. no. 1 to take a fresh decision within 4 weeks in view of the facts mentioned therein.

7. However, the respondents conveyed their inability to consider the representation of the applicant that she was supposed to pass the requisite lower standard examination within 2 years of her appointment. The res. no. 2 also placed reliance on the G.A.D. instructions dtd. 11.9.1986 (Exh. R.1 page 115) regarding delegation of powers for grant of exemption from passing Marathi language examination.

8. Learned P.O. also submitted on record copy of communication dtd. 13.7.2018 issued by Under Secretary, Public Health Department, Mumbai to the Commissioner, State Employees Insurance Scheme, Mumbai that, as the applicant was appointed before 6.2.2001 and hence she is not entitled for the relief as per the amendment made in Rule 4 of Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examinations Rules, 1987 and the provisions

of Government Notification dtd. 30.12.1987 are applicable to the applicant. Copy of the said communication dtd/ 13.7.2018 is also address to the learned P.O. of this Tribunal.

9. In view of above, we had examined the Rule 4 of the Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examinations Rules, 1987. The relevant Rule 4 is reproduced herein below :-

“4. Notwithstanding anything contained in rule 3, Government Servant shall be exempted from passing of the examination if, -

- (i) he has passed the examinations according to the existing rules;*
- (ii) he was eligible for exemption or was exempted under the existing rules;*
- (iii) his mother tongue is Marathi;*
- (iv) he has passed the Secondary School Certificate Examination or equivalent examination with Marathi as a higher standard subject of 100 marks paper, prior to joining the Government service; or*
- (v) he is a class III government servant holding a post for which requisite recruitment qualification is less than passing of the Secondary School Certificate Examination level;*

Provided that, Government Servants whose duties are of technical or arduous nature and who are not required to correspond in Marathi Language, may be exempted from passing the examination by the concerned Administrative Department in consultation with the General Administrative Department.”

10. Above Rule 4 was further amended by the Government by Notification dtd. 7.5.2001. The relevant portion of amended rule 4 is as under :-

“2. In rule-4 of the Maharashtra Government Servants (Other than High Court Servants) Marathi Language Examination Rules 1987

(a) after sub rule-1 (1) the following sub-rule shall be inserted, namely -

“(1A) A Government servant who passes the Secondary School Certificate Examination after entering into the Government service, with Marathi as a higher standard or lower standard subject and obtains not less than 50 per cent marks, shall be exempted from passing paper of the Higher Standard Examination or as the case may be, the Lower Standard Examination.”

11. In the instant case the applicant has passed the Marathi Examination with sixty one marks i.e. more than 50 marks, her temporary appointment as a Medical Officer and she was supposed to pass Marathi Higher Standard Examination before 2002 and Rule 4 was amended in 2001. Hence, it is not correct on the part of Respondents to say that amendment in Rules made in 2001 is not applicable to the applicant.

Further, it is also observed that as per Rule 4 (v) of Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examinations Rules, 1987 the applicant being a Medical Officer, her duties do not

require to correspond in Marathi. On this count also the applicant deserves exemption.

12. It is also shocking to observe that the res. No. 2 and 3 miserably failed to exercise the powers delegated by the State Government for granting exemption from passing Marathi examination vide order no. 1084/2761/20, dtd. 11th July, 1986 and unnecessarily made reference to the State Government. This Tribunal while delivering judgment on 9.12.2016 in **O.A. no. 110/2016 [Archana Umesh Tiwari Vs. the State of Maharashtra & Ors.]** has observed in para 10, 11, 12 & 13 as under :-

“10.It is to be noted that, the proviso to said Rule 4 (1) shows that the Govt. servants whose duties are of technical or arduous and which are not required to correspond in Marathi language may be exempted from passing examination by the concerned Administrative Department in consultation with General Administrative Department. The applicant in this case is a Medical Officer and his work is definitely of practical in nature, and specialized in medical education. It is not known whether she is required to correspondence in Marathi language and therefore, there is no reason as to why the competent authority did not consider the applicant’s claim for exemption.

11. It is also material to note that the applicant has crossed the age of 45 year and therefore, in many of the departmental examinations, the Govt. is exempting the Govt. servants from clearing the qualifying examination, who have crossed the age of 45 years and there is no reason as to why the applicant was not considered for such exemption.

12. *Clause no. 9 of the notification dated 30.12.1987, which reads as under :-*

“Notwithstanding anything contained in these rules, Government may relax provisions of any of the rules under special circumstance in such manner as shall appear to it to be just and reasonable.”

13. *The aforesaid Clause no. 9 clearly gives discretion to the Govt. to relax any provisions of this notification and therefore, the powers exercised by the Govt. are wide open.....”*

13. The respondents seems to have rejected representations without application. The respondents have not considered the observations in O.A. no. 110/2016 with proper perspective which are as under :-

“...The very reason for issuance of notification dated 30.12.1987 is that the Officer who has to deal with correspondence must know Marathi language and must possess adequate knowledge of Marathi language. The applicant in this case though a non Marathi she has passed examination in Marathi subject at S.S.C. level. The said examination was of 100 marks, and she has obtained 61 marks in Marathi subject. She has also crossed 45 years of age and therefore, the competent authority ought to have considered all these aspects.”

14. Considering the fact that this is second round of litigation, we feel it in the interest of justice not to leave the matter with the

respondent authorities to exercise jurisdiction of exemption to it,
and hence the following order :-

ORDER

- (i) The O.A. is allowed and the order dtd. 13.4.2017 issued by the res. No. 1 is quashed & set aside.
- (ii) The Respondents are directed to presume that the applicant is exempted from passing Marathi Language examination and shall extend all consequential service benefits to which she is entitled to as per rules. No order as to costs.

**(ATUL RAJ CHADHA)
MEMBER (A)**

**(J.D. KULKARNI)
VICE CHAIRMAN**

**Place : Aurangabad
Date : 24th August, 2018**

ARJ O.A.NO.438 2017 (D.B.) EXEMPTION FROM PASSING MARATHI LANGUAGE EXAM. (HON. CHADHA)