

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1023 of 2019 (SB)

J. Manoharan S/o K. Jegatheesan,
Aged 60 Years, Occu. Retired,
R/o C/o Anjela Netto Jeevan
Utkarsha Uttara, New Colony, Sadar, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Higher & Technical Education & Employment
Department, Mantralaya, Extension Building,
Mantralaya, Mumbai-32.
- 2) Director of Technical Education,
Maharashtra State, 3, Mahapalika Marg,
Mumbai-01.
- 3) Joint Director of Technical Education,
C/o Government Polytechnic Campus,
Mangalwari Bazar, Sadar, Nagpur-440 001.
- 4) Principal,
Government Institute and Hotel Management & Catering
Technology, C/o Government Polytechnic Campus,
Mangalwari Bazar, Sadar, Nagpur- 440 001.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 23rd March,2022.

Date of Pronouncement of Judgment : 1st April,2022.

JUDGMENT

(Delivered on this 1st day of April, 2022)

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Assistant Instructor (Bakery) in the Government Aided Institute namely Institute of Hotel Management and Catering Technology, Pune from 24/9/1980. Thereafter, applicant was appointed in the same Institute on the post of Lecturer in 1985. The respondent no.1 has taken over the Institute of Hotel Management and Catering Technology, Pune and the same was renamed as Maharashtra State Institute of Hotel Management and Catering Technology, Pune w.e.f. 01/01/1993. Thereafter, the respondent no.1 vide Govt. G.R. dated 2/9/2008 absorbed the services of the Lecturers including the applicant w.e.f. 1/1/1993 and was declared as a Government employee.

3. The applicant was transferred to Nagpur on the post of Lecturer with respondent no.4 in Hotel Management and Catering Technology, Nagpur. While working with the respondent no.4, the applicant tendered application for voluntary retirement and the same was accepted w.e.f. 18/6/2008 by order dated 17/12/2018. Hence, the applicant stood retired from the establishment of respondent no.4.

4. While absorbing the services of the applicant under the respondents, there were no condition prescribed in the G.R., but the applicant was asked for the submission of necessary certificates for grant of exemption in Marathi and Hindi languages. The respondent no.2 by his proposal dated 1/12/2016 requested respondent no.1 to grant exemption from passing Marathi language examination. In the said communication, respondent no.2 requested that appropriate order may kindly be passed for granting exemption from passing Marathi language examination, but he was not granted any exemption from passing Marathi language examination.

5. The respondent no.2 by his communication dated 2/12/2016 granted exemption from passing Hindi language examination of Ad-hoc Board. The respondent no.4 by way of impugned order dated 26/12/2018 effected the recovery of increments granted to the applicant since April,1995 to July,2004 to the tune of Rs.1,38,706/-. The said recovery is shown as excess payment of pay and allowances. Hence, the O.A. is filed for direction to stay the impugned order of recovery dated 26/12/2018 and with prayer to refund the said recovered amount of Rs.1,38,706/- deducted from the gratuity of the applicant.

6. The application is opposed by the respondent nos.1 to 4. It is submitted that the applicant is absorbed in the Government

service w.e.f. 1/1/1993 and declared him as a Government employee. He is bound by the Service Rules and Regulations of Government employees. The applicant submitted his application for exemption from passing Marathi language examination, but he is not eligible for exemption. As per the G.R. dated 10/6/1976 of GAD, he was entitled for exemption from passing Hindi language examination, therefore, he was granted exemption from passing Hindi language examination. But as per Rule 4 (3) of the Marathi language Examination Rules, 1987 (in short "Rules of 1987"), he is not entitled for any exemption from passing Marathi language examination. Rule 4(3) of the Rules of 1987 is as under –

“ if the employee whose mother tongue is not Marathi and he has not passed the SSC and HSC exam. with Marathi subject, in that case if he wants exemption, then he has to fulfill the following conditions :

- (a) He must easily write in Devnagari script.
- (b) He must submit the certificate from the concern school/society stating that he has completed education till 7th Standard in Marathi.
- (c) A Regional Head or Office Head should certify that an employee can write letters in Marathi language which can be used for communicate purpose.”

7. The applicant's mother tongue is not Marathi, he is unable to write in Deonagari script, he has not passed 7th standard examination in Marathi language. There was no certification by Regional Head that he can write letters in Marathi language, therefore, he is not

entitled for any exemption. Therefore, increment given to him was deducted from his gratuity. The applicant had given undertaking while preparing the pension case stating that any excess payment is made, that shall be deducted from his pensionary benefits.

8. Heard Shri N.D. Thombre, learned counsel for the applicant. He has submitted that the applicant retired in the year 2008 and he is Class-II employee. In view of the Judgment of Hon'ble Apex in case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** decided on 18 December, 2014 in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012) and Judgment of Hon'ble Bombay High Court in the case of **Smt. Nilam S. Naik Vs. Registrar General, High Court, Appellate Side, Mumbai & Ors.,** in Writ Petition No.3128/2018, decided on 8/3/2019. The respondents cannot recover the amount from gratuity. The learned counsel for the applicant has submitted that amount recovered from the applicant shall be refunded with interest.

9. Heard Shri A.M. Ghogre, learned P.O. for the respondents. During the course of hearing, learned P.O. has filed undertaking given by the applicant. It is taken on record and marked as Exh-X. The learned P.O. has submitted that the applicant has given undertaking while preparing his pension case stating that any over / excess payment shall be deducted from his pensionary benefits.

He has pointed out the undertaking given by applicant. The learned P.O. has submitted that once the undertaking is given, then he cannot say that amount shall not be deducted from his salary. In support of his submission pointed out decision in Writ Petition No.4919/2018, decided by the Hon'ble Bombay High Court, Bench at Nagpur on 23/7/2019. The learned P.O. has submitted that Judgment was challenged before the Hon'ble Supreme Court and SLP was dismissed on 25/10/2021.

10. There is no dispute that applicant was a Government employee. Therefore, he is bound by the service conditions of the Maharashtra Government. As per the rules, the applicant was required to pass Marathi and Hindi language examination. The applicant has not passed Marathi and Hindi language examination, but he was granted exemption from passing Hindi language examination as per the Govt. G.R. dated 10/6/1976. As per the Rule 4 (3) of the Rules of 1987, the applicant has to fulfil the conditions as mentioned above.

11. The applicant's mother tongue is not Marathi. He is a Tamil person. He is not able to read and write Marathi language, therefore, he has not fulfilled the conditions of Rule 4 (3) of the Rules of 1987 and therefore the increments which were wrongly granted to him, were calculated and recovered from him. While preparing the

pension case, the applicant has given a specific undertaking as under—

“ I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay as per Government Resolution No. RPS 1220/1/TE-5, dated 27th February,2003, or any excess payment in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payment due to me or lump sum.”

12. The learned counsel for the applicant Shri N.D. Thombre pointed out decision in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (cited supra) which shows that the excess amount paid cannot be recovered. The guidelines given in para-18 of the Judgment are as under –

“18. 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.

(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."*

13. The learned counsel for the applicant has pointed out decision of this Tribunal in O.A.No.438/2017, decided by Bench at Aurangabad on 24/8/2018. The fact in the cited decision is very much different. It is observed in para- 12 as under –

*"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....."*

14. The learned counsel for the applicant Shri N.D. Thombre, pointed out Judgment of Hon'ble Bombay High Court in W.P. 1192/2021 in the case of **Prasad V. Sohoni Vs. The Treasury Officer, Thane & Ano.** , in which the direction is given by the Hon'ble Bombay High Court to refund recovered amount of Rs. 3,60,580/- with interest @ 6% p.a.

15. The applicant is not entitled for the relief, because, the applicant has given specific undertaking before the respondents at the

time of preparing pension case. In his undertaking, he has stated that any excess payment that may be found to have been made as a result of incorrect fixation of pay as per the Government Resolution No. RPS 1220/1/TE-5, dated 27th February, 2003 or any excess payment deducted in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payment due to me or lump sum. In another undertaking, he has given specific undertaking stating that any over / excess payment can be recovered from his pensionary benefits.

16. The Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4919/2018, decided on 23/7/2019 has held that "once the undertaking is given by the employee for deduction of any excess payment, then he cannot claim refund of the said amount." The guidelines given by the Hon'ble Apex Court in case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (cited supra) are not applicable in such situation. In para-6 the following observations are made by the Hon'ble Bombay High Court –

"6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not

having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523, in paragraph 11 it observed thus :

"the principle enunciated in proposition

(ii) above cannot 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."

17. The said Judgment was challenged before the Hon'ble Supreme court in SLP No.24418/2019 and the same was dismissed on 25/10/2021. The Hon'ble Bombay High Court in the above cited Judgment relied on the Judgment of Hon'ble Supreme Court in case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523. The Hon'ble Supreme Court has held that " *the principle enunciated in proposition (ii) above cannot 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."

18. In this O.A., the applicant had given undertaking at the time of preparation of pension case stating that any excess payment made by the respondents, shall be recovered from his pensionary benefits. Admittedly, the applicant was given wrong increments, because, he had not passed Marathi language examination which is a condition precedent as per the Rule 4 (3) of the Rules of 1987. Therefore, deduction by the respondents of wrongly paid increments, cannot be said to be illegal in view of the Judgment of Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** (cited supra). In that view of the matter, the following order -

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 01/04/2022

**(Justice M.G. Giratkar)
Member (J).**

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 01/04/2022

Uploaded on : 04/04/2022*