

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.782 OF 2014

DISTRICT : NASHIK

Mr. Mohammed S.M. Gaus. )  
Age : 61 years, Occu.: Retired from )  
Service on 31.05.2011 and residing at )  
House No.340, Mhd Ali Road, )  
Mangalwar Ward, Malegaon, )  
Dist : Nashik, Malegaon 423 203. )...**Applicant**

**Versus**

1. The Secretary, )  
Industries, Energy & Labour Dept, )  
Mantralaya, Mumbai - 400 032. )
2. The Commissioner. )  
Block E-C 20, Bandra Kurla Complex )  
Kamgar Bhavan, Bandra (E) - 51. )
3. The Deputy Commissioner of Labour )  
Nashik Division, Nasik. )
4. The Accountant General. )  
Accounts & Entitlements (1), )  
Pratistha Bhavan (Old CGO Bldg.) )  
101, Maharshi Karve Marg, )  
Mumbai 400 020. )...**Respondents**

  
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**Shri K.R. Jagdale, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**

**R.B. MALIK (MEMBER-JUDICIAL)**

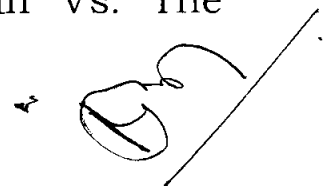
**DATE : 19.08.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Applicant having served the Government in Industries and Labour Department and having attained the age of superannuation was stung by the impugned order dated 3<sup>rd</sup> December, 2013 which was pregnant with adversities to him in as much as having spent the entire life time in the service post retirement, it was conveyed to him that he could not be given exemption from passing Marathi Examination. In challenging the said impugned order, the Applicant is up before us.

2. The Applicant served as Shop Inspector and one Shri D.C. Khan and Shri S.S. Hashmi were also the Government servants. In fact, Shri Khan was the colleague of the present Applicant. The impugned order also visited the same adversity on Shri D.C. Khan as well and he brought OA 783/2014 (Mr. Dulekha C. Khan Vs. The



Secretary, Industries, Energy & Labour Department and 5 ors.). This OA came to be decided by this very Bench on 1<sup>st</sup> July, 2016 speaking through one of us (R.B. Malik-Member (J)). We granted relief and saddled cost of Rs.10,000/- on one of the Government Officers. The only difference in case of Shri Khan was that he had been granted exemption earlier and it was withdrawn, so as to be relegated to the same position as the present Applicant. Therefore, right at the outset, we must make it quite clear that the role of parity and similarly placed persons must lead us to find for the Applicant herein.

3. We have perused the record and proceedings and heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

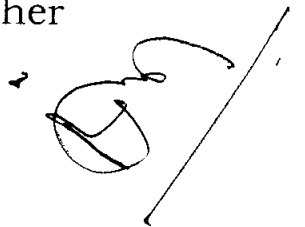
4. The Respondents have been insisting on the fact that all through his life, he had complete command over Marathi language and he functioned through Marathi medium only. When he joined the service way back in 1981, he was 8<sup>th</sup> Standard passed. Thereafter, he cleared his matriculation. He retired on 31<sup>st</sup> May, 2011 and unable to bear the onslaught of from the Respondents, he must have become one of the oldest students to have

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cleared the matriculation in Marathi. That according to him is all the more the reason why he should have been treated somewhat kindly rather than bombarding him with the impugned order a little more than two years after he demitted the Office.

5. Pertinently, there is absolutely no material to show that the Respondents ever took any step to make sure that the Applicant either complied with and cleared the examination or made to suffer the consequences while in harness. In our opinion, the approach of the Respondents to transfer every blame on the employee is unacceptable. There are certain functions that only the Government has to perform viz. holding of the examinations, etc. It was in this context that there ought to have been but there is no material to show that the Applicant was fore warned during his entire career and he allowed those warnings to fall on deaf ears.

6. Quite pertinently, again his immediate superiors have espoused his cause for which there is material on record and in this background, while turning to the Maharashtra Government Servants (other than judicial department servants) Marathi Language Examination Rules, 1987 (Rules hereinafter) apart from several other



provisions, there are provisions which give primacy to the knowledge of Marathi. That as already mentioned above, the Applicant already had. In the result of the impugned orders, the Applicant is facing problems with regard to his pension, etc. In that behalf, Rule 5 of the said Rules would make it clear that those Rules are a code unto themselves and provide for the consequences of failure. The consequences are withholding of the increments. It is very clear that as per the Rules, the consequence which is being sought to be visited upon the Applicant is not envisaged. Most pertinently, Rule 9 of the said Rules is a non-obstinate clause and prevails over all other Rules thereof and it reserves the right of the Government to relax the provisions of any of these Rules under special circumstances, in such manner as shall appear to it to be just and reasonable.

7. The above discussion must have made it very clear that there were reasons aplenty to invoke this Rule 9 by the Respondents and at least no reason has been furnished as to why they could not have exercised this particular power. We hold that a case therefor was fully constituted.



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8. It needs to be noted that somewhat early in his career, the Applicant faced a criminal prosecution and suspension. He, however, was acquitted in the trial itself and that acquittal was upheld by the Hon'ble High Court in appeal preferred by the State. That period of suspension from 7.2.1990 to 8.3.2001 was in fact regularized post retirement on 27.12.2011. That being the state of affairs, the circumstances have so occurred as to make out a case for our active interference with the impugned order. The said impugned order dated 3<sup>rd</sup> December, 2013 (Exh. 'A', Page 15 of the Paper Book) stands hereby quashed and set aside in so far as the Applicant is concerned. The Applicant is held entitled to be exempted from passing Marathi Examination and the Respondents are directed to take all steps necessary as a consequence hereto. No prejudice be caused to the Applicant. Compliance within three months from today.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**19.08.2016**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**  
**19.08.2016**

Mumbai  
Date : 19.08.2016  
Dictation taken by :  
S.K. Wamanse.