

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION 899 OF 2015**

**DISTRICT : SOLAPUR**

Dr Mazharali Mushirali Sayed, )  
[Ex. Specialist, Class-I,] ESIS )  
Hospital, Hotgi Road, Solapur. )  
R/o: 158-A, Railway Lines )  
Parijat Cokplex, Solapur. )...**Applicant**

**Versus**

1. The Commissioner, )  
Employees State Insurance )  
Scheme, having office at )  
Panchdeep Bhavan 6<sup>th</sup> floor )  
N.M Joshi Marg, Lower Parel, )  
Mumbai 400 013. )
2. The Medical Superintendent, )  
E.S.I.S, Solapur, Hotgi Road, )  
Solapur. )
3. The State of Maharashtra, )  
Through Additional Chief )  
Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )...**Respondents**

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Shri B.A Bandiwadekar, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 27.06.2016**

**ORDER**

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the orders dated 6.4.2015 and 18.4.2015 passed by the Respondents no 1 & 2 respectively asking the Applicant to pay Rs. 3,89,281/- which were paid to him by way of yearly increments to which he was not entitled as he had not passed the requisite lower and higher Marathi language examinations.

3. Learned Advocate for the Applicant argued that the Applicant was holding the post of Specialist Class-I (Ophthalmologist) since 1991. This is a technical post and the Applicant was not required to make any

correspondence in Marathi language. As such, he was not required to pass Marathi Language examination. Learned Counsel for the Applicant argued that Hon'ble Supreme Court in the matter of The State of Punjab & Others Vs. Rafiq Masih (2014) 8 SCC 883, has held that no recovery of excess amount paid by mistake to an employee can be recovered after his retirement. The Applicant is, therefore, entitled to receive his full gratuity and no recovery on account of increments released to him earlier can be ordered even if it was released to him without him being entitled to get it.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the post of Specialist in Public Health Department is not a technical post. A doctor has to interact with his patients in local language of the people, which is Marathi. He also has to make correspondence with the superiors like Deputy Director, Joint Director and Director of Health. He is also required to correspond with the Government. Such a person cannot be exempted from passing Marathi Language Examination under the relevant rules. In fact, the appointment letter of the Applicant made it very clear that he was required to pass Marathi Language Examinations as per rules. As the Applicant did not pass Marathi Language examinations in time, he was not entitled to be given yearly increments. However, such

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increments were released to him. The excess amount has been ordered to be recovered from his gratuity.

5. It is seen that the Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examination Rules, 1987 provide that every Government servant is required to pass Lower Standard Marathi examination before expiry of two years from the date of his appointment and Higher Standard Examination within a further period of two years. Under proviso to Rule 4(1), a Government servant whose duties are of technical or arduous nature and who is not required to correspond in Marathi Language may be exempted from passing the Examinations. The Applicant claim that he is entitled to be exempted from passing Marathi Language Examination as his duties are of technical nature and he is not required to correspond in Marathi language. He has relied on the judgment of this Tribunal in O.A no 363/2005 (Dr. Dipak Himatlal Dal Vs. The State of Maharashtra & others). It is stated that Dr Dal, who was a Specialist, was held to be entitled to exemption from passing Marathi Language Examination by this Tribunal as he was a Specialist. I have carefully perused the aforesaid order. In fact, in that case also, increments were received by Dr. Dal, though he had not passed Lower and Higher Level Marathi Language Examinations as per rules. The order of recovery of excess amount paid to him was quashed on the ground

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that it was issued without following the principles of natural justice. Nowhere in the order it is mentioned that Dr. Dal was a technical person not required to correspond in Marathi. It is quite intriguing as to why this fact was mentioned in the letter dated 3.4.2007 from the Respondent no. 1 to the Respondent no. 3, stating that a Specialist Doctor can be exempted from passing Marathi Language Examinations. This recommendation was apparently not accepted and in the affidavit in reply filed by the Respondents dated 15.1.2016 in para 13, it is stated that:-

“However, as said by the Applicant about his duties are of technical nature is not acceptable, as along with the clinical duties, the Applicant was supposed to perform administrative duties also for which knowledge of Marathi Language is a must.”

I find no merit in the claim of the Applicant that the duties of a Specialist Doctor are of technical nature. A Doctor is required to interact with his patients and it is essential for him to know the local language. The claim of the Respondents that the Applicant was required to correspond with other persons in the Department and he has administrative duties also is absolutely correct. The claim of the Applicant that he was entitled to be exempted from passing Lower and Higher Level Marathi Language Examination is without any basis. It is

mentioned in para 6 of the affidavit in reply of the Respondents that the appointment letter of the Applicant had a stipulation that he had to pass prescribed Marathi and Hindi Language Examinations. In the affidavit in rejoinder, the Applicant had not denied this fact. He is only shifting responsibility on the Respondents, who released his increments and never asked the Applicant to pass the language examinations. It appears that the Applicant finally passed Higher Level Marathi Language Examination in 2009, having passed Lower Level Examination in 2008. He was appointed to the Government service on 20.8.1991 and was required to pass Lower Level Examination before 20.8.1993 and Higher Level Examination on or before 20.8.1995. The amount of excess payment due to release of increments from 1.8.1992 to 1.8.2004 amounting to Rs. 3,89,281/- were to be recovered. Rs. 16,211/- was recovered and by order dated 18.4.2015, the balance Rs. 3,73,060/- was to be recovered from his gratuity, as per the Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examination Rules, 1987. The question is whether such recovery can be made from the retiral dues of a Government servant. The Applicant claims that as per Supreme Court judgment in Rafiq Masih's case (supra), no recover of excess payment made to a Government servant can be made from his retiral dues.

6. Hon'ble Supreme Court in para 3 of the judgment in Rafiq Masih's case has held as follows:-

"3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out."

In para 4, Hon'ble Supreme Court has held that:-

"For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable."  
(emphasis supplied).

It is, therefore, to be examined, whether the Applicant has any role in the decision of the Respondents in not

stopping increments on his failure to pass the requisite Marathi Language Examinations as per relevant rules.

7. The Applicant has himself placed on record a copy of his representation dated 27.9.2010 to the Respondent no. 3. In para 2, he has mentioned that:-

“ ज्या पदावरील अधिका-यांच्या सेवा तांत्रिक विषयाच्या व फक्त इंग्रजी माध्यमातून प्रशिक्षित आहेत त्यांना मराठी भाषा परिक्षेची सक्ती नसल्याने रा.का.वि. योजनेतील “म. वै.वि.सेवा” या संवर्गातील डॉ. दल यांचे प्रकरणी वसूल करण्यात आलेली संपूर्ण रक्कम कोर्टाच्या आदेशानुसार डॉ. दल यांना परत केल्याचे दि.३/४/२००७ च्या पत्राद्वारे सादर केलेल्या प्रस्तावात स्पष्टपणे विनिर्दिष्ट केलेले असताना तो माझ्या विषईचा प्रस्ताव तीन वर्षांपेक्षा जास्त काळ शासनाने प्रलंबित- दुर्लक्षित ठेवला. वैद्यकीय अधिक्षक रा.का.वि.यो सोलापूर हे म.वै.वि.से वर्ग-१ चे नियुक्ती शिस्तभंग विषयक सक्षम अधिकारी नसताना, विभाग प्रमुख आयुक्त रा.का.वि.यो. यांचे दि.३/४/२००७ च्या प्रस्तावीत पत्रावर अधिकमण-अतिकमण करून वसुली करण्याविषयीचे काढलेल्या आदेशास स्थगिती द्यावी. कारण ते सक्षम अधिकारी नाहीत.”

It is quite clear that the Applicant has claimed that by Court's order, the amount of excess payment made to Dr. Dal was refunded as his service was considered to be of technical nature. The Applicant has placed the judgment of this Tribunal dated 27.2.2006 in O.A no 363 of 2005 on record. It is already observed that it is nowhere mentioned in the aforesaid judgment of the Tribunal that the nature of duties of a Specialist Doctor in E.S.I.S are of technical nature. Admittedly, the Applicant misrepresented to the Respondents by his letter dated 22.1.2007 in this regard. As a result, the Respondent no.



1 made a proposal on 3.4.2007 to the Respondent no. 3 to give exemption to the Applicant from passing Marathi Language Examination. In para 4, of the letter dated 27.9.2010 also, the Applicant has sought relief similar to what was given to said Dr. Dal, though that judgment was not applicable to Specialists, per se, but was applicable in cases, where principles of natural justice were violated. The Applicant did not claim that order in his case was passed in violation of principles of natural justice. In fact, no order stopping increments was passed and the Applicant misrepresented to ensure that no such order was passed.

8. As observed by Hon'ble Supreme Court in Rafiq Masih's case (supra), only if an employee is not guilty of furnishing any incorrect information or if he is not guilty of misrepresentation, that judgment will apply in his case. The Applicant had clearly supplied misleading and incorrect information by his application dated 22.1.2007 to the Respondent no. 1 who submitted a proposal dated 3.4.2007 to the Respondent no. 3 on the basis of incorrect information. The Applicant then submitted a representation to the Respondent no. 3 on 26.9.2010 containing misleading and incorrect information. He is not entitled to get the relief under the aforesaid judgment of Hon'ble Supreme Court.



9. The Applicant was required to pass Lower Level and Higher Level Marathi Language Examinations within two and four years of his appointment. The Applicant misrepresented to the Respondents that he was entitled under the rules for exemption from passing the said examination and misinterpreted about the judgment dated 27.2.2006 of this Tribunal in O.A no 363/2005 in support of his misrepresentation to the Respondents. The Applicant was paid excess amount of Rs. 3,89,281/- which is sought to be recovered from him. The Applicant is not protected by the judgment of Hon'ble Supreme Court in Rafiq Masih's case and the orders dated 6.4.2015 and 18.4.2015 passed by the Respondents no 1 & 2 do not require any interference.

10. Having regard to the aforesaid facts and circumstances, this Original Application is dismissed with no order as to costs.

  
(Rajiv Agarwal)  
Vice-Chairman

**Place : Mumbai**

**Date : 27.06.2016**

**Dictation taken by : A.K. Nair.**