

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 988 OF 2015

DISTRICT : MUMBAI

Ms Malini Damodar Kale,)
D/o: Late Shri Damodar Mahadev Kale,)
Retired 'Filed Work Lecturer' [Gazetted],)
Maharashtra Institute of Labour Studies,)
Parel, Mumbai 400 012.)
R/at: 3, Vinod Apartments, Raghoji Road,))
Gawali Tank, Mumbai-36.)...**Applicant**

Versus

1. Maharashtra Institute of Labour)
Studies, Dadabhai Chamarbhagwala)
Marg, Parel, Mumbai 400 0122,)
Through its Director.)
2. State of Maharashtra,)
Through the Secretary to the)
Ministry of Industry, Enger & Labour))
Mantralaya, Mumbai-32.)...**Respondents**

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Shri S.N Pillai, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 16.06.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.N Pillai, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, who retired from Government servant on superannuation on 30.6.2000 and who is seeking pension w.e.f 1.7.2000 with interest. She is also seeking release of annual increments from 1.8.1982, which was stopped due to not passing of Marathi Language Examination.


3. Learned Counsel for the Applicant argued that the Applicant had worked as Field Work Supervisor with the Respondent no. 1 from 1972 to 31.8.1976. She was

given regular appointment as Faculty Assistant w.e.f 1.9.1976. Learned Counsel for the Applicant for the Applicant argued that this appointment of the Applicant was on regular basis and she was promoted as Lecturer (Field Work) w.e.f 7.8.1980 by G.R dated 5.8.1980 in the pay scale of Rs. 400-950. From 1.4.1981, Pay Scale for the post of Lecturers, approved by the University Grants Commission (U.G.C) were made applicable to the Applicant and her pay was fixed in the pay scale of Rs. 700-1600. The Applicant was given first increment on 1.8.1981. However, no increments were granted to her, thereafter. The reasons for not granting increments was the failure of the Applicant to pass Hindi and Marathi language Examinations. This is clear from the entry dated 24.1.1990 in her Service Book. The Applicant had protested by letter dated 3.12.1980 that her mother tongue was Marathi and she had passed S.S.C Examination with Hindi as second language. Learned Counsel for the Applicant argued that from the correspondence placed on record by the Respondents, it is clear that the issue regarding her Medical Examination Certificate was never raised till a memorandum was issued to her on 29.1.2000, 24 years after her appointment. Now this issue that she had not submitted her Medical Examination Certificate at the time of her initial appointment is being raised. Learned Counsel for the Applicant argued that the Applicant had undergone Medical Examination at Cama and Albles Hospital,



Mumbai. The Hospital authorities used to send Medical Examination Certificate directly to the office. It must have been sent to the Respondent no. 1 and evidently, it has been misplaced by his office. At this stage, this cannot be a ground to deny pension to the Applicant. Learned Counsel for the Applicant argued that all her Certificates including S.S.C Certificate were examined by the Respondent no. 1 when she was given appointment. In the letter from the Respondent no. 1 dated 2.12.2000 (Exhibit A-4) to the Respondent no. 1 this fact is clearly admitted. As regards her medical examination it is admitted that the Applicant was sent for medical examination. If the Medical Examination Certificate is not received, the Applicant cannot be blamed for that.

4. Learned Presenting Officer (P.O) argued that the present Original Application is hopelessly time barred and the Applicant has not filed any Misc Application for condonation of delay. On that ground only, this Original Application is liable to be dismissed. Learned Presenting Officer contended that the Applicant had nowhere mentioned that she had approached the Respondents regarding her pension till the year 2012, though she had retired on 30.6.2000. The Applicant, while in service, was repeatedly asked to submit copies of Certificates like S.S.C Certificate to verify her claim that she was exempted from passing Marathi and Hindi language examination. The Applicant informed the office that she



had misplaced her S.S.C Certificate and was getting a copy from the S.S.C Board. However, a duplicate Certificate was also not submitted by the Applicant. Learned Presenting Officer argued that the Applicant was informed by the Respondent no. 2 by letter dated 3.4.2012 that she should submit a certificate that she had received education up to 7th standard in Marathi medium. That Certificate was also not submitted. The Applicant alone is responsible for not submitting any document regarding her claim that her mother tongue is Marathi, so she is exempted from passing Marathi Language Examination as such persons are also required to submit Certificate of having received education in Marathi medium till 7th standard. Learned Presenting Officer argued that the Applicant has not made out any case for release of her increments after 1.8.1982. Such a relief cannot be granted due to delay and latches.

5. It is seen that two main issues are raised in this Original Application, viz:-

- (i) Payment of pension and interest
- (ii) Release of increment from 1.8.1982.

The Applicant's case is that there is no delay in filing this Original Application, as she has put in more than 24 years of service and she is entitled to be given pension. The Applicant is also seeking release of increments which were stopped for her failure to pass Hindi and Marathi



language Examination. Another point regarding non-submission of Medical Examination Certificate when the Applicant was appointed in the Government service in 1976 has also surfaced.

6. The issue of release of increments is examined first. On perusal of synopsis of this Original Application, one thing is clear that though the Applicant retired from Government service on 30.6.2000, she did not approach the Respondents for pensionary benefits till the year 2012. She has placed on record a letter dated 9.3.2012 from the Respondent no. 2 informing that her pension could not be sanctioned as she had not submitted Medical Examination Certificate and she has not passed Marathi & Hindi language Certificates. The Applicant has neither claimed nor placed on record any representation she had made to the Respondents. In the Original Application also, there is not a single representation made by the Applicant to the Respondents. Only documents she has placed on record are her affidavit dated 26.3.2012 and a letter addressed to Finance Minister of Maharashtra dated 4.12.2012. It is, therefore, clear that the Applicant herself cannot escape blame for not getting her pension in time. As regards stoppage of her increments from 1982, there is an entry in her Service Book which reads:-

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“Further increments are not released for which a reference has been made vide this office letter No. PAG7/Lab/16-1/MDK/407 dated 19.7.1989, reply of which is not received yet.

Hindi and Marathi Exams neither cleared nor any orders of exemptions have been issued by the Competent Authority.”

This is signed by Assistant Pay and Accounts Officer of the Respondent no.1 in 1990. The Applicant on 3.12.1980 had informed the Pay and Accounts Officer, Mumbai that:-

“I hereby state that my Mother Tongue is Marathi and I have passed S.S.C examination with Hindi as Second language. My S.S.C Certificate has been misplaced and as such, I have applied to the S.S.C Board for a duplicate Certificate. On getting the same, I shall submit a copy of the same for perusal.”

Despite this letter and a similar letter to the Respondent no. 1 dated 3.12.1980, the Applicant never seems to have submitted her S.S.C certificate. In fact, she was asked on 18.5.1995, 31.7.1995 and 29.1.2000 to submit certificates, but the Applicant seems to have paid no heed to any of these letters. In para 5 of the affidavit in reply of the Respondents dated 18.1.2016, these facts are

mentioned. In her affidavit in rejoinder dated 18.4.2016, in para 6, the Applicant has not denied these facts. She is only claiming that her Mother Tongue is Marathi and she passed S.S.C examination with Hindi as second language. She had not explained as to why she did not procure duplicate copy of S.S.C Certificate from the Board, and if she did so, why the same was not produced before the authorities. Even for a person, who claims that his/her mother tongue is Marathi, a certificate that he/she could correspond in Marathi in Devnagri script is required from Head of Office. In addition, Certificate of having received education in Marathi Medium till 7th standard is required. A person is not exempted from passing Marathi Language Examination just because she claims that her mother tongue is Marathi unless he/she produces documents in support of that claim. In the present case, the Applicant failed to produce documents to show despite repeated reminders, that she has passed Marathi examinations. She never applied for exemption from passing the said examination also. Now, at this stage after 16 years of her retirement, her claim that her increments should not have been stopped in 1982 cannot be accepted. In fact, she is required to explain, as to why she did not make any representation and took other measures when her increments were stopped in 1982. From the letter she had written earlier on 3.12.1980 to the Respondent no. 1 and the Pay and Accounts Officer, Bombay, it appears that she was aware that she has to


produce Certificates regarding Hindi and Marathi language Examination. However, she never produced duplicate copy of her S.S.C Certificate in support of her claim. The relief sought by the Applicant for release of her increments cannot be granted, as the Applicant has not sought condonation of delay and from the material on record, it is clear that she alone was responsible for stoppage of her increments as despite repeated reminders from the Respondent no. 1, she never submitted requisite documents. As she is held ineligible for release of any increments, question of granting benefit of Assured Career Progression Scheme does not arise. In any case, the Applicant has not placed any material on record to show that she was entitled to receive any such benefit.

7. As regards pension, the Respondents have not been able to show that non passing of Marathi or Hindi Language Examinations can result in a Government servant losing his pension. There is no provision in the 1987 Rules regarding passing of Marathi Language Examination or in the Marathi Civil Services (Pension) Rules, 1982, which prescribes that pension of a Government servant can be stopped for his failure to pass Marathi or Hindi Language Examination. The Respondents have stated that Rule 11 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 provides that Certificate of Physical

Fitness is a pre-requisite for substantive appointment or continuance in service. Rule 11(1) reads:-

“(1) Every Government servant shall produce a medical certificate of health either before he is appointed substantively to a permanent post or before he completes six months service from the date of appointment, whichever is earlier.”

These rules came into force on 15th day of August, 1981 as per Rule 1(2) of the said rules. The Respondents have claimed that the Applicant was appointed as Faculty Assistant by order dated 4.9.1976 and the appointment was subject to passing of medical examination. In the letter dated 2.12.2000 from the Respondent no. 1 to the Respondent no. 2 (Exhibit A-4), it is mentioned that the Applicant was sent for medical examination. In the same letter, it is mentioned that the Respondent no. 1 has inquired with Cama Hospital on 24.8.1981 regarding medical examination of the Applicant. This letter is mentioned in para 6.12 of the Original Application. In the affidavit in reply dated 18.1.2016, in para 15, it is admitted that this letter was written by the Respondent no. 1 to the Respondent no. 2. However, the Respondents have not given any further details as to the date on which the Applicant was sent for medical examination, and as to why till 1981, she was not asked to produce medical examination certificate. In fact, by G.R no. SRV-1075-X dated 19.11.1975, which



prescribes that a temporary Government servant appointed in conformity with relevant recruitment rules is deemed to be a permanent Government servant for all purposes, including the admissibility of full pensionary benefits. Of course, the Government servant is required to produce physical fitness certificate. From the material placed on record by the Respondents, the Applicant was not asked to produce such a Certificate till 29.1.2000. The Respondents in the affidavit in reply appended Exhibits R-8 dated 18.5.95 and R-8(i) dated 31.7.1995 where there is no specific mention of the Medical Certificate. Only in letter dated 29.1.2000 Exhibit R-8(ii) the Applicant was asked to produce Medical Examination Certificate. The Applicant superannuated on 30.6.2000. For almost 24 years, she was not asked to produce the Medical Fitness Certificate and just before retirement she was asked to do so. The claim of the Applicant that she had actually undergone medical examination at Cama Hospital and the Medical Certificate was sent by the hospital directly to the office, appears to be plausible in view of the conduct of the Respondents. In the letter dated 6.4.2000 from the Respondent no. 1 to the Respondent no. 2, it is clearly mentioned that the Applicant fulfilled the educational qualification requirement to the post, when she was appointed as Faculty Assistant on 7.9.1976. It is also mentioned that:-

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“ तसेच कु. काळे, यांची जन्मतारीख दि. २०.६.१९४२ असून त्यांनी वयाची ५५ वर्षे पूर्ण केलेली आहे व वयाच्या ५० व्या वर्षापर्यंत सेवेच्या कालावधीत त्या कुठल्याही प्रकारच्या दिर्घ आजाराने ग्रासल्यामुळे रजेवर गेल्या होत्या अशी नोंद त्यांच्या सेवा पुस्तकात आढळून येत नाही. तरी वयाची ५५ वर्षे पूर्ण झाली असल्यामुळे कु. काळे यांना वैद्यकीय तपासणीतून सूट देण्यास हरकत नसावी, अशी धारणा आहे.”

From this, it is clear that the Applicant enjoyed normal good health during her service period and she was not prevented from discharging official duties due to bad health. That is the purpose of Medical Certificate. In the present case, considering that the Respondents failed to take timely action to ensure production of Medical Certificate by the Applicant and the material on record tend to suggest that such a Certificate might have been received by the Respondents, the Applicant cannot be held responsible for not producing medical certificate. Now after retirement, such a Certificate cannot be asked for, from her. In any case, it is a fit case for grant of exemption from producing Medical Certificate. The Applicant is deemed to have been a permanent Government servant after three years of joining service by virtue of G.R dated 19.9.1975 and is fully eligible to get pensionary benefits. However, her request for interest cannot be considered as she herself never made efforts to get the pension till the year 2012.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is

partly allowed. The Respondents are directed to pay pension to the Applicant w.e.f 1.7.2000 along with other retiral benefits, if admissible. There will be no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 16.06.2016

Dictation taken by : A.K. Nair.

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