

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO. 1102 OF 2015**

**DISTRICT :Mumbai**

Shri Syed Maqbol Hashmi, )  
Aged about 64 years, )  
Retired Government Labour Officer, )  
and presently residing at N-13, )  
Flat No.63, CIDCO, Himayat Baug, )  
Aurangabad- 431 001. )...**Applicant**

**VERSUS**

1. Government of Maharashtra, )  
Through Principal Secretary, )  
Industry, Energy & Labour Depart., )  
Mantralaya, Mumbai – 400 032. )
2. Commissioner of Labour, )  
Maharashtra State, )  
having his office at Bandra-Kurla )  
Complex, Bandra, Mumbai. )
3. Accountant General, )  
Maharashtra State, )  
having his office at Maharshi )  
Karve Road, Mumbai. )
4. Assistant Commissioner of Labour, )  
Tarapur, MIDC, Employees Colony, )  
Boisar, Tal & District Palghar, )  
Palghar – 401 504. )....**Respondents**

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Shri M.D. Lonkar, learned Advocate for the Applicant.

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

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**DATE : 14.06.2016**

**ORDER**

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant challenging orders dated 12.8.2014 and 17.4.2015 issued by the Respondent No.4. The Applicant is seeking release of amount recovered from his pensionary dues.

3. Learned Counsel for the Applicant argued that the Applicant retired from Government Service as Government Labour Officer on 31.7.2009. The Applicant was not given his retiral dues so he submitted representation dated 21.5.201 to the Deputy Commissioner of Labour, Thane to release his retiral benefits early. As no cognizance of his representation was taken, the Applicant made a complaint to Lokayukta on 13.08.2013. By letter dated 11.11.2013, Lokayukta asked the Applicant to seek exemption from passing Marathi and English examination from the Respondents. The Applicant was informed by the Deputy

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Labour Commissioner, Thane by letter dated 3.2.2011 that he had passed Marathi Language Examination but there was no entry in the Service Book about his having passed Hindi Language Examination. Learned Counsel for the Applicant stated that as per G.R. dated 1.12.1984, the Applicant was granted exemption from passing Hindi Language Examination. This matter was under correspondance when the order dated 12.8.2014 was passed by the Respondent No.4. By another order dated 17.4.2015, Rs.2,47,350/- out of total excess payment of Rs.4,64,288 made to the Applicant is recovered from the retirement gratuity of the Applicant. Learned Counsel for the Applicant argued that the recovery of excess payment of Rs.4,64,288/- is illegal after retirement of the Applicant and the Respondents may be directed to refund the same.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant had not passed Marathi Language Examination and his request for exemption from passing Marathi Language Examination was rejected on 3.12.2013. Learned P.O. contended that excess payment was made to the Applicant, while he was in service. He has not passed Marathi Language Examination, but he continued to draw increments. The Respondents have rightly and legally recovered excess amount of Rs.4,64,288/- from his gratuity and other pensionary dues as per his consent. Learned P.O. argued that order dated 12.8.2014 as well as order dated 17.4.2015 are legal and valid.

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5. It appears that the Applicant was not granted exemption from passing Marathi Language Examination, which the Applicant was required to pass as the Maharashtra Government Serants & Other than Judicial Department Servants) Marathi Language Examination Rules, 1987. The Applicant has applied by letter dated 20.3.2010 to the Respondent No.2 for exemption from passing Marathi (and Hindi) Language Examination. This is stated in para 6.1 of the affidavit in reply dated 8.3.2016 filed on behalf of the Respondents No.1,2 & 4. Copy of letter dated 20.3.2010 is appended as Exhibit 'R-1' on page no.65 of the Paper Book. By letter dated 3.12.2013, the Respondent No.1 rejected the request of the Applicant for exemption from passing Marathi Language Examination. The Applicant has not challenged that decision in this O.A. It appears that if a Government servant fails to pass the lower level and higher level Examinations in Marathi Language within prescribed period, his increments are to be withheld until he passes the examination or is exempted from passing the same. In the present case, the Applicant failed to pass the said examinations while in service and his request for exemption was rejected. He, apparently, continued to get the increments and the excess payment was recovered from him by orders dated 12.8.2014 and 17.4.2015. The Applicant is claiming that the amount excess payment cannot be recovered from a retired Government servant unless he had misrepresented or committed fraud for getting the same. As the Applicant had never misrepresented for release of his

increments, the Respondents were not justified in recovering excess payment from him. The Applicant has relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer)etc. in Civil Appeal No.11527 of 2014**. Hon'ble Supreme Court has held that in the situations mentioned in para 12 of the judgment, no recovery of excess payment would be permissible in law. Para (ii) reads:-

“(ii) Recovery from retired employees or employees who are due to retire within one year of the order of recovery.”

In the present case, the Applicant retired on 31.7.2009. The recovery order is passed on 12.8.2014 ordering recovery of excess payment made from 30.12.1989 onwards. Though the Applicant has challenged 'Certificate' dated 17.4.2015 as an order of recovery, the same is not really an order of recovery. The order of recovery is dated 12.8.2014. Learned P.O. argued that the judgment of Hon'ble S.C. in Rafiq Masih's case (Supra) is applicable to only Group 'C' & 'D' Government Servants. This contention can not be accepted as only para 12(i) of the judgment specifically covers Group 'C' & 'D' employees while other Sub-Paras cover all the employees. The Respondents could not have recovered any excess payment made to the Applicant, after his retirement.

6. Having regard to the aforesaid facts and circumstances of the case, the order dated 12.8.2014 passed by the Respondent No.4 is quashed and set aside. Amount of excess payment recovered from the Applicant may be

refunded to him within 3 months from the date of this order.  
This O.A. is allowed accordingly with no order as to costs.

Sd/-

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

**Date : 14.06.2016**

**Place : Mumbai**

**Dictation taken by : SBA**

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