

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.614 OF 2020

DISTRICT : SATARA

Dr. Rohit Rambhau Ramteke)
Age : Adult, Occu. Service,)
Residing at Popst Saidapur (Vidyanagari),)
Karad, T-5/S-6, Dnyaneshwar Sankul,)
Near Saidapur Talathi Office,)
Taluka : Karad, District : Satara 415 002.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Director of Technical Education.)
3, Mahapalika Marg, Opp. Metro)
Cinema, Mumbai – 400 001.)
3. Principal, Government Polytechnic)
College, Karad, Vidyanagar,)
Karad – 415 124.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.06.2021

JUDGMENT

1. The Applicant has challenged the order dated 7th October, 2020 issued by Respondent No.3 – Principal, Government Polytechnic College, Karad thereby seeking recovery of increments released in his favour for not passing Marathi Language Examination within stipulated period from the date of joining service, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined the post of Lecturer in Government Polytechnic College, Malvan on 26.08.1994 and during the tenure of service, served at Mumbai, Thane, Sakoli (Nagpur), Pune and presently is Head of the Department in Civil Engineering at Government Polytechnic, Karad. The Government of Maharashtra has framed Rules viz. The Maharashtra Government Servants (Other than Judicial Department Servants) Marathi language Examination Rules, 1987 [hereinafter referred to as 'Examination Rules of 1987' for brevity]. In terms of Rule 3, every gazetted or non-gazetted Government servant is required to pass lower standard examination of Marathi Language within two years from the date of appointment and further to pass Higher Standard Examination before the expiry of two years after passing Lower Standard Examination. Whereas, as per Rule 4(1)(iii) of 'Examination Rules of 1987', where mother tongue of Government servant is Marathi, he is exempted from passing the examination and all that, he is required to produce Certificate from Head of the Department that he is able to write Marathi language and can effectively corresponding Marathi with facile. The Applicant contends that he has applied to the Head of Office in the year 2005 for grant of Certificate and accordingly, Certificate dated 09.12.2005 was issued by Principal of Government Polytechnic, Nagpur. He, therefore, applied on 11.07.2017 for grant of exemption, but the same was not responded. On the contrary, the Government Polytechnic, Pune by letter dated 18.07.2017 sought to recover increments paid to

him from 1998 for failure to pass Marathi Language Examination. Thereafter, as abundant precaution, the Applicant appeared in Marathi Language Examination on 14.03.2018 and 14.09.2018 and passed Lower Standard as well as Higher Standard Marathi Language Examinations. He then again made representation on 01.10.2020 against recovery of arrears paid to him, but in vain. It is on this background, the Respondent No.3 – Principal, Government Polytechnic, Karad has issued communicated dated 7th October, 2020 thereby seeking recovery of increments paid to him in 36 installments, which is under challenge in this present O.A.

3. Shri S.S. Dere, learned Advocate for the Applicant sought to assail the impugned communication dated 7th October, 2020 contending that the same is *ex-facie* illegal since in terms of 'Rules of 1987', the Applicant's mother tongue being Marathi, he is exempted from passing Marathi Language Examination and has also produced the Certificate from Head of the Department in terms of 'Rules of 1987'. He, therefore, submits that the impugned action of recovery of increments paid to him is totally unsustainable in law and deserves to be quashed.

4. Per contra, Ms. S.P. Manchekar, learned C.P.O. sought to contend that even if Applicant's mother tongue is Marathi, the Certificate was produced by the Applicant in 2005 only, and therefore, the recovery of increments paid to him cannot be faulted with. In alternative, she submits that recovery of increments paid before 2005 cannot be questioned.

5. In view of submissions advanced at the Bar, the short question posed for consideration is whether the impugned action of recovery of increments paid to the Applicant on the ground of non-passing Marathi Language Examination within four years from the date of appointment is legal.

6. Indisputably, the Applicant joined service as Lecturer in Government Polytechnic, Malvan by order dated 4th August, 1994. It is also not in dispute that Applicant's mother tongue is Marathi and Principal, Government Polytechnic, Nagpur issued Certificate dated 09.12.2005 in favour of Applicant stating that his mother tongue is Marathi and is able to read, write and speak Marathi language. The Certificate is at Page No.39 of Paper Book.

7. Here, it would be apposite to reproduce Rule Nos.3, 4 and 5, which are as under :-

“3. Subject to the provisions of rule 4, every Gazetted or non-Gazetted Government Servant shall be required to pass the –

- (i) Lower Standard Examination before the expiry of two years from the date of coming into operation of these rules or from the date of his appointment, whichever is later; and
- (ii) Higher Standard Examination before the expiry of two years after his passing the Lower Standard Examination.

4. (1) Notwithstanding anything contained in rule 3, a Government Servant shall be exempted from passing of the examinations if, -

- (i) he has passed the examinations according to the existing rules;
 - (ii) he was eligible for exemption or was exempted under the existing rules;
 - (iii) his mother tongue is Marathi;
 - (iv) he has passed the Secondary School Certificate Examination or equivalent examination with Marathi as a higher standard subject of 100 marks' paper, prior to joining the Government service; or
 - (v) he is a class III government servant holding a post for which requisite recruitment qualification is less than passing of the Secondary School Certificate Examination level :
- (2) A Government Servant who claims that his mother tongue is Marathi shall fulfill the following conditions,-

- (i) he should be able to write Marathi language in Devnagari script, with facile;
 - (ii) he should produce a certificate from his Head of the Department/Office that he can effectively correspond in Marathi.
- (3) A Government Servant who does not claim that his mother tongue is Marathi but that he has studied in Marathi medium and who has not passed Secondary School Certificate or Higher Standard Examination with Marathi shall fulfill the following conditions for getting exemption from these rules :-
- (a) he should be able to write with facile in Devnagari script;
 - (b) he should produce a certificate from the concerned Institute indicating that he has taken education in Marathi medium at least upto 7th standard; and
 - (c) he should produce a certificate from the Head of Department/Office that he can correspond in Marathi.
- (4) The Appointing Authority or the Head of the Department as the case may be, of a Government servant shall, issue orders in respect of the Government servant falling under this rule.

- 5.** A Government Servant who fails to pass the examination within the prescribed period shall, after the expiry of the said period, be liable to have his increments withheld until he passes the examination or examinations, as the case may be, or is exempted from passing the same under the provisions of rule 4.”

8. Thus, the perusal of ‘Examination Rules of 1987’ reveals that gazetted or non-gazetted Government servant is required to pass Lower Standard Examination before expiry of two years from the date of appointment and further to pass Higher Standard Examination before expiry of two years after passing the Lower Standard Examination. The consequences for failure to pass the examination are set out in Rule 5 which *inter-alia* provides for withholding increments until a Government servant passes the examination or exempted from passing the same. Whereas, Rule 4 pertains to exemptions. Here, one need to read Rule 4(1)(iii) read with Rule 4(2) of ‘Examination Rules of 1987’ for harmonious interpretation. It provides that where a mother tongue of a Government servant is Marathi, then all that he has to fulfill the condition of producing Certificate from Head of the Office that he is able

to write Marathi language in Devnagari with facile and can effectively correspond in Marathi. Admittedly, Applicant's mother tongue is Marathi. He had also produced the Certificate issued by Principal, Government Polytechnic, Nagpur dated 09.12.2005 that his mother tongue is Marathi and he is able to speak, read and write Marathi language with facile. As such, the Certificate dated 09.12.2005 has to be construed compliance of Rule 4(2) of 'Examination Rules of 1987' and he is exempted from passing Marathi Language Examination. This being the position, since admittedly, Applicant's mother tongue is Marathi and he was able to read, write and speak Marathi language with facile, there was no requirement of passing Marathi Language Examination. The passing of Marathi Language Examination is essential for a Government servant whose mother tongue is not Marathi. The object behind this Rule is that, every Government servant should be able to read, write and speak Marathi language with facile and there should not be any hurdle of language in the communication during performance of his duties.

9. It is nowhere the case of Respondents that Applicant was not able to read, write or speak Marathi language or to correspond in Marathi language with facile. At no point of time, the Respondents objected or issued any communication to the Applicant in this behalf. As such, basically, if Applicant's mother tongue is Marathi, all that he is required to produce Certificate from Head of Office that he is able to write Marathi language in Devnagari and is able to correspond in Marathi effectively. Merely because Applicant did not produce any Certificate within two years from the date of joining that hardly matters where admittedly Applicant's mother tongue is Marathi and he is able to correspond in Marathi with facile. Since there was no deficiency in the services rendered by the Applicant from the point of language examination, the Department had released increments regularly in favour of Applicant.

10. Admittedly, the present issue is governed by 'Examination Rules of 1987' and not by amended Rules of 1999. Rule 4 of 'Examination Rules

of 1987' has been substituted by amended Rules of 1999 whereby production of Certificate from the concerned institute indicating that a Government servant has taken education in Marathi medium at least upto 7th Standard is made additional requirement other than production of Certificate by the Department where a mother tongue of Government servant is Marathi. Material to note that the Government by Circular dated 24.05.2016 has clarified that a Government servant appointed on or before 06.02.2001 are governed by 'Examination Rules of 1987' and not by Rules of 1999.

11. Apart, admittedly, the Applicant has passed Marathi Language Examination as well as Higher Standard Examination as abundant precaution in 2018, as seen from declaration of result by communication dated 14.03.2018 and 04.09.2018 (Page Nos.47 and 49 of P.B.). Thus, even if the Applicant was not required to pass Marathi Language Examination, he appeared and got through.

12. True, it appears that at the time of pay fixation in 2003, 2010 and 2019, the Applicant has submitted Undertaking that, if any excess payment is found, he will refund the same to the Government either by adjustment or payment due to him or otherwise. Obviously, this Undertaking pertain to pay fixation exercise which was carried out in terms of revised pay scales and it has nothing to do with the increments released in favour of the Applicant. Indeed, in view of the fact that Applicant's mother tongue is Marathi and he was able to speak, write and read Marathi with facile, the question of withholding increments or its recovery does not survive.

13. The submission advanced by the learned CPO that recovery of increments at least paid upto year 2005 (the date of production of Certificate) should not be disturbed is unpalatable. As stated above, in view of the fact that Applicant's mother tongue is Marathi and he was able to read, write and speak Marathi with facile and has submitted

Certificate in terms of Rule 4(1)(iii) read with 4(2), it has to be construed that the Applicant deemed to have been exempted from passing of Language Examination, and therefore, there could be no recovery of increments paid to him.

14. The learned CPO referred to the decision rendered by this Tribunal and confirmed by Hon'ble High Court in **Writ Petition No.7929/2019 (Kiran Solanki Vs. State of Maharashtra) decided on 19th July, 2019** wherein the order of recovery of arrears for not passing Marathi Language Examination was confirmed. In so far as this decision is concerned, in that matter, the Applicant's Marathi tongue was not Marathi and there was no exemption in her favour from passing language examination. Therefore, in fact situation, the recovery was upheld. Whereas, in the present case, the Applicant's mother tongue is Marathi and Department itself certified that he can read, write and speak Marathi with facile. Therefore, the decision referred to is quite distinguishable and is of no help to the Respondents.

15. I have no hesitation to sum-up that the impugned action of recovery is totally arbitrary, irrational and contrary to letter and spirit of 'Examination Rules of 1987'. The interpretation sought to be made by the Respondents that recovery at least upto 2005 is valid, is too rigid and highly technical. Here, one needs to see the object of Rules and not its technicalities. Suffice to say, the Certificate issued by the Head of the Department in 2005 enure to the benefit of the Applicant, since inception i.e. entry in service in the facts and circumstances of the present case.

16. For the aforesaid discussion, there is no escape from the conclusion that the impugned order is unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 7th October, 2020 is quashed and set aside.
- (C) The Respondents are directed to release the increments withheld, if any, to the Applicant.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.06.2021

Dictation taken by :

S.K. Wamanse.

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