

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.1136 & 1137 OF 2022

DISTRICT : KALYAN

Sub.:- Recovery

ORIGINAL APPLICATION NO.1136 OF 2022

Dr. Awadhesh A. Upadhyay.)
Age : 48 Yrs, Occu.: Medical Officer, (Gr. A,))
Class-II), Working at Primary Health Centre)
Mangrul, Tal.: Ambernath, Dist : Thane)
and residing at Camps Corner Co-op.Hsg.)
Society, Near Sapna Hotel, Murbad Road,)
Shahad (W), Kalyan.)...**Applicant**

Versus

1. The Additional Chief Secretary.)
Public Health Department, Govt.)
of Maharashtra, Mantralaya,)
Mumbai.)
Through Chief Presenting Officer,)
M.A.T, Mumbai.)
2. Director of Public Health.)
St. Georges Hospital Compound,)
P.D'Mello Road, Near V.T. Station,)
Mumbai – 400 001.)
3. Joint Director (Finance & Admn.)
Commissioner), Health Services,)
Aarogya Bhavan, St. Georges)
Hospital Compound, P.D'Mello Road,))
Mumbai – 400 001.)
4. The District Health Officer.)
Health Department, Zilla Parishad,)
Thane.)...**Respondents**

ORIGINAL APPLICATION NO.1137 OF 2022

Dr. Pradnya A. Meshram.)
 Age : 42 Yrs, Occu.: Medical Officer (Gr. A)
 Class-II), Working at Primary Health Centre)
 Kongaon, Tal.: Bhiwandi, Dist : Thane)
 and residing at Mangeshi Shahara,)
 Krishna Kunj, Room No.203, A-1, Near)
 Chattri-Bungalow, Chickenghar,)
 Kalyan (W), District : Thane.)...**Applicant**

Versus

1. The Additional Chief Secretary.)
 Public Health Department, Govt.)
 of Maharashtra, Mantralaya,)
 Mumbai.)
 Through Chief Presenting Officer,)
 M.A.T, Mumbai.)
2. Director of Public Health.)
 St. Georges Hospital Compound,)
 P.D'Mello Road, Near V.T. Station,)
 Mumbai – 400 001.)
3. Joint Director (Finance & Admn.)
 Commissioner), Health Services,)
 Aarogya Bhavan, St. Georges)
 Hospital Compound, P.D'Mello Road,))
 Mumbai – 400 001.)
4. Deputy Director of Public Health)
 Services, Thane Circle, Thane.)
5. The District Health Officer.)
 Health Department, Zilla Parishad,)
 Thane.)...**Respondents**

Shri V.P. Potbhare, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent-State.

**Shri A.S. Gaikwad, Advocate for Respondent No.4 in O.A.No.1136/22
 and for Respondent No.5 in O.A.No.1137/22.**

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.06.2023

JUDGMENT

1. In these Original Applications, the Applicants have challenged the impugned action of recovery of the increments paid to them to which according to Respondents, they were not entitled because of non-passing of Marathi Language Examinations within stipulated period in terms of 'Maharashtra Government Servants (Other than Judicial Department Servants), Marathi Language Examination Rules, 1987 (hereinafter referred to as 'Examination Rules of 1987' for brevity). Since the issue involved is common, both these O.As are being decided by common order.

2. Shortly stated facts giving rise to these O.As are as under :-

The Applicant in O.A.No.1136/2022 was appointed as Medical Officer by order dated 15.12.2001 purely on *ad-hoc* basis for one year and later it was continued from time to time. Later, Government by order dated 11.02.2009 regularized his services on regular basis. As per stipulation mentioned in appointment order, he was to clear Marathi Language Examination within stipulated period in terms of 'Examination Rules of 1987' if not exempted from passing the said examination, failing to which he would not be entitled to increment. The Applicant contends that though his mother tongue is not Marathi, he has passed Secondary School Certificate Examination with Marathi as Higher Standard subject of 100 marks prior to joining the service, and therefore, exempted from passing Marathi Language Examination in terms of 'Examination Rules of 1987'. Despite he appeared in Marathi Language Examination in 2020 and 2021 and cleared the examinations. However, Respondent No.3 – Joint Director, Finance and Administration Commissionerate, Health Services, Mumbai by order dated 08.12.2021 sought recovery of increments paid to him and on that basis, Respondent No.4 – District

Health Officer, Z.P, Thane passed order dated 18.01.2023 seeking recovery of Rs.6,50,696/- paid to him towards increments. Thereafter, Applicant made representation on 08.08.2022 and pointed out that since he has passed SSC with Marathi as higher standard subjects with higher marks was entitled to exemption, and therefore, increments were rightly granted to him. Thereafter again, on the insistence of Department, he appeared in Lower and Higher Standard Examination of Marathi Language in terms of 'Examination Rules of 1987' and requested to recall the order, but it is not responded. The Applicant, therefore, challenged the impugned orders dated 08.12.2021 and 18.01.2023 in the present O.A.

3. Whereas Applicant in O.A.No.1137/2022 was appointed as Medical Officer by order dated 24.08.2004 purely on *ad-hoc* basis and was continued from year to year. Later, Government by order dated 15.05.2009 regularized his services as Medical Officer on regular basis. He contends that he has passed Secondary School Certificate Examination with Marathi as higher standard subject of 100 marks and also passed HSC Examination with Hindi as higher standard examination of 100 marks, and therefore, exempted from again passing lower standard examination and higher standard examination of Marathi Language in terms of 'Examination Rules of 1987'. However, because of insistence of the Department, he appeared in the said examinations again and cleared it in 2020 and 2021. Despite this position, Respondent No.3 - Joint Director passed order on 06.09.2022 for recovery of increments paid to him. The Applicant made representation on 31.10.2022 and pointed out that since he passed SCC and HSC examination with Marathi and Hindi language subjects of 100 marks, he is exempted from appearing lower standard and higher standard Marathi Language Examination in terms of 'Examination Rules of 1987'. However, it is not responded. The Applicant has, therefore, challenged the order dated 06.09.2022 whereby recovery is sought from him.

4. In both these O.As, the Respondents resisted the O.A. and sought to justify the impugned action *inter-alia* contending that in terms of 'Examination Rules of 1987', the Applicants are required to pass lower standard examination of Marathi language before expiration of two years from the date of their appointment and further to clear Higher Standard Examination of Marathi language within two years after passing Lower Standard Examination of Marathi language in terms of 'Examination Rules of 1987', but neither they appeared nor passed the said examinations in terms of 'Examination Rules of 1987'. Since they failed to pass the examination within stipulated period, their increments were liable to be withheld, but those were paid inadvertently, and therefore, impugned action of recovery is legal and valid. According to Respondents, mere passing of SCC Examination with Marathi as higher standard subject of 100 marks paper is not enough and no case is made out to grant any such exemption from clearing lower standard and higher standard examination in terms of 'Examination Rules of 1987'.

5. Shri V.P. Potbhare, learned Advocate for the Applicant sought to assail the impugned communications of recovery *inter-alia* contending that since both the Applicants have passed SCC Examination with Marathi as higher standard subject of 100 marks prior to joining of service, they are entitled to exemption from clearing lower standard and higher standard examination as specifically provided under Rule 4(1)(iv) of 'Examination Rules of 1987'. In this behalf, he referred SSC Certificate as well as HSC Certificates of the Applicants. He has pointed out that despite this position, the Applicants again appeared in Lower Standard and Higher Standard Examination in 2020 and 2021. In alternative, he submits that increments were released by the Department without there being any misrepresentation or fraud by the Applicants, and therefore, recovery is impermissible in view of decision of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer and Shri Gaikwad, learned Advocate for Zilla Parishad sought to justify the impugned action inter-alia contending that mere passing of SCC Certificate Examination with Marathi as higher standard subject of 100 marks prior to joining of service is not enough for exemption. According to them, in terms of 'Examination Rules of 1987', Applicants were required to pass Lower Standard and Higher Standard Examination of Marathi language within 2/4 years from the date of joining, but they failed to do so, and therefore, not entitled to increments, but those were released inadvertently and it being noticed, now recovery is legal and valid.

7. In view of submissions, the issue posed for consideration is whether impugned communication seeking recovery of the increments paid to the Applicants is legally sustainable.

8. The impugned action of recovery is taken on the ground that the Applicants have not cleared Lower Standard and Higher Standard Marathi Language Examination within time limit given in the 'Examination Rules of 1987'. Therefore, it would be apposite to reproduce the 'Examination Rules of 1987' for ready reference, which are as under :-

- 1.** These rules may be called the Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examination Rules, 1987.
- 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.

Note :- An Officer belonging to the All India Services who is exempted from passing the Lower Standard Examination under sub-rule (6) of rule 4 of these rules, shall be required to pass the

Higher Standard Examination within four years from the date of his joining the State service.

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 :

Provided that, Government Servants whose duties are of technical or arduous nature and who are not required to correspond in Marathi Language, may be exempted from passing the Examinations by the concerned Administrative Department in consultation with the General Administration Department.

(2) A Government Servant who claims that his mother tongue is Marathi shall fulfil 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 fulfil 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 whose mother tongue is Konkani shall not be eligible for exemption from passing the examinations.
- (6) An Officer belonging to the All India Services shall be exempted from passing the Lower Standard Examination if he has passed the Marathi Language Examination during the period of his training in the National Academy.
5. A Government Servant who fails to pass the examinations 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.

Note 1 :- The date of passing the examination shall be deemed to be the date following the date on which the examination ends ;

Note 2 :- Increments so withheld shall become payable to the Government Servant with effect from the date on which he passes the examination or is exempted from passing it and increments shall accrue to his as if no increments had been withheld. He shall not be entitled for the arrears due to withholding of increments.”

9. As per ‘Examination Rules of 1987’, every gazette and non-gazetted servant is required to pass Lower Standard Marathi Examination before expiry of two years from the date of appointment and then to pass Higher Standard Marathi Examination within next two years after passing Lower Standard Examination of Marathi Language and failure to do so, would entail withholding of increments until he passes the examination or is exempted from passing examination under Rule 4 of ‘Examination Rules of 1987’. However, Rule 4(1) starts with non-obstante Clause that notwithstanding anything contained in Rule 3, a Government servant shall be exempted from passing these examinations in the situations enumerated from (i) to (v) and he is not required to pass Lower Standard and Higher Standard Marathi Language Examination afresh. Here, we are concerned with Clause (iv) which *inter-alia* provides exemption if a

Government servant has passed SSC examination or equivalent to Marathi as Higher Standard subject of 100 marks paper prior to joining the Government service. In the present case, admittedly, Applicants have passed SSC Examination with Marathi Language with Marathi subject of 100 marks. Their SCC Certificates are at Page Nos.23 & 25 of Paper Book in O.A.No.1136/2022 and are at Page No.25 of P.B. in O.A.1137/2022. The Applicant in O.A.1136/2022 had obtained 65 marks out of 100 in Marathi Language Examination in SCC Examination. Whereas Applicant in O.A.1137/2022 had secured 71 marks out of 100 marks in Marathi Language Examination in SCC. This being so, Rule 4(1)(iv) of 'Examination Rules of 1987' is clearly attracted so as to qualify for exemption from passing Lower Standard and Higher Standard Marathi Language Examination afresh which was required to be passed as per Rule 3 of 'Examination Rules of 1987'. True, mother tongue of both the Applicants is not Marathi. Notably where mother tongue of Government is not Marathi and has not passed SCC or HSC Examination with Marathi but has studied in marathi medium upto 7th standard and is able to read and write Marathi language in Devnagari and produce Certificate from the Head of the Department that he can correspond in marathi is also entitled for exemption as per Rule 4(3) of 'Examination Rules of 1987'. Thus, plain and harmonious construction of 'Examination Rules of 1987' clearly spells that where mother tongue is not Marathi, but he has passed SCC with Marathi Higher Standard subject as 100 marks prior to joining Government service, he is entitled to exemption from appearing again in Lower Standard and Higher Standard Marathi Language Examination, as specifically provided in Rule 4(1)(iv) of 'Examination Rules of 1987'.

10. The submission advanced by learned P.O. and Shri Gaikwad, learned Advocate for Zilla Parishad that it is only in a case where mother tongue is Marathi and has passed SCC with Marathi as subject of 100 marks paper is only entitled to exemption is totally misconceived and fallacious. As state above, under Rule 4(1) of 'Examination Rules of

1987', five situations are mentioned and those are disjunctive meaning thereby if matter found in any one of the situation, a Government servant is entitled to exemption from passing Lower Standard and Higher Standard Marathi Language Examination again.

11. That apart, as per proviso to Rule 4(1) of 'Examination Rules of 1987', the Government servants whose duties are of technical or arduous nature and who are not required to correspond in Marathi are entitled to exemption from passing the examination by the concerned administrative department in consultation with General Administration Department. In the present case, the Applicants are appointed as Medical Officers and there is absolutely nothing on record to indicate that they were required to correspond in marathi language, but were unable to do so. Indeed, they being appointed as Medical Officers, their duties are restricted to the examination of patients and prescription of medicine. There is absolutely nothing on record to establish that they were unable to communicate in Marathi and it created any hurdle in discharging of duties as Medical Officers. This being so, the Applicants deemed to have been exempted from passing the examinations.

12. Furthermore, on insistence of the Department, the Applicants appeared in Lower Standard and Higher Standard Marathi Language Examination in 2020-2021 and cleared the examinations. They made representations pointing out that they have passed SCC Examination with Marathi as Higher Standard subject of 100 marks prior to joining the Government service and entitled to exemption. However, instead of declaring exemption on the basis of SCC examination, the Respondents granted exemption from the date of passing the examinations of 2020-2021 by impugned communication which is under challenge. Suffice to say, denial of exemption as claimed by the Applicants on the basis of passing of SCC Examination with Marathi language of 100 marks is in contravention of Rule 4 of 'Examination Rules of 1987'. The Respondents misdirected themselves in doing so. The Respondents

ought to have granted exemption as specifically provided in Rule 4(1)(iv) of 'Examination Rules of 1987'. The impugned communication is thus totally arbitrary and liable to be quashed.

13. The totality of aforesaid discussion leads me to sum-up that the impugned orders are totally indefensible in law as discussed above and liable to be quashed. Hence, the order.

ORDER

- (A) Both these Original Applications are allowed.
- (B) Impugned communication dated 08.12.2021 and 18.01.2023 in O.A.No.1136/2022 and impugned communication dated 06.09.2022 in O.A.No.1137/2022 are quashed and set aside.
- (C) The amount recovered, if any, in pursuance of impugned orders be refunded to the Applicants within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 23.06.2023

Dictation taken by :

S.K. Wamanse.

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