

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.420 OF 2019**

**WITH**

**ORIGINAL APPLICATION NO.421 OF 2019**

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**ORIGINAL APPLICATION NO.420 OF 2019**

**DISTRICT : MUMBAI**

Smt. Priyanka Laukik Mokashi, )  
Age 33 years, occ. Junior Statistical Assistant, )  
R/at B-305, Riddhi Siddhi CHS, Louis Wadi, )  
Eastern Express Highway, Near Hotel Samudra, )  
Thane (E) 400604 )..Applicant

Versus

1. The State of Maharashtra, )  
The Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400032 )
2. The Principal Chief Conservator of Forest, )  
(Forest Force Head), Van Bhavan, )  
Ramgiri Road, Civil Lines, Nagpur 440001 )
3. The Chief Conservator of Forest (Territory), )  
Thane Circle, Microwave Tower, )  
Bara Bungalow Area, Kopri, Thane (E) 400603 )..Respondents

**WITH****ORIGINAL APPLICATION NO.421 OF 2019****DISTRICT : MUMBAI**

Smt. Sujata Rakesh Kadam, )  
Age 40 years, occ. Accountant, )  
R/at B-101, Ganaraj Heights, Opp. Adarsh Nagar, )  
Kolbad, Thane (W) 400601 )..Applicant

Versus

1. The State of Maharashtra, )  
The Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400032 )
2. The Principal Chief Conservator of Forest, )  
(Forest Force Head), Van Bhavan, )  
Ramgiri Road, Civil Lines, Nagpur 440001 )
3. The Chief Conservator of Forest (Territory), )  
Thane Circle, Microwave Tower, )  
Bara Bungalow Area, Kopri, Thane (E) 400603 )..Respondents

Shri K.R. Jagdale – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
 RESERVED ON : 17<sup>th</sup> July, 2019  
 PRONOUNCED ON : 19<sup>th</sup> July, 2019

### J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.
2. These two OAs are being disposed off by common judgment because the facts are exactly identical.
3. The grievance of the applicants is that vide impugned order dated 26.2.2019 (Exhibit F page 23 of OA) the respondents have issued the order as under:

“४०. श्रीमती मोकाशी, कनिष्ठ सांख्यिकी सहायक यांचे माध्यमिक शालांत परिक्षेचे (SSC) चे गुणपत्रकानुसार त्यांनी “हिंदी” विषय घेतलेला नसल्याने त्यांनी एतदर्थ मंडळाची हिंदी भाषा परीक्षा उत्तीर्ण होऊन तसे प्रमाणपत्र सादर करणे आवश्यक होते. तथापि एतदर्थ मंडळाची हिंदी भाषा निम्नस्तर /उच्चस्तर परीक्षा उत्तीर्ण झाल्याबाबतचे निकाल / प्रमाणपत्र सादर केलेले नाही. त्यामुळे त्यांना दिनांक ०१/०७/२०११ रोजी व त्यानंतर देण्यात आलेल्या वेतनवाढी शासकीय सेवा ३ वर्ष पुर्ण केल्यानंतर म्हणजेच वेतन संरचना पी.बी.२: ५२००-२०२००, ग्रेड पे २४०० मधील दिनांक ०१. ०७०२०१० चे वेतन रु.८१२०+२४००=१०५२० नंतर मंजूर केलेले दिनांक १ जुलै २०११ पासून ते दिनांक १ जुलै, २०१८ पर्यंत खालीलप्रमाणे रद्द करण्यात येत आहे.

अ. क्र.	नांव व पदनाम	श्रीमती प्रियांका लौकिक मोकाशी, कनिष्ठ सांख्यिकी सहायक	
१.	दिनांक ०१.०७.२०१० रोजीचे वेतन	८१२० + २४०० = १०५२०/-	
२.	पुढील वेतनवाढीचा दिनांक व वेतन	वेतन बँड मधील वेतन	ग्रेड वेतन
३.	१ जुलै, २०११	८१२०+ ३२०= ८४४०	२४००

४.	१ जुलै, २०१२	८४४०+ ३३०= ८७७०	२४००
५.	१ जुलै, २०१३	८७७०+ ३४०= ९११०	२४००
६.	१ जुलै, २०१४	९११०+ ३५०= ९४६०	२४००
७.	१ जुलै, २०१५	९४६० + ३६०= ९८२०	२४००
८.	१ जुलै, २०१६	९८२०+ ३७०= १०१९०	२४००
९.	१ जुलै, २०१७	१०१९०+ ३८०= १०५७०	२४००
१०.	१ जुलै, २०१८	१०५७०+ ३९०= १०९६०	२४००

वरीलप्रमाणे नमूद अनुक्रमांक ३ ते १० पर्यंतचे वेतनवाढी काढून घेणेत आल्याने श्रीमती मोकाशी, कनिष्ठ सांख्यिकी सहायक यांचे दिनांक ०१/०७/२०१० पासुनचे वेतन सद्यस्थितीत रु. ८१२०+२४००=१०५२०/- याप्रमाणे राहिल.

५.०० एतदर्थ मंडळाची परीक्षा उत्तीर्ण झाल्यावर किंवा वयाची ४५ वर्ष पुर्ण झाल्यामुळे सुट मिळाल्यानंतर जे अगोदरचे घडेल त्यावेळी त्यांच्या काढून घेण्यात आलेल्या /स्थगीत केलेल्या वेतनवाढी मोकळ्या करण्यांत येतील. त्याचे आदेश वेगळ्याने काढणेत येईल व या अनुषंगाने अतिप्रदानाची वसूली करण्यात येईल.”

(Quoted from page 24 of OA No.420/19)

4. Similar order has been issued in respect of applicant in OA No.421 of 2019 (Exhibit F page 21 of OA No.421/19).
5. The applicants, therefore, made prayer as under:

*“10(a) By suitable orders or directions this Hon’ble Tribunal may be pleased to quash and set aside the impugned order dated 26.2.2019 issued by the respondent no.3 as well as quash and set asides the impugned order dated 29.3.2019 issued by the respondent no.3, forthwith.*

*(c) By suitable orders or directions this Hon'ble Tribunal may be pleased to direct the respondents to grant/refund and pay the withheld increments of the applicant, forthwith."*

(Quoted from page 10-11 of OA)

6. In support of the prayer, the applicants have furnished the following grounds:

*(i) The appointment order did not stipulate passing Hindi Language examination in three years from the date of appointment.*

*(ii) Stoppage of increments would entail financial suffering to the applicants.*

*(iii) The impugned order is arbitrary, illegal, perverse and arbitrary.*

*(iv) The order is contrary to Rule 36 of MCS (Pay) Rules, 1981 which states that increments cannot be withheld unless penalty is imposed under relevant provisions of MCS (Discipline & Appeal) Rules, 1979.*

*(v) The increments have been withheld as per GR dated 10.7.1976 which is of general nature and cannot be applied, as the applicants have not been punished as mentioned above.*

*(vi) The applicants have not been intimated about appearing and passing the said examination.*

*(vii) The applicants cannot be made to suffer for omission on the part of the respondents.*

*(viii) The applicants did not make any misrepresentation for getting increments, "This ratio has been upheld by the Hon'ble Supreme Court in*

*the matter of Sahib Ram Vs. State of Haryana (1995 Suppl (1) SCC 18)".  
(Para 7.5 page 8 of OA)*

*(ix) Withdrawing increments and recovery for non-passing Hindi Language examination is discriminatory, arbitrary and contrary to Article 14 and 16 of the Constitution of India.*

*(x) It is discriminatory as no recovery has been made in respect of 21 others (list enclosed in para 7.6 page 9 of OA).*

7. The Ld. Advocate for the applicants has relied on following judgments:

*(i) OA No.1073 of 2017 Shri Ramdaras S. Prasad Vs. The State of Maharashtra & Ors. decided by this Tribunal on 3.10.2018.*

*(ii) Civil Appeal No.6868 of 1994 Sahib Ram Vs. State of Haryana & Ors. decided by the Hon'ble Supreme Court on 19.9.1994.*

*(iii) Civil Appeal No.11527 of 2014 State of Punjab & Ors. Vs. Rafiq Masih (While Washer) & Ors. decided by the Hon'ble Supreme Court on 18.12.2014.*

*(iv) Writ Petition No.9172 of 2013 Ramesh Vs. The State of Maharashtra & Ors. decided by the Hon'ble Bombay High Court (Aurangabad Bench) on 8.5.2015.*

*(v) Writ Petition No.2648 of 2016 Lata Gajanan Wankhede Vs. State of Maharashtra & Ors. decided by the Hon'ble Bombay High Court (Nagpur Bench) on 1.7.2016.*

*(vi) OA No.899 of 2016 Shri Harish Ramchandra Das Vs. The Commissioner of Police, Pune City & Ors. decided by this Tribunal on 10.2.2017.*

*(vii) OA No.923 of 2015 Shri Balkrishna Babu Nikam Vs. The Government of Maharashtra & Ors. decided by this Tribunal on 18.2.2016.*

*(viii) Writ Petition No.7404 of 2016 The State of Maharashtra & Ors. Vs. Shri Balkrishna Babu Nikam decided by the Hon'ble Bombay High Court on 3.10.2016.*

8. During hearing the Ld. Advocate for the applicants on instructions submits that the applicants passed the requisite examination on 13.5.2019. Ld. Advocate for the applicants submits that accordingly on 4.6.2019 the respondents have released the withheld increments from 1.7.2011 to 24.2.2019 in respect of applicant in OA No.420/19 and from 1.7.2004 to 24.2.2019 in respect of applicant in OA No.421/19. However, the order clarified that the arrears would not be admissible. The Advocate, therefore, presses only his prayer in 10(c).

9. The respondents no.1 to 3 have filed their reply and resisted the contentions raised by the applicants. Relevant portion of the same is as under:

*(i) As per GAD, MS, GR dated 10.6.1976, every government employee should pass Hindi Language (Lower and Higher Grade) examination of the Adhoc Board of State Government within 3 years from the date of joining service. However, the applicant failed to fulfill the said criteria she is not eligible to get regular yearly increments as mentioned in the said GR. However, in the present case such increment has been granted to the applicant inadvertently by mistake. In view of the instructions issued by the Additional Principal Chief Conservator of Forests (Subordinate cadre), MS, Nagpur vide letter No.Desk-10(2)/est/one/CR No.138/2466 dated*

*13.3.2018 the yearly regular increment of Government employees, who have not passed the Adhoc Board Language Examination as mentioned in the GR dated 10.6.1976 shall be stopped till they pass the said examination or complete their age of 45 years. It is further instructed in the same letter that if such yearly regular increment is paid to the Government officers or employees it shall be withdrawn and amount paid in excess on account of such increment be recovered from them. (para 2 page 39 of OA)*

*(ii) As the applicants did not pass Hindi Language Examination as mentioned in GR, show cause notice was issued, but the explanation submitted was unsatisfactory. Hence, the impugned order has been issued. The applicants were informed that increments would be released on completion of the condition of passing Hindi Language Examination.*

*(iii) The appointment letter has clear instructions that she would be governed by prevailing and existing rules and regulations. The GR of 1976 provides all Government servants to fulfill the condition of passing examination in Hindi Language in stipulated period and it was the responsibility of the applicants to comply with the same. Ignorance of the same cannot be considered as an excuse of responsible government servant.*

*(iv) The applicant is not liable to get regular yearly increments which were given inadvertently by mistake and hence same is proposed to be withdrawn as per rules.*

*(v) The impugned order is legal, proper and correct.*

*(vi) The applicant has been receiving the increments by mistake for which she is not entitled. The ratio of the decision in the matter of Sahib Ram Vs. State of Haryana [1995 Suppl.(1) SCC 18] is not applicable to the facts and circumstances of the present case. (para 18 page 47)*



*(vii) The GR dated 10.6.1979 and instructions in letter are applicable to the entire State of Maharashtra and instructions issued are being followed by all the concerned. Therefore, there is no question of applying different yard stick to the employees. (Para 19(i) page 47)*

*(viii) Moreover, when the information is collected in respect of 21 employees working with the forest divisions under the control of office of respondent no.3 it is transpired that out of 21 employees 17 employees have passed SSC with Marathi and Hindi subjects. Hence they are exempted from passing Adhoc Board language Examination. In respect of remaining 4 employees appropriate steps are being taken to initiate action against them. Therefore, the contents in para 7.6 are incorrect. (Para 19(ii) page 48)*

10. The respondents have, therefore, submitted that the OA is without any foundation and devoid of any merits and the same deserves to be dismissed.

11. The issue for consideration is whether the Government servant is entitled for “unjust enrichment” for an act done inadvertently by the respondents? The reply is no; and reasons are as under:

Discussion and findings:

12. I have perused the GR issued by GAD dated 10.6.1976. The relevant portion of the same reads as under:

“१) पूर्वीच्या नियमांनुसार विहित केलेल्या निम्नस्तर, उच्चस्तर व बोलभाषा हिंदी परीक्षा प्रत्येक शासकीय कर्मचा-यास उत्तीर्ण होणे आवश्यक राहिल. या परीक्षा शासकीय सेवेत रुजू झालेल्या दिनांकापासून तीन वर्षांच्या मुदतीत किंवा शासनाने काही कारणास्त मुदत वाढविल्यास त्या मुदतीस उत्तीर्ण होणे आवश्यक राहिल. पूर्वीच्या नियमानुसार जे कर्मचारी हया परीक्षा यापूर्वी उत्तीर्ण झालेले

असतील त्यांना परीक्षा उत्तीर्ण होणे आवश्यक राहणार नाही. मात्र जे कर्मचारी ह्या परीक्षा अद्यापि उत्तीर्ण झालेले नसतील त्यांना परीक्षा उत्तीर्ण होणे अनिवार्य आहे.

५) जे शासकीय कर्मचारी विहित मुदतीत किंवा त्यांच्या वयाची ४५ वर्षे पूर्ण होईपर्यंत या परीक्षा उत्तीर्ण होणार नाहीत त्यांची वार्षिक वेतनवाढ उक्त मुदत संपल्यानंतर ही परीक्षा उत्तीर्ण होईपर्यंत किंवा वयाची ४५ वर्षे पूर्ण झाल्यामुळे सूट मिळेपर्यंत रोखण्यात येईल.

या नियमानुसार रोखून धरण्यात आलेली वार्षिक वेतनवाढ शासकीय कर्मचारी ज्या दिनांकास परीक्षा उत्तीर्ण होतील किंवा त्यांच्या वयाला ४५ वर्षे पूर्ण होतील त्या दिनांकापासून त्यांना देय होईल व पुढील सर्व वेतनवाढी कोणतीही वेतनवाढ रोखून धरण्यात आली नव्हती असे मानून त्यांना मिळतील. मात्र वेतनवाढ रोखून ठेवल्यामुळे कर्मचा-यांना ज्या प्रत्येक वेतनास मुकावे लागेल त्याची थकबाकी मिळण्याचा हक्क राहणार नाही.”

(Quoted from page 52-53 of OA)

13. The same is reiterated in the letter by the respondents on 13.3.2018 (Exhibit R-2). The impugned orders issued to the applicants are based on the above GR (Exhibit R-3). In this connection judgment and order dated 6.6.2019 of Nagpur Bench of this Tribunal in OA No.933 of 2017 Pralhad Natthuji Bhatkar Vs. State of Maharashtra & Ors. is relevant. The relevant portion is quoted below:

*“9. In Writ Petition No.5198/2013 the Hon’ble Division Bench of Bombay High Court Bench at Aurangabad in case of Vijay Sambrao Bharati Vs. State of Maharashtra & Ors., decided on 17/04/2018, placed reliance on the Judgment of the Hon’ble Apex Court in the case reported in 2012 AIR SCW, 4742. The relevant observations made by the Hon’ble Apex Court are reproduced by the Hon’ble Division Bench of the Bombay High Court which are as under—*

*“11) In the case reported as 2012 AIR SCW 4742 [Chandi WP No. 5198/2013 & Anr. Prasad Uniyal and Ors. Vs. State of Uttarakhand*

*and Ors.], the Apex Court referred provision of section 72 of the Contract Act and has made observations which are relevant for the present purpose and the observations are as under :-*

*"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.*

*16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise WP No. 5198/2013 & Anr. where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/ received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to*

*repay the money, otherwise it would amount to unjust enrichment.*

*17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (supra) and in Col. B.J. Akkara (Retd.) case (2006 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.*

*18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands WP No. 5198/2013 & Anr.”*

*10. After reading Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 it is crystal clear that if excess amount is paid to the government servant during his service, then the Government has a right to recover that amount from the pensioner after giving him a reasonable opportunity of hearing and in instalments. As there is a specific provision under the Maharashtra Civil Services (Pension) Rules, 1982 which empowers the State Government to recover the excess amount wrongly paid to the Pensioner, I do not see any merit in the submission of the applicant that the recovery is illegal.*

*11. Even in case of Vijay Sambrao Bharati Vs. State of Maharashtra & Ors., the Hon'ble Division Bench in para-9 of the Judgment has considered the provisions under Rule 134 (A) of the Maharashtra Civil Services*

*(Pension) Rules, 1982 and on the basis of this it is held that the Government is empowered to recover the excess amount.*

*12. The crux of the matter is that as discussed in this Judgment the excess amount paid to the applicant was public money and it was described as tax payer's money and if though there is a specific provisions in the Service Rules, the applicant is permitted to retain this amount, then it would amounts to unjust enrichment it will not be in the interest of the society at large and considering this view taken by the Hon'ble Apex Court reported in 2012 AIR SCW, 4742, I 7 O.A. No. 933 of 2017 do not see any merit in this application. Hence, the O.A. is dismissed. No order as to costs."*

14. In the present OAs the contentions raised by the applicants that they were ignorant, were not intimated in time are not relevant, as every government servant is expected to acquaint himself/herself about the terms and conditions governing the service. The recovery is not on account of any misrepresentation. The increments were released as admitted by the respondents inadvertently and the respondents are within their legal right to recover the same till the terms and conditions laid down by various GRs are complied with as this amount belongs to taxpayers' money. The applicants are not entitled for payment of arrears as prayed.

15. The impugned orders are legal and no interference is called for by this Tribunal as there is no arbitrariness or any discrimination.

16. Both the Original Applications are, therefore, dismissed with no order as to costs.

Sd/-

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**19.7.2019**

Dictation taken by: S.G. Jawalkar.