

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 137 OF 2021**

DIST. : LATUR

**Premnath s/o Gopalrao Akangire, )**  
Age : 63 years, Occu.: Nil (Pensioner), )  
R/o. Vishal Nagar, Near Sai Mandir, )  
Barshi Road, Latur. )..

**APPLICANT**

VER S U S

- 1. The State of Maharashtra )**  
Through its Secretary, )  
Agriculture, Animal Husbandry )  
Dairy Development & Fisheries )  
Department, M.S., )  
Mantralaya, Mumbai - 32. )
- 2. Commissioner of Agriculture, )**  
M.S., Central Building, )  
3<sup>rd</sup> floor, Pune – 411 001. )
- 3. The District Superintending )**  
Agriculture Officer, Latur. )
- 4. The Accountant General, )**  
Plot no. 167, Netaji Nagar, )  
Nagpur 440 008. )

**...RESPONDENTS**

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APPEARANCE :- Shri Avinash S. Deshmukh, learned  
Advocate for the applicant.

: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**

**DATE** : **17<sup>th</sup> APRIL, 2023**  
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**O R A L - O R D E R**

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The applicant has preferred the present Original Application seeing quashment of the order dated 9.10.2020 issued by respondent no. 1, whereby respondent no. 1 has rejected the request of the applicant seeking exemption from passing the Post Recruitment Divisional Accounts Examination. The applicant has also sought declaration to the effect that the order dated 30.8.2002 granting exemption to the applicant from passing the Post Recruitment Divisional Accounts Examination upon attaining the age of 45 years was legal and proper in light of the policy decision of the State Government dated 1.11.1977. The applicant has also prayed for directions against the respondents to forthwith process and finalize his pension case and consequently to start paying him regular monthly pension.

3. It is the case of the applicant that vide order dated 30.8.2002 issued by respondent no. 2 though exemption was granted to the applicant and others from passing the Divisional Accounts Examination on attaining the age of 45 years and though thereafter vide G.R. dated 29.1.2003 the applicant was declared to have successfully completed 2 years' probation period, after his retirement he has been communicated that his request for grant of exemption from passing the Divisional Accounts Examination has been rejected.

4. The applicant entered into Government service as a Agriculture Supervisor on 8.6.1983. On 6.6.1984 the applicant was appointed as Agriculture Officer by the Director of Agriculture, Maharashtra State, Pune. On 16.8.1984 the M.P.S.C. recommended the name of the applicant for appointment on the post of Maharashtra Agriculture Services Class-II. The select list prepared by the M.P.S.C. was challenged before the Hon'ble Bombay High Court in writ petition No. 746/1984. In the said writ petition the interim relief was granted restraining the respondents from issuing the orders in favour of the selected candidates till the final disposal of the said writ petition and because of the said interim order the applicant could not get the appointment order. Writ Petition

was subsequently transferred to this Tribunal and the Tribunal finally decided and dismissed the said petition on 26.7.1996. Since the writ petition was dismissed obviously the interim order passed in the said matter stood vacated.

5. Respondent no. 1 thereafter issued an order dated 30.7.1998 thereby appointing 38 persons including the applicant in Maharashtra Agriculture Services Class-II. As mentioned in the said order the applicant was appointed on probation for the period of 2 years and he was required to pass the Post Recruitment Divisional Accounts Examination. On 30.8.2002 respondent no. 2 issued an order granting exemption to total 15 officers including the present applicant from passing the Divisional Accounts Examination upon attaining the age of 45 years. On 29.1.2003 respondent no. 1 issued a G.R. thereby terminating the applicant's probation period w.e.f. 28.7.2002 and continuing the applicant on Maharashtra Agriculture Services Group-B on long term basis. On 31.5.2015 the applicant got retired on attaining the age of superannuation. At the time of his retirement, the applicant was working as District Seed Certification Officer at Latur under the immediate control of respondent no. 3. After his retirement the applicant was paid monthly provisional pension for the period of one year i.e. from

1.6.2015 to 31.5.2016. Thereafter the said payment was stopped. As per the information received to the applicant his provisional pension was stopped for 2 reasons; first that his pay upon his promotion on 1.9.1998 was wrongly fixed and other that the applicant has failed to pass the Post Recruitment Divisional Accounts Examination. Thereupon the applicant submitted a representation to respondent no. 1 on 1.6.2015. The said representation came to be rejected vide order dated 9.10.2020 as a consequence of which the applicant is deprived of the pension. In the circumstances, the applicant has approached this Tribunal praying for the reliefs as noted hereinabove.

6. In nutshell, it is the contention of the applicant that he was already granted exemption vide order dated 30.8.2002 from passing the Divisional Accounts Examination. It is his further contention that as a consequence of the order dated 30.8.2002 the further order was passed on 29.1.2003 whereby applicant was declared to have completed 2 years' probation period successfully. According to the applicant, in view of the aforesaid 2 orders, the impugned order cannot be sustained.

7. The respondents have resisted the contentions raised and the prayers made in the O.A. respondent nos. 1 to 3 have

jointly filed their affidavit in reply. It is the contention of the respondents that in view of the Agriculture Department State Service Officers (Accounts examination) Rules, 1981 notified by the notification dated 20.6.1981 no exemption was liable to be granted in favour of the applicant even on his attaining the age of 45 years. It is further contended that the order passed by respondent no. 2 on 30.8.2002 was completely erroneous. It is further contended that every Officer in the Maharashtra Agriculture Services Class-II was under an obligation to pass the Divisional Accounts Examination within the period of probation of 2 years and unless an officer passes the said examination, the said officer was not liable to be confirmed in the Government services. It is further contended that exemption provided under rule 6(2) of rules, 1981 was applicable only to the State Services Officers appointed by promotion and State Services Officers appointed by nomination were not entitled to take benefit of the said rule 6(2) of the said notification. It is further contended that the order granting exemption to the applicant from passing the Divisional Accounts Examination was patently illegal since there is no provision in the rules regarding granting such exemption. As such, the applicant cannot take benefit of the said order. It is further contended that the applicant cannot rely upon the G.R.

dated 1.11.1977 since the same has been amended and replaced by another G.R. dated 20.6.1981. It further contended that the applicant cannot take disadvantage of G.R. dated 11.3.2008. It is further contended that the case of the applicant has been rejected by the High Power Committee on 9.10.2020. The respondents, in the circumstances, prayed for dismissal of the application.

8. Shri Avinash S. Deshmukh, learned counsel appearing for the applicant assailed the impugned order on various grounds. The learned counsel submitted that G.R. dated 1.11.1977 was issued by the General Administration Department of the State and was binding on each and every department of the State. The learned counsel submitted that, that was the reason that an order came to be passed on 30.8.2002 granting exemption to the applicant and some others from passing the Divisional Accounts Examination. The learned counsel further submitted that the said order dated 30.8.2002 has never been set aside. The learned counsel further submitted that the contention of the respondents that G.R. dated 1.11.1977 was substituted with G.R. dated 20.6.1981 is wholly incorrect and unsustainable. He further submitted that G.R. dated 1.11.1977 specifically deals with exemption to the candidates, who are

overaged from passing the Divisional Accounts Examination and in the circumstances though in the G.R. dated 20.6.1981 even if there is no provision regarding granting such exemption, the G.R. dated 1.11.1977 being issued by the G.A.D. of the State it would be applicable.

9. The learned counsel further submitted that the respondents have not disputed the order passed on 29.1.2003, whereby the applicant is declared to have successfully completed the probation period. The learned counsel submitted that as per the condition incorporated in the order of appointment, the applicant was required to pass the Divisional Accounts Examination within the period of probation meaning thereby that unless the applicant passes the Divisional Accounts Examination his probation period was not liable to be terminated. In the circumstances, declaration issued by the respondents that the applicant has successfully completed the period of probation impliedly means that he was exempted from passing the Divisional Accounts Examination. The learned counsel further submitted that thereafter the applicant was continued in the service till the date of his superannuation also impliedly means that the applicant was exempted from passing the Divisional Accounts Examination.



10. The learned counsel further submitted that in the rules notified on 20.6.1981 the consequences of failure to pass the examination are provided in rule 5 thereof, which read thus:-

*“5. Consequence of failure to pass the Examination :- (1) No State Service Officer shall be confirmed unless he passes the Examination or has been exempted from passing the Examination under rule 6.*

*(2) A State Service Officer who fails to pass the Examination within the period and chances allowed in accordance with the provisions of Rule 4 shall be liable to be :-*

*(a) reverted to the lower post if he is appointed by promotion, or*

*(b) discharged from service if he is appointed by nomination.”*

Admittedly the applicant was not reverted to the lower post nor he was discharge from the service. The aforesaid circumstances also lead to an inference that the applicant was exempted from passing the Divisional Accounts Examination vide order 30.8.2002 and the said order was legal and proper. The learned counsel in the circumstances prayed for allowing the application.

11. The learned Presenting Officer in his arguments reiterated the contentions raised in the affidavit in reply filed on behalf of the respondents. The entire emphasis of the learned PO was on

the rules notified on 20.6.1981. the learned PO submitted that the said rules were framed in exercise of the powers conferred by the proviso to article 309 of the Constitution of India and in supersession of all existing rules and orders issued in this behalf and in force in the State or any part thereof. In the circumstances, according to the learned PO, reliance placed on behalf of the applicant on the G.R. dated 1.11.1977 is misplaced and unacceptable. The learned PO submitted that in the Rules of 1981 there is provision for granting exemption from passing the departmental examination on attaining the age of 45 years. The learned PO submitted that since the applicant did not pass the Divisional Accounts Examination, he was not liable to be even confirmed in the service and as such, according to him the order dated 9.10.2020 is perfectly legal and valid. The learned PO submitted that rule 6(2) of the rules notified on 20.6.1981 is applicable only to the officers appointed by promotion and since the applicant was nominated and not promoted to the post of Maharashtra Agriculture services Class-II the provisions under rule 6(2) would not apply in the case of the applicant. In the circumstances, according to the learned PO, no case is made out by the applicant so as to cause any interference in the impugned order. The learned PO, therefore, prayed for dismissal of the OA.

12. I have duly considered the submissions made on behalf of the applicant, as well as, the respondents. I have also perused the documents produced on record by the parties. It is not in dispute that the applicant was appointed on the post of Maharashtra Agriculture Services Class-II as recommended by the MPSC on 16.8.1984. It is further not in dispute that the MPSC, though, recommended the name of the applicant for the aforesaid post in the year 1984 since the Hon'ble High Court has granted stay in Writ Petition no. 746/1984 restraining the respondents from issuing the orders of appointments, the applicant did not get the appointment. The aforesaid petition was admittedly dismissed on 26.7.1996. Thereafter on 30.7.1998 the order of appointment came to be issued in favour of the applicant and accordingly he resumed the duties of the said post.

13. It is also not in dispute that on 30.8.2002 an order came to be passed whereby not only the applicant alone but 14 other officers were granted exemption from passing the Divisional Accounts Examination on attaining the age of 45 years. It is also not in dispute that thereafter on 29.1.2003 another order was passed whereby the applicant was declared to have successfully completed the period of probation. The applicant

admittedly retired from the Government services on 31.5.2015 on attaining the age of superannuation when he was working as Seed Certification Officer at Latur. There is no dispute that after his retirement up to year 2016 the applicant was paid the monthly pension. The respondents stopped paying the pension on the basis of certain objections raised by the Pay Verification Unit in regard to pay fixation of the applicant and also in regard to the promotion given to the applicant on 1.9.1998 and failure of the applicant to pass the Divisional Accounts Examination. It is the stand now taken by the respondents that the orders passed by them are legal and correct and since there is no provision in the rules notified on 20.6.1981 of giving exemption from passing the Divisional Accounts Examination to the officers appointed by nomination, the applicant cannot be exempted from passing the Divisional Accounts Examination. Though there is no specific averment in the affidavit in reply filed on behalf of the respondents the impugned communication has resulted in stopping the pension of the applicant and impliedly declaring the applicant disentitled for receiving any pension.

14. After having considered the submissions so advanced and on perusal of the documents on record it is difficult to accept

the contention raised on behalf of the respondents. In their affidavit in reply though the respondents have referred to the provisions under rules notified on 20.6.1981 have not denied the order dated 30.8.2002 passed by respondent no. 2 whereby the applicant and 14 other officers were given exemption from passing the Divisional Accounts Examination for the reason of their attaining the age of 45 years. In view of the fact the order dated 30.8.2002 has never been set aside by the competent authority the said order still holds the field and has to be acted upon.

15. The contention in the affidavit in reply filed by respondent nos. 1 to 3 that the order dated 30.8.2002 is patently illegal and the applicant is not entitled to take the benefit of the said order as it is against the Notification dated 20.6.1981, has to be rejected. According to the respondents, if the aforesaid order is illegal, it must have been set aside by the competent authority. Admittedly that has not been done and the said order still subsists. Moreover, it is significant to note that the respondent no. 2 while passing the order dated 30.8.2002 has considered the rules notified on 20.6.1981. In the said order under the caption 'Read' 5 Notifications are referred to and at sr. no. 1 is Notification dated 20.6.1981. It is not the case of the

respondents that respondent no. 2 was not having any right or authority to pass such order. The respondents have thus utterly failed in substantiating their contention that the order dated 30.8.2002 was not legal.

16. It further cannot be lost sight of that the applicant was continued in the Government service till the date of his retirement without raising any objection in regard to his failure to pass the Divisional Accounts Examination. In the rules notified on 20.6.1981 consequences of failure to pass the Divisional Accounts Examination are provided under rule 5 thereof, which are already reproduced hereinabove. Admittedly, no such action as has been intimated in the said rule 5 has been taken against the applicant. Not taking of any action by the respondents despite the fact that the applicant did not pass the Divisional Accounts Examination also leads to an inference that the applicant was exempted from passing the said examination.

17. In the order of appointment dated 30.7.1998 issued in favour of the applicant there is a specific condition (condition no. 4) that the applicant has to pass the Divisional Accounts Examination within the period of probation and unless he passes the said examination his probation period will not be

terminated. The order dated 29.1.2003 passed by respondent no. 1 whereby the applicant was declared to have completed the probation period assumes importance in premise of condition as aforesaid in the order of appointment. As has been argued on behalf of the applicant the order dated 29.1.2003 impliedly means that the applicant was exempted from passing the Divisional Accounts Examination. It is significant to note that the respondents in their affidavit in reply have not denied the order dated 29.1.2003 issued by respondent no. 1. On the contrary, the averment made in this regard by the applicant in his O.A. in paragraphs 6(xi) and 6(xii) are admitted by the respondents. As I mentioned hereinbefore for completing the period of probation as mentioned in the order of appointment dated 30.7.1998 the applicant was under an obligation to pass the Divisional Accounts Examination. It is not in dispute that the applicant did not pass the Divisional Accounts Examination. In spite of that when the applicant is declared to have successfully completed the period of probation, confirms the fact of exemption granted to the applicant by respondent no. 2 vide order dated 30.8.2002 from passing the Divisional Accounts Examination.

18. Apart from the facts as above, the conduct of the respondents would be material. As per the order of appointment dated 30.7.1998 within 2 years thereafter the applicant was supposed to pass the Divisional Accounts Examination. The period of 2 years admittedly expired in the year 2000 itself. Admittedly, for not passing the said examination the applicant was neither reverted to the lower post nor was discharged from the service as provided under rule 5(2) of the Rules of 1981. It is, however, the matter of record that the applicant was thereafter continued in service till the date he attained the age of superannuation. The applicant attained the age of superannuation in the year 2015. The conduct of the respondents in not taking any action against the applicant for not passing the Divisional Accounts Examination and continuation of the applicant in service for next 15 years till the applicant attains the age of superannuation leads to an inference that the applicant was exempted from passing the Divisional Accounts Examination and was deemed to have been confirmed. Deemed confirmation can be inferred from the facts and especially from the conduct of the employer.

19. After having considered the entire facts and circumstances involved in the present matter the order dated 9.10.2020



passed by respondent no. 2 appears to be wholly unsustainable and deserves to be quashed and set aside. For the reasons elaborated by me hereinabove, the order dated 30.8.2002, whereby the applicant was exempted from passing the Divisional Accounts Examination and the order dated 29.1.2003, whereby the applicant was declared to have satisfactorily completed the probation still subsists and are binding on the respondents. In view of the order dated 30.8.2002, which was never set aside, in fact, there was no reason for the respondents to require to seek exemption from passing the Divisional Accounts Examination and thereafter to reject the said request. The respondents have grossly erred in withholding the pension of the applicant after 1.6.2016. Respondents have lost sight of the fact that to receive pension is the right of the public servant. Such right constitutes property and any interference therein will amount to breach of article 231(1) of the constitution. The State has no power to deny the pension in absence of any specific rule to that effect under the Pension Rules, 1982. In no case the respondents could have stopped the pension of the applicant. For all aforesaid reasons the present application deserves to be allowed. Hence, the following order:-

**ORDER**

(i) Order dated 9.10.2020 issued by respondent no. 1 is quashed and set aside.

(ii) It is declared that order dated 30.8.2002 whereby exemption was granted to the applicant from passing the Divisional Accounts Examination and the order dated 29.1.2003 whereby respondent no. 1 declared the applicant to have successfully completed the probation period still hold the field and the respondents are directed to act upon the said orders.

(iii) Respondents are directed to process and finalize the applicant's pension case and start paying him regular monthly pension within 8 weeks from the date of this order.

(iv) The Original Application stands allowed in the aforesaid terms without any order as to costs.

**VICE CHAIRMAN**

Place : Aurangabad

Date : 17.4.2023