

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 347 OF 2016
(Subject – Recovery)**

DISTRICT: AURANGABAD

Smt. Vaishali Shrikrushnakumar Patil,
Age: 37 years, Occu. : Service,
R/o Flat No. 5 Shilp Samruddhi Apartment,
Behind Apex Hospital, Jalna Road,
Aurangabad.

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**
Through the Secretary,
Health Department,
Mantralaya, Mumbai-32.

(Copy to be served on C.P.O.
M.A.T., Bench at Aurangabad)

2) **The Commissioner,**
Employees State Insurance Scheme,
Panchdeep Bhavan, 6th Floor N.M. Joshi Marg,
Lower Parel, Mumbai – 400 013.

3) **Deputy Director of Health,**
Central Building, Pune.

4) **Medical Superintendent,**
State Employee Insurance Scheme Hospital,
Chikalthana, Aurangabad,
District Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri P.A. Bharat, Advocate holding for Shri U.L.
Momale, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, learned Presenting
Officer for the Respondents

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

ORDER**(Delivered on this 12th day of September, 2017.)**

1. The applicant has prayed to quash the order dated 23.03.2016 passed by the respondent No. 2 i.e. the Commissioner, Employees State Insurance Scheme, Mumbai and the orders dated 1.4.2016 and 22.4.2016 passed by the respondent No. 4 i.e. the Medical Superintendent, State Employees Insurance Scheme Hospital, Aurangabad, thereby directing recovery of amount paid to her on account of increments granted to her from time to time.

2. The applicant was appointed as a Physiotherapist Class-III, by order dated 30.10.2004 in the pay scale of Rs. 5500-175-9000 at Cottage Hospital, Hingoli, District Hingoli. In the appointment order, the condition to complete course of computer diploma was mentioned and no other conditions were mentioned therein. Thereafter, the applicant had been transferred from Hingoli to Jalna District on 3.6.2007. She has been transferred from Jalna to State Employees Insurance Scheme Hospital, Chikalthana, Aurangabad on 19.12.2007 and since then, she is serving there.

3. It is contention of the applicant that in the year 2013, she came to know that the Government employee has to pass

Hindi Language examination, which is compulsory for every Government servant. Accordingly, she applied for the said examination conducted by the department. She appeared for the said examination and has passed the examination in first attempt on 17.02.2013. Accordingly, the Divisional Assistant Director of Language, Aurangabad informed the respondent No. 4 about passing of the examination by the applicant by its letter dated 15.05.2013.

4. On 21.03.2014, the applicant has filed an application with a request to give her exemption from passing Hindi Language examination, as she had no knowledge regarding passing of Hindi Language examination. On 5.6.2015, the respondent No. 4 issued order to recover an amount paid to her towards annual increments; as she had not passed Hindi Language examination within stipulated period in view of G.R. dated 10.06.1976. The applicant filed detailed reply to the said communication on 14.12.2015 raising her grievance. She was heard by the respondents and thereafter, the respondent No. 2 has passed the order dated 23.3.2016 directing the respondent No. 4 to recover an amount of annual increments given to the applicant during 01.01.2007 to 17.02.2013 from her salary. In pursuance of the said order, the respondent No. 4 issued orders dated 1.4.2016

and 22.4.2016 directing the recovery of an amount of Rs. 1,51,628/- from the salary of the applicant in installments. The applicant has challenged the said orders by filing the present Original Application on the ground that the orders under challenge are against the principles of natural justice. It is her contention that the department had never communicated her about the condition of passing of Hindi Language examination within three years from the date of appointment. It is her contention that she has passed Hindi Language examination in her first attempt in the year 2013 by appearing the exam immediately after she learnt about the condition that the Government employee has to pass Hindi Language examination. It is her contention that she is Class-III employee and therefore, recovery cannot be made from her salary. Therefore, she prayed to allow the Original Application and to quash the impugned orders.

5. The respondent Nos. 1, 2 & 4 have filed an affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant was appointed as a Physiotherapist Class-III by order dated 30.10.2004 in the pay scale of Rs. 5500-175-9000 at Cottage Hospital, Hingoli, District Hingoli on temporary basis. It is their contention that as per the

Rules and regulations, the Government employee has to pass Hindi Language examination within three years from the date of his/her joining the post in view of the G.R. dated 10.06.1976. Failing which the increments of those employee, who does not pass the Hindi Language examination within three years from the date of joining on the post or up to 45 years of age will be stopped. The employee will be eligible for increment from the date on which he or she passes the examination, but will not be eligible for the arrears of increments, which were stopped. It is their contention that the applicant has not passed the Hindi Language examination within three years from the date of joining the service and therefore, she was not eligible for annual increments, which were wrongly given to her. Therefore, the respondent No. 4 had issued the order dated 5.6.2015 directing the recovery of an amount of increments given to the applicant against the provisions of G.R. dated 10.06.1976. She has passed the Hindi Language examination in the year 2013 and therefore, the recovery for the period w.e.f. 1.11.2007 to 8.12.2013 was directed. It is their contention that the recovery has been ordered in view of the provisions of G.R. dated 10.06.1976. The amount of increments has been wrongly paid to the applicant though she was not entitled to it and therefore, it requires to be recovered. It is their contention that the impugned orders passed by the

respondent Nos. 2 and 4 are in accordance with the G.R. dated 10.06.1976 and therefore, they prayed to reject the present Original Application.

6. Heard Shri P.A. Bharat, Advocate holding for Shri U.L. Momale, Advocate for the applicant and Smt. Deepali S. Deshpande, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

7. Admittedly, the applicant was appointed by order dated 30.10.2004 as Physiotherapist Class-III in the pay scale of Rs. 5500-175-9000 at Cottage Hospital, Hingoli, District Hingoli. She served their up to the year 2007. By order dated 3.6.2007 she has been transferred to Jalna District from Hingoli. On 19.12.2007 she has been transferred to State Employee Insurance Scheme Hospital, Chikalthana, Aurangabad and since then she is working as Physiotherapist there. Admittedly, the applicant has not passed the Hindi Language examination within three years from the date of her joining the service. She has passed Hindi Language examination in the year 2013. There is no dispute about the fact that the regular annual increments had been released to the applicant since beginning and admittedly, she received the amount of the increment, though she had not passed Hindi Language examination within three years from the date of

her joining. Since the applicant had not passed the Hindi Language examination from the date of appointment, the respondent No. 2 passed the impugned order dated 23.03.2016 directing the respondent No. 4 to recover the amount of increments given to the applicant, though it was not admissible to her and accordingly, the respondent No. 4 passed the impugned orders dated 1.4.2016 and 22.4.2016 directing the recover from the salary of the applicant.

8. Learned Advocate for the applicant has submitted that the appointment order dated 30.10.2004 of the applicant does not mention the condition of passing Hindi Language examination by the applicant within three years from the date of joining the service. He has submitted that the applicant has been transferred on the establishment of State Employees Insurance Scheme Hospital, Chikalhana, Aurangabad in the year 2007 by order dated 19.12.2007 and at time also, no such condition was mentioned in the said order. He has submitted that none of the respondents informed the applicant about the said condition and insisted her to pass Hindi Language examination within three years from the date of her joining the service. He argued that, in the year 2013, the applicant came to know about the said condition, which requires the Government employee to pass Hindi

Language examination. Thereafter, she appeared for the said examination conducted by the department and she passed the said examination in the first attempt. He has submitted that the respondents released the increments to the applicant regularly, even after completion of three years of her service from the date of her appointment, though she had not passed the Hindi Language examination as required under the provisions of G.R. dated 10.06.1976. There was no misrepresentation on the part of the applicant compelling the respondents to release the increments. He has submitted that annual increments have been released by the respondents on their own accord and therefore, said recovery cannot be made from her salary. The impugned orders passed by the respondent Nos. 2 & 4 are illegal, as it causes hardship to the applicant. In support of his submission, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **(2005) 4 Supreme Court Cases 334**, wherein it is observed as follows :-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a

ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

He has submitted that in view of the guidelines given in the said decision, the recover cannot be made from the salary

of the applicant, as she is belonging to Class-III service i.e. Group -C service and therefore, he prayed to quash the impugned orders by allowing the present Original Application.

9. Learned Presenting Officer has submitted that in view of the G.R. dated 10.06.1976, it is one of the essential conditions that the Government employee has to pass Hindi Language examination within three years from the date of joining of the services and if he fails to pass the examination within three years from the date of his joining, he will not be entitled to get next increments, till passing of the Hindi Language examination. He has submitted that in view of the provisions of said G.R., it was incumbent on the part of the applicant to pass examination within three years from the date of joining her service, but she has failed to pass the examination within three years from the date of her joining the service. She has passed Hindi Language examination in the year 2013 and therefore, the amount of increments wrongly paid to the applicant from the year 2007 has been ordered to be recovered by issuing impugned orders passed by the respondent Nos. 2 and 4. He has submitted that there is no illegality in the order under challenge and therefore, he prayed to reject the Original Application.

10. In view of the G.R. dated 10.06.1976, the Government

employee has to pass Hindi Language examination within three years from the date of appointment of his/her services, failing which, his/her further increments will be withheld till passing of the examination. On passing the examination, he/she is entitled to get further increments, but will not be entitled to get arrears. The relevant provisions of G.R. are material, hence same are reproduced herein below :-

“२) दिनांक १ ऑक्टोबर १९७६ रोजी ज्या कमचा-यांच्या वयाची ४५ वर्षे पूर्ण होतील किंवा ज्या वेळी त्यांच्या वयाची ४५ वर्षे पूर्ण होतील अशा कर्मचा-याला विहित हिंदी परीक्षा उत्तीर्ण होण्या पासून सूट राहिल.

३) एतदर्थ मंडळाच्या उच्चस्तर व निम्नस्तर परीक्षेचा दर्जा अनुक्रमे माध्यमिक शालांत परीक्षा मंडळाच्या उच्चस्तर व निम्नस्तर हिंदी परीक्षेच्या समकक्ष राहिल.

४) हिंदी भाषेच्या प्रचाराचे काम करणा-या मान्यवर खाजगी संस्थातर्फे घेतल्या जाणा-या ज्या परीक्षांचा दर्जा एतदर्थ मंडळाच्या निम्नस्तर व उच्चस्तर परीक्षांच्या समकक्ष मानला जाईल त्या परीक्षा उत्तीर्ण झालेल्या व होणा-या कर्मचा-यांना एतदर्थ मंडळाच्या परीक्षा उत्तीर्ण होण्यापासून सूट राहिल. अशा संस्थांची नावे व समकक्ष परीक्षांची याची यथावकाश जाहीर करण्यात येतील.

५) जे शासकीय कर्मचारी विहित मुदतीत किंवा त्यांच्या वयाची ४५ वर्षे पूर्ण होईपर्यन्त या परीक्षा उत्तीर्ण हाणार नाहीत. त्यांची वार्षिक वेतनवाढ उक्त मुदत संपल्यानंतर ही परीक्षा उत्तीर्ण होईपर्यन्त किंवा वयाची ४५ वर्षे पूर्ण झाल्यामुळे सुट मिळेपर्यन्त रोखण्यात येईल.

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

पाठ्यक्रम व पाठ्यपुस्तके

उच्चस्तर हिंदी भाषा परीक्षा

माध्यमिक शालांत परीक्षा मंडळाच्या हिंदी भाषा उच्चस्तर परीक्षेसाठी वेळोवेळी जो पाठ्यक्रम व पाठ्यपुस्तके विहित केली जातात तीच या परीक्षेलाही विहित करण्यात येतील.

निम्नस्तर हिंदी भाषा परीक्षा

माध्यमिक शालांत परीक्षा मंडळाच्या हिंदी भाषा निम्नस्तर परीक्षेसाठी वेळोवेळी जो पाठ्यक्रम व पाठ्यपुस्तके विहित केली जातात तीच या परीक्षेलाही विहित करण्यात येतील.

बोलभाषा हिंदी परीक्षा

बोलभाषा हिंदी परीक्षेचा दर्जा व परीक्षा पद्धती यात कोणताही बदल करण्यात आलेला नसून ती पूर्वीप्रमाणेच राहिल.”

11. The applicant has not passed the Hindi Language examination within three years from the date of her joining the service i.e. from 30.10.2004. Therefore, she was not entitled to get increments after 30.10.2007. The applicant has not informed the respondents that she had not passed Hindi Language examination within three years from the date of appointment. Not only this, but she had not appeared for Hindi Language examination during that period. It was incumbent on the part of the applicant to appear and pass Hindi Language examination within three years from the date of appointment. But she has not appeared for the examination nor passed the examination within three years as stipulated in the G.R. dated 10.06.1976. She ought to have informed the respondents about the said fact. She kept mum and received benefit of increments granted to her regularly, though she was not entitled to it. Mere showing

ignorance about the said condition on the part of the applicant is not sufficient to accept her contention in that regard. As a Government employee, she must be aware about the G.R. dated 10.06.1976, but she had kept mum. This shows that she had not informed the respondents about failure to fulfill the said condition by her. She has passed the examination in the year 2013. The respondent No. 4 has passed the impugned order dated 5.6.2015 (page no. 19 of the paper book) directing the recovery of the amount of increments paid to the applicant, to which the applicant was not entitled and on the basis of said order, the respondent No. 4 issued order dated 1.4.2016 & 23.03.2016 after giving opportunity of hearing to the applicant. On the basis of said order dated 23.03.2016, the respondent No. 4 issued orders dated 1.04.2016 and 22.4.2016. The said orders have been issued in view of the provisions of G.R. dated 10.06.1976. Therefore, I do not find any illegality in the orders under challenge. I, therefore, do not find substance in the contentions raised by the applicant in that regard.

12. I have gone through the decision referred by the applicant in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others reported in (2005) 4 Supreme Court Cases 334.** In the said decision, it has been observed as follows:-

“ Orders passed by the State as employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer’s right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when the Supreme Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power.”

In the instant case, no hardship will be caused to the applicant due to the impugned orders, as the applicant has received increments, though she had not passed the Hindi Language Examination within three years from the date of joining the service and the applicant has suppressed the said fact and therefore, in my opinion, the impugned orders cannot be said to be iniquitous and arbitrary. Therefore, the said recovery cannot be said to be illegal, harsh and arbitrary. The orders under challenge are as per the provisions of the G.R. dated 10.06.1976 and the same are legal.

13. Considering the above said facts and circumstance, in my opinion, the impugned orders are legal and there is no illegality in the said orders. Therefore, no interference is called for in the said orders. There is no merit in the O.A. Consequently, it deserves to be dismissed.

14. In view of the aforesaid discussions, the Original Application stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 347 of 2016 BPP 2017 Recovery