

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI**  
**BENCH AT AURANGABAD.**

**DIST.DHULE.**

**ORIGINAL APPLICATION NO.110/2016.**

-----

Archana Umesh Tiwari,  
Age 52 years, Occu. Service,  
R/o Employee State Insurance Scheme  
Hospital, Dhule, Taluka & District Dhule.

-- **APPLICANT**

**VERSUS**

1. The State of Maharashtra  
Through the Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.  
(Copy to be served on Presenting  
Officer, MAT at Bombay, Bench at  
Aurangabad).
2. The Commissioner (Administration),  
Employees' State Insurance Scheme,  
Government of Maharashtra,  
Office Address : Panchdeep Bhawan,  
N. M. Joshi Marg., Lower Parel,  
Mumbai 400 013.
3. Administrative Medical Officer,  
Employees' State Insurance Scheme  
Hospital Premises, Survey No.689/690,  
Bibvewadi, Pune 37.

-- **RESPONDENTS.**

**APPEARANCE** : Shri A. A. Sawant, Learned Advocate for the Applicant.  
: Smt R. S. Deshmukh, Learned Presenting Officer for the Respondents.

**CORAM** : **Hon'ble Shri JD Kulkarni, Member (J).**

**DATE** : 09.12.2016.

**JUDGMENT**

**(Delivered on this 9<sup>th</sup> day of November, 2016)**

1. The applicant Archana Umesh Tiwari has challenged the impugned order dated 24.2.2015 issued by the Commissioner, Employees' State Insurance Scheme (ESIS) Mumbai and the order dated 16.11.2015 issued by the Administrative Medical Officer, E.S.I.S. Bibvewadi, Pune i.e. Respondents no.2 & 3 respectively.

2. Vide impugned order dated 24.2.2015 the Director, E.S.I.S. Mumbai was pleased to direct to stop the further increments of the applicant till she produces the certificate showing passing of higher board examination in Marathi language. In consequence of the said order the respondent no.3 has passed the impugned order dated 16.11.2015 and stopped the increments of the applicant w.e.f. 1.4.2000 till 1.7.2014.

3. The applicant has filed representation on 23.3.2015 and 27.6.2015 prior to issuance of the order of stoppage of increments by Respondent no.3, but for no use. According to applicant, both these letters are illegal, arbitrary and requires to be quashed and set aside and hence this Original Application.

4. From the reply affidavits filed by Respondents no.1 to 3, it seems that, according to respondents as per notification dated 7.2.2001 and clause 4 (1-A) of the said notification a Govt. servant has to pass secondary school certificate examination after entering into the Govt. service with Marathi as a higher Std. or lower standard subject and he shall obtain not less than 50% marks unless exempted from passing paper-1<sup>st</sup> of the higher standard examination or as the case may be the lower standard examination. The applicant has passed S.S.C. Examination with Marathi as lower standard subject in October, 1997. Hence, she is entitled to exemption from paper 1<sup>st</sup> of lower standard examination only. The applicant has not passed the Marathi language examination as per notification dated 30.12.1987. She was required to pass Marathi language examination as per Maharashtra Govt. servants (other than Judicial Department servants) Marathi language examination Rules, 1987. The applicant has passed SSC Examination with

Marathi as lower standard subject in October 1997 but has to pass higher level Marathi language examination and therefore, her increments are rightly stopped with retrospective effect.

5. Heard the learned counsel for the applicant Shri A.A. Sawant, and learned Presenting Officer Smt R.S. Deshmukh for the respondents. I have also perused the affidavit, affidavit in reply as well as various documents placed on record.

6. It is material to note that the applicant is aged about 52 years and she had joined the services long back i.e. in the year 1996 on the post of Medical Officer. The respondent no.3 has passed the impugned order dated 16.11.2015 and stopped the increments of the applicant w.e.f. 1.4.2000 to 1.7.2014 as per directions of the order passed by Director dated 24.2.2015. The order passed by the Director dated 24.2.2015 is at paper book page no.42. In the said letter it has been mentioned as under :-

“उक्त संदर्भाकितं पत्राच्या अनुषंगाने आपणांस कळविण्यात येते की, डॉ (श्रीमती) अर्चना तिवारी, वैद्यकीय अधिकारी गट.अ हया महाराष्ट्र राज्य माध्यमिक व उच्च माध्यमिक शिक्षण मंडळाची १०० मार्काची मराठी द्वितीय भाषा परिक्षा उत्तीर्ण झाल्या असल्याने त्यांना शासनाच्या क्र. मभाप-१०८७/१४/सीआर-२/८७/२०, दि. ३०.१२.१९८७ च्या अधिसूचनेमधील नियम ४ (४) मधील तरतूदीनुसार त्यांनी उच्चस्तर मराठी भाषा उत्तीर्ण होणे आवश्यक आहे. या संदर्भातील नियम

स्पष्ट असूनही डॉ. (श्रीमती) अर्चना तिवारी यांना नियमित वेतनवाढी देत असल्याचे दिसून येते. ही अतिशय गंभीर बाब आहे.

तरी आपणास आदेशित करण्यात येते की, डॉ (श्रीमती) तिवारी यांना एतदर्थ मंडळाची उच्चस्तर मराठी भाषा परीक्षा उत्तीर्ण होण्याबाबतच्या सूचना देण्यात याव्यात. त्या सदर परीक्षा उत्तीर्ण झाल्याचे प्रमाणपत्र सदर करेपर्यंत यापुढील त्यांच्या वेतनवाढी थांबविण्यात याव्यात.

केलेल्या कार्यवाहीचा अनुपालन अहवाल तसेच उच्चस्तर मराठी भाषा परिक्षा उत्तीर्ण झाल्याखेरीज त्यांना नियमित वेतनवाढी देण्याबाबतचा निर्णय घेणा-या जबाबदार असणा-या अधिकारी/कर्मचारी यांची दि. १/२/१९९९ पासूनची नावे या कार्यालयास कळविण्यात यावी.”

7. Perusal of the aforesaid letter shows that the applicant was required to pass Marathi examination as per Rule 4(4) of the notification dated 30.12.1987, and since she did not pass that examination the Administrative Officer was asked to direct the applicant to pass that examination and to stop her future increments till she produces certificate of passing such examination. Admittedly, this order was passed on 24.2.2015 and therefore, even for the sake of argument it is accepted that this order is legal, the respondent no.3 was directed to stop future increments only. The respondent no.3 however, has passed the order dated 16.11.2015 from which it seems that the increments conferred upon the applicant w.e.f. 1.4.2000 to 1.7.2014 (total 14 increments) were stopped. Thus, the order passed by respondent no.3 seems to be prima facie illegal, since there was no direction by the Director, Medical Health to stop the increments with retrospective effect. The

order dated 16.11.2015 is therefore, absolutely illegal and arbitrary and as such the same is quashed and set aside.

8. The learned Advocate for the Applicant submits that the Respondents ought to have exempted the applicant from passing such examination considering the circumstances on record, so also the fact that the applicant has crossed age of 45 years. It seems that, the applicant has filed representations before the respondent authorities on 23.3.2015 and 27.6.2015. In the said representations the applicant had stated that she has passed the Marathi subject in the H.S.C. Board examination in "A" Grade and she shall be exempted as per Rule 4 (1) of the notification. However, she was intimated that, she must pass the Marathi examination as per the provisions of Rule 4 (4) of the notification dated 30.12.1987 and therefore, her request for exemption was rejected.

9. The notification dated 30.12.1987 is placed on record. It is a Rule called as "The Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examination Rules, 1987. The relevant Rule 4 of the notification reads as under:-

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

10. The Respondents are taking benefits of Rule of 1987 and it is the case of the Respondents that, Rule 4 (1) (iv) says that, the Officer

shall pass the secondary school certificate examination or equivalent examination with Marathi as a higher standard subject of 100 marks paper prior to joining of the service. In the present case the applicant has passed the secondary school certificate examination with Marathi subject, but it is stated that, the said subject is of lower standard and not of higher standard. The mark sheet of the applicant is at paper book page no.19 from which it seems that the applicant has appeared for Marathi Standard Examination for the Maharashtra State of Secondary and Higher Secondary Examination and has passed that subject as second language with 61% marks. It is stated that she should have passed this subject as a first language. It is to be noted that, the proviso to said Rule 4 (1) shows that the Govt. servants whose duties are of technical or arduous and which are not required to correspond in Marathi language may be exempted from passing examination by the concerned Administrative Department in consultation with General Administration Department. The applicant in this case is a Medical Officer and his work is definitely of practical in nature, and specialized in medical education. It is not known whether she is required to correspondence in Marathi language and therefore, there is no reason as to why the competent authority did not consider the applicant's claim for exemption.



11. It is also material to note that the applicant has crossed the age of 45 years and therefore, in many of the departmental examinations, the Govt. is exempting the Govt. servants from clearing the qualifying examination, who have crossed the age of 45 years and there is no reason as to why the applicant was not considered for such exemption.

12. Clause No.9 of the notification dated 30.12.1987, which reads as under :-

“Notwithstanding anything contained in these rules, Government may relax provisions of any of the rules under special circumstances in such manner as shall appear to it to be just and reasonable.”

13. The aforesaid Clause no.9 clearly gives discretion to the Govt. to relax any provisions of this notification and therefore, the powers exercised by the Govt. are wide open. It seems that, the representations filed by the applicant were considered by the Director, ESIS Mumbai vide communication dated 7.10.2015. The said communication shows that, the applicant's claim has been rejected on technical ground. The representations of the applicant

are not forwarded to the Govt. for proper adjudication. In fact, the Director, E.S.I.S. should have forwarded the applicant's representations to the Government.

14. The learned Presenting Officer submits that, the representations were filed by the applicant to the Administrative Medical Officer, Pune, but the same have been rejected by the Director, E.S.I.S. Mumbai. Even for the sake of argument it is accepted, the same has not been forwarded to the Govt. Though the applicant did not file representations to the Govt., still the Respondent no.3 has forwarded the said representations to Respondent no.2 and the Respondent no.2 has rejected the same on technical grounds. The very reason for issuance of notification dated 30.12.1987 is that the Officer who has to deal with correspondence must know Marathi language and must possess adequate knowledge of Marathi language. The applicant in this case though a non Marathi she has passed examination in Marathi subject at S.S.C. level. The said examination was of 100 marks, and she has obtained 61 marks in Marathi subject. She has also crossed 45 years of age and therefore, the competent authority ought to have considered all these aspects.

15. In view of the peculiar circumstances as discussed in the foregoing paragraphs, I feel that, it will be in the interest of justice and equity to allow the applicant to file fresh representation as regards exemption from passing qualifying Marathi language examination as required, as per notification dated 30.12.1987 to the competent authority and the competent authority may take appropriate decision as to whether to exempt the applicant or not from passing Marathi language examination as required in the notification. In view thereof, the following order.

ORDER.

- i) The Original application is partly allowed.
- ii) The impugned communication dated 16.11.2015 issued by the Respondent no.3 is quashed and set aside.
- iii) The applicant is given liberty to file comprehensive representation for exemption from passing of Marathi language examination to the competent authority i.e. Government as required as per notification dated 30.12.1987. On receiving such representation the Government shall take necessary decision considering the circumstances already referred in this order. Such decision shall be taken within two months from the date of receipt of representation and the same shall be communicated to the applicant in writing. In view of this, the direction in the letter dated 24.2.2015 issued by respondent no.2 shall not be executed, till such

decision is taken and communicated to the applicant on her representation.

- iv) The applicant will be at liberty to approach the Tribunal, if her representation is not favourably considered.
- v) There shall be no order as to costs.

**MEMBER (J)**

atpoa11016

