

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.250 OF 2017
(Subject – Recovery)**

DISTRICT: NANDED

Shri SayedKhaja Mubeenuddin Sayed)
Khaja Azizuddin,)
 Age: 50 years, Occu. :Service,)
 R/o BMC Bank Colony, Deepnagar)
 Nanded, Tq. & Dist. Nanded.) **.. APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Secretary,)
 Medical Education and Drugs)
 Department,)
 Mantralaya Mumbai- 400 032.)
 (Copy to be served on Chief)
 Presenting Officer,)
 M.A.T. Aurangabad.)
- 2) **The Director of Ayush,**)
 Govt. Dental College & Hospital)
 Building, Forth Floor, St. Jorge)
 Hospital, P.D.M.L.O. Road,)
 Maharashtra State, Mumbai.)
- 3) **The Assist. Director of Ayush**)
 Nagpur.)
- 4) **The Dean,**)
 Govt. Ayurvedic & Unani)
 Pharmacy Vizirabad, Nanded)
 Tq. & Dist. Nanded.) **.. RESPONDENTS**

APPEARANCE : Shri S.C. Bhosle, learned Advocate for the
 Applicant.

: Shri M.P. Gude, Presenting Officer for the
 Respondents.

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

ORDER
(Delivered on this 21st day of December, 2017.)

1. The applicant has challenged the order dated 19.04.2017 issued by the respondent No. 4 directing the recovery of an amount of Rs. 7,00,776/- in monthly installments on account of payment made to him towards annual increments, to which he was not entitled by filing the present Original Application.

2. The applicant was appointed as Clerk-come-Typist on compassionate ground with the respondents on 5.3.1990. On 20.07.2004, he was promoted as Senior Clerk and thereafter, he was promoted as Head Clerk on 1.2.2008. On 11.3.2016, he was promoted on the post of Superintendent and since then, he is working on the said post. It is his contention that the respondents had not issued single notice to him for passing Marathi and Hindi language examination within three years from the date of joining the service. He has passed Marathi language examination in the month of February, 2010 and Hindi test in the month of July, 2012. It is his contention that there was no fault on his part and respondents never directed him to pass the said examination. On 12.10.2011, the respondents issued order stating that he has passed Marathi language examination, but he has not passed Hindi examination and therefore, stopped his

annual increments from July 2011. Thereafter, on 31.08.2015 the respondent No. 4 issued another order directing to recover the amount paid to him towards annual increments during the period from 1.4.1994 to 30.6.2012 on the ground that he had not passed the Marathi and Hindi language examination within three years from the date of joining the service, but no notice had been issued to the applicant in that regard. It is his contention that the increment has been given to him by the respondents from time to time and he had not practiced any fraud and therefore, the respondents are not entitled to recover the said amount.

3. It is contention of the applicant that in view of the Government Resolution dated 10.06.1976; the employee should pass the Marathi and Hindi language examination within three years from the date of joining the service. It is his contention that, as nobody was directed him to comply the said condition and annual increments has been granted to him from time to time by the respondents. He is not responsible for the same. He has contended that on 11.9.2012 he has completed 45 years of age and therefore, he cannot appear for the said examination. It is his contention that on 19.04.2017, the respondents issued order directing recovery of an amount of Rs. 6,77,322/- from monthly salary towards annual increments paid to him. It is his contention

that the said order is illegal and arbitrary. Therefore, he prayed to quash the said order by filing the present Original Application.

4. The respondent Nos. 2 to 4 have filed their affidavit in reply and resisted the contention of the applicant. It is their contention that as per G.R. dated 10.06.1976 issued by the General Administration Department, the Government employee has to pass the Hindi language examination within three years from the date of joining the service. The said G.R. also provides that the employee has to pass the said examination before completion of his 45 years of age and he will be exempted from passing Hindi language examination on completion of 45 years of age. The Government has laid down the Rules under the said G.R. and as per the Rules, passing of Hindi language examination is mandatory for every Government employee.

5. It is their contention that the applicant was appointed on 5.3.1990 on compassionate ground on the post of Typist-cum-Clerk. In the appointment letter there is condition No. 8 stating that the applicant must pass Hindi language examination as per the Rules. The applicant accepted the appointment order along with condition and joined the post, but he has not passed the Hindi language examination within three years from the date of joining the service. The Director of Ayush Mumbai has repeatedly communicated to the office of Dean, but the office of Dean had

not acted as per the Rules and therefore, by letter dated 26.09.2011, the Director of Ayush, Mumbai communicated office of Dean that the applicant had not passed the Ethadarth Mandal's Hindi language examination within stipulated time in view of the provisions of G.R. dated 10.06.1976 and therefore, his annual increments should be stopped, but the Dean had not acted upon on the letter. On 19.04.2017, the Dean finally issued order and stopped the annual increments of the applicant w.e.f. 5.3.1993 and directed to recover the excess amount paid to him from his salary from the month of April 2017. It is their contention that there is a condition in the appointment letter of the applicant to pass said examination and there is no need to issue notice to the applicant in that regard. It is their contention that the letter of the Director of Language, Maharashtra State, Mumbai dated 18.06.2010 show that the applicant had passed Eathadarth Mandals Marathi language Higher Grade examination dated 25.02.2010. Not only this, but another letter dated 17.12.2012 issued by the Directorate of Languages, Divisional Office, Aurangabad shows that the applicant has passed Ethadarth Mandals Hindi language examination in the month of July, 2012. It is their contention that the applicant has passed S.C.C. examination in the year 1983 and he appeared for Marathi subject and therefore, it was not necessary for him to pass Marathi language examination, but he has to pass Hindi language

examination within three years from the date of joining the service. He has passed Hindi Language examination in the month of July, 2012 and therefore, excess amount paid to him by way of annual increments from 1996 to July 2012 has to be recovered and therefore, the Dean, Nanded has passed the impugned order accordingly. It is their contention that there is no illegality in the impugned order. Therefore, they supported the order under challenge and prayed to reject the present Original Application.

6. I have heard Shri S.C. Bhosle, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Office for the respondents. I have perused the documents placed on record by both the parties.

7. Admittedly, the applicant was appointed on 5.3.1990 on compassionate ground as a Clerk-come-Typist. He was promoted as Senior Clerk w.e.f. 20.07.2004 and thereafter, he was promoted as Head Clerk on 1.2.2008. On 11.3.2016, he was promoted on the post of Superintendent. Admittedly, as per G.R. dated 10.06.1976, the Government employee has to pass Hindi and Marathi language examination within three years from the date of joining the service, failing which his further annual increments would be withheld. Admittedly, the said condition has been incorporated in the appointment letter dated 5.3.1990 issued to the applicant. It is not much disputed that the

applicant had appeared for S.S.C. examination with Marathi as one of the subject and passed the S.S.C. examination with Marathi language. Admittedly, there is no need to the applicant to appear for Marathi language examination as per G.R. dated 10.06.1976. Admittedly, the applicant has to appear for Hindi language examination and to pass the said examination within three years from the date of joining the service. But the applicant had not passed the examination till July 2011 and he passed the Hindi language examination in the month of July, 2012. Prior to that, he appeared for Ethadarth Mandals Marathi language examination held in the month of February 2012 and passed the examination. Admittedly, the respondent No. 2 i.e. the Director of Ayush, Mumbai issued order dated 12.10.2011 addressed to the office of the respondent No. 4 i.e. the Dean, Nanded to stop the annual increments of the applicant from July 2011, as he had not passed Hindi language examination in view of the provisions of the G.R. dated 10.06.1976. The office of Dean, Nanded had not acted upon the said communication. But on 21.08.2015, the respondent No. 4 i.e. Dean, Nanded issued an order directing recovery of the amount paid to the applicant by way of annual increments during the period from 01.04.1994 to 30.06.2012 on the ground that he had not passed Hindi language examination within stipulated time and was not entitled to get increments in view of the G.R. dated 10.06.1976, but recovery had not been

started accordingly. The applicant has not challenged the said orders dated 12.10.2011 and 31.08.2015. Thereafter, the respondent No. 4 issued impugned order dated 19.04.2017 and directed to recover an amount of Rs. 6,77,322/- from the applicant towards payment made to him towards annual increments to which he was not entitled. Accordingly, recovery has been directed in installments.

8. Learned Advocate for the applicant has submitted that the applicant was appointed on 5.3.1990 on compassionate ground. He has submitted that in the appointment order dated 5.3.1990 (Exhibit A-1, page Nos. 11 & 12 of the paper book) there is no specific condition showing period in which the applicant has to pass Hindi and Marathi language examination. He has submitted that the applicant was not aware about the fact that he has to pass said languages examination for getting the annual increments. He has submitted that the G.R. dated 10.06.1976 has not been brought to his notice. He has submitted that the applicant has neither practiced any fraud on the respondents nor misrepresented them in getting the increments from time to time. He has submitted that when the applicant learnt about the provisions of G.R. dated 10.06.1976, he appeared for Marathi and Hindi language examination and passed it. He has submitted that vide impugned order dated 19.04.2017, the respondents

directed recovery of an amount of Rs. 6,77,322/- paid to him towards annual increments from time to time is not legal one and therefore, he prayed to allow the Original Application and quash and set aside the impugned order dated 19.04.2017.

9. Learned Presenting Officer has submitted that the applicant was aware about the condition of passing Hindi and Marathi language examination, when he received appointment order dated 5.9.1990, as there is condition No. 8 incorporated in the said order. He has submitted that in view of the G.R. dated 10.06.1976, the concerned employee has to pass Hindi and Marathi language examination within three years from the date of joining the service. But the applicant has not passed the said examination within stipulated time. He has submitted that the respondents had given exemption the applicant from passing Marathi language examination, as the applicant has passed S.S.C. examination with Marathi language subject. But the applicant has not passed Hindi language examination within three years from the date of joining the service. He has submitted that in view of the said G.R. dated 10.06.1976, a Government servant, who did not pass Marathi and Hindi language examination within stipulated time, is not entitled to get further annual increments, but the applicant has received annual increments regularly against the provisions of the said G.R. dated

10.06.1976. This fact has been noticed by the respondent No. 2 i.e. the Director of Ayush, Mumbai and therefore, he informed the office of the Dean, Govt. Medical and Unani Pharmacy Vizirabad, Nanded by his letter dated 26.09.2011 and accordingly, Dean, Govt. Medical and Unani Pharmacy Vizirabad, Nanded issued order dated 12.10.2011 (Exhibit A-4, page No. 19 of the paper book) for stopping the further annual increments of the applicant w.e.f. July 2011. But the Dean, Nanded has not taken action to recover the amount as per Rules. On 31.08.2015 (Exhibit A-5, page No. 20 of the paper book), the Dean, Nanded passed the order and directed to recover the excess amount paid to the applicant. He has submitted that the applicant has neither challenged the order dated 26.09.2011 issued by the Director of Ayush, Mumbai i.e. the respondent No. 2 nor the orders dated 12.10.2011 and 31.08.2015 issued by the Dean, Govt. Medical and Unani Pharmacy Vizirabad, Nanded i.e. the respondent No. 4 till today, when the actual recovery has been started by order dated 19.04.2017 issued by the respondent No. 4. He has filed the present O.A. challenging the said order without challenging the earlier orders issued by the Director Ayush, Mumbai and the Dean, Govt. Medical and Unani Pharmacy Vizirabad, Nanded. He has submitted that the applicant has not challenged the said orders passed by the Director Ayush, Mumbai i.e. the respondent No. 2 and the Dean, Govt. Medical and Unani Pharmacy

Vizirabad, Nanded i.e. the respondent No. 4 and therefore, same became final and conclusive and therefore, the present Original Application challenging the subsequent order dated 19.04.2017 is not maintainable.

10. Learned Presenting Officer has further submitted that it is one of the essential condition to the employees appointed in the Government service that they should pass Marathi and Hindi language examination in view of the G.R. dated 10.06.1976. The applicant was aware about the said condition since his appointment, as the said condition has been incorporated in the appointment letter dated 05.03.1990 (Exhibit A-1, page Nos. 11 and 12 of the paper book) and the said condition is mentioned therein at Sr. No. 8. He has submitted that the applicant has not passed the Hindi language examination within three years from the date of joining the service. He informed his higher authority in that regard and he has received the amount of annual increments released to him from time to time. He has submitted that the applicant had suppressed the said fact and therefore, O.A. cannot be allowed, as the applicant suppressed the material facts. He has further submitted that in the year 2011, the Director Ayush, Mumbai noticed this fact and directed the respondent No. 4 by its letter dated 26.09.2011 to stop the annual increments of the applicant, since he has not passed the Hindi language

examination and thereafter, respondent No. 4 issued order dated 12.10.2011 (Exhibit A-4, page No. 19 of the paper book) and passed the order dated 31.08.2015. He has submitted that applicant had not challenged the said orders, but he continued to receive the higher scale released to him till impugned order dated 19.04.2017 has been passed. He has submitted that all these facts show that the applicant received increments, though he was not entitled for the same. This shows mala-fideneess on the part of the applicant and therefore, he prayed to reject the present Original Application.

11. Learned Presenting Officer has submitted that since the applicant did not pass the educational qualification, he was not entitled to get annual increments, which has wrongly been released to him.

12. Learned Advocate for the applicant has submitted that the amount paid to the applicant towards annual increments cannot be recovered, considering the fact that it is not a case wherein any misrepresentation has been made by the applicant and therefore, he prayed to quash the impugned order dated 19.04.2017. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **Bihar State Electricity Board Vs. BijayBhadur** reported in **2000 (10)SCC 99** decided on 1.12.1999 and in case of **Sahib**

Ram Vs. State of Haryana reported in **1994 DGLS (Soft.) 846** decided on 19.09.1994.

13. I have gone through the documents on record. There is no dispute about the fact that the applicant has passed S.S.C. examination with Marathi language in the year 1983, (Exhibit R-1, page No. 44 of the paper book), much before his appointment and therefore, there was no need for him to pass Marathi language examination again in view of the provisions of the G.R. dated 10.06.1976. But as per the appointment letter dated 5.3.1993 (page nos. 11 & 12 of the paper book), the applicant has to pass Hindi and Marathi language examination. He could not seek exemption from passing Marathi language examination, as he has passed S.S.C. with Marathi language, which is one of the main subjects, but he has to pass Hindi language examination within three years from the date of joining of the service. He ought to have passed Hindi language examination on or before 05.03.1993, but he had not passed the said examination till July, 2012. The applicant was aware about the condition No. 8 to that effect which has been incorporated in the appointment order dated 05.03.1990. Though the applicant has not passed the Hindi language examination, annual increments had been released to him from time to time. The Director of Ayush, Mumbai by communication dated 26.09.2011 informed the respondent No. 4

i.e. the Dean, Nanded to stop the annual increments of the applicant, since he had not passed the Hindi language examination within three years from the date of joining the service and accordingly, the respondent No. 4 issued order dated 12.10.2011 and informed the applicant. The order has been served on the applicant, but the applicant has not challenged the said order, by which his annual increments from July 2011 had been stopped. Thereafter, respondent No. 4 issued another order dated 31.08.2015 and directed the applicant to deposit the excess amount paid to him on account of annual increment released to him, though he had not passed the Hindi language examination and the said order had also been served on the applicant. The applicant had not challenged the same also. Therefore, the said orders dated 12.10.2011 and 31.08.2015 become final and conclusive. The applicant has not challenged those orders till filing of the present Original Application. Therefore, the present Original Application challenging the order dated 19.04.2017 is liable to be dismissed.

14. It is pertinent to note here that the respondent has placed on record a copy of order passed in W.P. No. 6410/2017 (Exhibit R-3, page No. 49), which shows that the applicant has filed W.P. No. 6410/2017 challenging the order of recovery of the amount paid to him, to which he was not entitled and in that W.P.

the Hon'ble High Court by order dated 4th May, 2017 passed the interim order that no further deduction shall be made from the salary of the applicant pursuant to the impugned communication. The applicant has specifically stated in paragraph No. 14 of O.A. that he has not filed any other petition/application or any other proceedings in this Court or in any other Court including the Hon'ble Supreme Court of India. He has suppressed the said material fact regarding filing of Writ Petition and therefore, on that count also, the present Original Application deserves to be dismissed.

15. I have gone through the decision referred by the learned Advocate for the applicant on perusing the same, it reveals that the reliefs were granted to the petitioners in those cases considering the facts and circumstances in those cases. Facts in this case are different and not identical with the facts in those cases. Therefore, the principles laid down therein are not attracted to this case. Therefore, said decisions are not much useful to the applicant in the present Original Application.

16. In view of the above facts and circumstances, it is crystal clear that the applicant has not challenged the earlier order dated 26.09.2011 issued by the respondent No. 2 and orders dated 12.10.2011 & 31.08.2015 issued by the respondent No. 4 directing recovery of excess payment paid to him on account

of annual increments granted to him from time to time, to which he was not entitled, as he was not passed the Hindi language examination within three years from the date of joining the service as per the G.R. dated 10.06.1976. Therefore, those orders become final and conclusive and the same are binding on the applicant. Therefore, the present Original Application challenging the order dated 19.04.2017 issued by the respondent No. 4 without challenging the earlier orders is not maintainable. There is no illegality in the order dated 19.04.2017 issued by the respondent No. 4. Therefore, I do not find merit in the present Original Application. Consequently, it deserves to be dismissed.

17. In view of the discussions in foregoing paragraphs, the Original Application stands dismissed without costs.

(B.P. PATIL)
MEMBER (J)

PLACE : AURANGABAD.

DATE : 21.12.2017.

KPB/S.B. O.A. No. 250of 2017 BPP 2017 Recovery