

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 299 OF 2018

Vaishali Shrikrushnakumar Patil .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. Mane h/f. Mr. U. L. Momale, Advocate for the
Petitioner.
Mr. S. P. Tiwari, A.G.P. for Respondent Nos. 1
to 4.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 17th DECEMBER, 2018

PER COURT :

1. The Original Application filed by the petitioner against the order passed by the department seeking recovery on account of increments being given to the petitioner is assailed.

2. The learned Advocate for the petitioner submits that the petitioner was appointed on 30.10.2004 as 'Physiotherapist' by the respondent. In the appointment order condition was imposed

that the petitioner shall obtain the 'MS-CIT' certificate and / or should pass DOEACC Society approved 'CCC' or 'O' or 'C' level examination. No condition was imposed that the petitioner should pass Hindi language examination within three years from the date of appointment. The petitioner was granted increments since July-2008 every year. According to the learned Advocate, the petitioner had never misrepresented that the petitioner has passed Hindi language examination. The increments were granted by the respondents. The petitioner passed the Hindi language examination on 18.02.2013. Till the year-2013, the petitioner was not intimated that it is necessary for her to pass the Hindi language examination.

3. According to the learned Advocate for the petitioner, no fault can be attributed to the petitioner for grant of increments as the petitioner has never misrepresented.

4. The learned Advocate for the petitioner further submits that, the petitioner is Class-III

employee. The recovery claimed is beyond five years. Hardship would be caused if the recovery is claimed. In such case, the respondents are not entitled for recovery. The petitioner relies on the judgment of the Apex Court in a case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in 2015 (4) SCC 334. The tribunal failed to consider the same.

5. We have heard the learned Assistant Government Pleader.

6. The petitioner was required to pass Hindi language examination within three years of his appointment as per the Government Resolution dated 10.06.1976. The petitioner ought to have passed the same. It is no gain saying that the petitioner should be intimated that she is required to pass Hindi language examination within three years, as on lapse of three years petitioner every year was granted benefit of increments on the ground that she has passed Hindi language examination and / or she is exempted from passing said examination. At

the time the petitioner was granted benefit of increment on the ground that she has passed the Hindi language examination, she could have represented that she has not passed Hindi language examination. However, the petitioner did not do so. It is not a case of pay fixation being wrongly done. However, it is a case of increments being granted on the pretext that the petitioner has passed the Hindi language examination and / or is exempted from the same. At that time, it is the duty of the petitioner to inform the department that she has not passed the said examination.

7. The judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** (*supra*), no doubt, bars recovery in certain circumstances. However, here it is to be noted that the recovery is claimed on account of increments being granted to which the petitioner was not entitled to and it is not a case of wrong pay fixation being done by the authorities. When the increment was granted to the

petitioner on the ground that she has passed Hindi language examination or is exempted, it was the duty of the petitioner to intimate the authority about she not having passed the said examination or is not exempted.

8. In the light of above, the tribunal has not committed any error.

9. Further, the recovery sought to be claimed is of Rs. 1,51,628/-. It would not be appropriate to allow the respondent to recover the whole amount in lumpsum. The petitioner is in employment of the respondent.

10. It is submitted that the respondents are recovering the amount at an installment of Rs.3,000/-, the same would be reasonable.

11. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]