

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1088 OF 2022

DISTRICT:- AURANGABAD

Dr. Gautam Bhagwan Sawase,)
Age: 41 years, Occu.: Service as)
Associate Professor,)
Rural Health Training Center,)
Paithan, District Aurangabad.)
R/o. 109-B, Dwarkapuri,)
Behind Eknath Nagar, Aurangabad)
Tq. and Dist. Aurangabad.).. **Applicant**

V E R S U S

1. The State of Maharashtra)
Through its Principal Secretary,)
Drugs, Medical Education and)
Research Department,)
G.T. Hospital, 9th Floor,)
Lokmanya Tilak Road,)
Mumbai – 400 001.)

02. The Dean,)
Government Medical College,)
Aurangabad, GHATI,)
Near Panchakki Road,)
Aurangabad,)
District Aurangabad (431 001).)

03. Dr. Bharat Bhagwansing Chavan,)
Age: 58 years, Occu.: Service as)
Associate Professor,)
At Rural Health Training Center,)
Paithan, District Aurangabad.) .. **Respondents**

APPEARANCE : Shri V.B. Wagh, learned counsel for the applicant.
: Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities/respondent nos. 1 & 2.
: Shri Avinash S. Deshmukh, learned counsel for respondent No. 3.

CORAM : JUSTICE SHRI P.R.BORA, VICE HAIRMAN

DATE : 7.2.2023.

ORAL - ORDER

Heard Shri V.B. Wagh, learned counsel for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities/respondent nos. 1 & 2 and Shri Avinash S. Deshmukh, learned counsel for respondent No. 3.

2. By filing the present Original Application the applicant has prayed the following reliefs:-

“A) This Original Application may kindly be allowed.

B) To direct the respondent No. 2 to allow the applicant to join on the post of Associate Professor for the Community Medicine / Preventive and Social Medicine at Rural Health Training Center, Paithan, District Aurangabad pursuant to his joining report dated 02.11.2022, in view of the posting

order issued by the respondent No.1 on 01.11.2022, and further the respondent No. 3 may be relieved from the said post pursuant to his promotion order dated 11.08.2022 giving him posting as Professor at Shri Bhausahab Hire Medical College, Dhule, forthwith and for that purpose necessary orders may kindly be passed.

C) Any other relief may kindly be granted in favour of the applicant in the interest of justice.

INTERIM RELIEFS -

a) Pending hearing and final disposal of this Original Application, the respondent No.2 may be directed to allow the applicant to join the post of Associate Professor for the Community Medicine / Preventive and Social Medicine at Rural Health Training Center, Paithan, District Aurangabad pursuant to his joining report dated 02.11.2022, in view of the posting order issued by the respondent No. 1 on 01.11.2022, and further the respondent No. 3 may be relieved from the said post pursuant to his promotion order dated 11.08.2022 giving him posting as Professor at Shri. Bhausahab Hire Medical College, Dhule, forthwith and for that purpose necessary orders may kindly be passed.”

3. The applicant entered into the Government service w.e.f. 17.7.2014 on the post of Medical Officer, Group-A and was posted in the Public Health Department at Aurangabad in its District T.B. Centre, Aurangabad. The applicant was then selected through the Maharashtra Public Service Commission (for short the MPSC) for the post of Assistant Professor in Community Medicine (Preventive and Social Medicine) and was given posting at Government Medical College, Aurangabad on 19.2.2016 and till the date of filing the present application was

working on the said post. In the year 2021 an advertisement came to be issued for the post of Associate Professor in Community Medicine (Preventive and Social Medicine). This advertisement was issued by respondent no. 1. The selection of the appointee was to be made by the MPSC. The applicant applied for the said post and eventually was selected for the said post through MPSC. On 1.11.2022, respondent no. 1 issued appointment and posting order of the applicant as Associate Professor for Community Medicine (Preventive and Social Medicine) at Rural Health Training Centre, Paithan. It is the grievance of the applicant that though after having been selected through the MPSC and order of promotion, as well as, the posting was issued by respondent no. 1, the respondent no. 2 firstly did not relieve the applicant from his existing post and did not get him joined on the promotional post. In the circumstances, the applicant has approached this Tribunal with the aforesaid prayers.

4. As is revealing from the contentions raised in the application the respondent no. 3 is working on the post of Associate Professor in Community Medicine (Preventive and Social Medicine) at Rural Health Training Centre, Paithan on which the applicant has been posted. As is further revealing

from the pleadings of the parties, respondent no. 3 was also promoted to the next higher post i.e. of Professor and was posted as Professor at Shri Bhausahab Hire Government Medical College, Dhule vide order dated 11.8.2022. Pleadings and documents further reveal that the respondent no. 3 on 17.8.2022 requested for extension of time for joining at the transferred post with further request of his retention at the existing post. On 13.10.2022 respondent no. 3 submitted application to respondent no. 1 seeking permission to resume on the transferred/promotional post at Dhule. In the meanwhile the order was passed giving posting to the present applicant in place of respondent no. 3 vide order dated 1.11.2022. The documents further reveal that respondent no. 2 did not pass any order relieving the applicant from his existing post so that the applicant can join on the promotional post. Respondent no. 2 also did not pass any order relieving respondent no. 3 from his existing post so as to pave way for the applicant to join on the said post.

5. Shri Wagh, learned counsel appearing for the applicant raised certain serious objections as about the conduct of respondent no. 2 in not relieving the applicant from his previous post, as well as, to respondent no. 3 from his existing post.

6. Respondent no. 1 has filed the affidavit in reply to the O.A. The said affidavit in reply is sworn by respondent no. 2. Respondent no. 2 has, however, not filed any separate affidavit in reply to the OA. However, respondent no. 2 has filed affidavit in reply in pursuance of the order passed by the Tribunal on 3.1.2023 explaining the circumstances as were required to be explained. Respondent no. 1 has taken a stand in its affidavit in reply that since respondent no. 3 did not join on his transferred post and communicated his unwillingness to join the said post, the applicant could not resume the said post on which he was appointed vide order dated 1.11.2022. The affidavit in reply of respondent no. 1 further reveals that a show cause notice now has been issued to respondent no. 3, as well as, respondent no. 2 for not taking timely actions and the respondent no. 1 is taking cognizance of the defaults so occurred on their part.

7. Shri Bhumkar, learned Presenting Officer appearing for respondent nos. 1 & 2 submitted that on account of genuine difficulties, which are explained in the affidavit in reply, the respondents could not get joined the applicant on the post on which he was appointed vide order dated 1.11.2022. The

learned PO submitted that the Government is intending to cancel the promotion granted in favour of respondent no.3 and accordingly a proposal has been forwarded to the competent authority and approval from the said authority is awaited. The learned PO further submitted that the competent authority is the Hon'ble Chief Minister. It is further contended that unless said orders are received, respondent no. 1 is unable to get joined the applicant on his post in pursuance of the order dated 1.11.2022. The learned PO further submitted that the respondents are also intending to effect change in the posting of the applicant if ultimately it is found difficult to get him joined on the post on which he is appointed. The learned PO submitted that having regard to the facts as aforesaid the contention of the applicant that intentionally he has been deprived from joining the said post cannot be accepted and the request made by the applicant in his application seeking direction for his posting on the said post also cannot be accepted. The learned PO in the circumstances has prayed for dismissal of the Original Application.

8. Shri Avinash Deshmukh, learned counsel appearing for respondent no. 3 submitted that the prayers as are made in the OA and in the manner or form they are made, cannot be

accepted for the reason that the applicant is not vested with any indefeasible right to seek posting on a particular place on his promotion. The learned counsel submitted that when respondent no. 1 has clarified its stand that suitable posting will be given to the applicant, in fact, nothing remains to be considered in the OA so filed. The learned counsel further submitted that after respondent no. 3 was promoted and was posted at Shri Bhausahab Hire Government Medical college, Dhule, since at the relevant time he was having certain difficulties immediately preferred representation seeking extension of time. The learned counsel further submitted that at one point of time respondent no. 3 decided to resume at the transferred post and submitted an application seeking permission to join at the said place since the period which was initially provided for his joining has expired and unless permitted by the authorities, he could not have joined. The learned counsel further submitted that the requests/representations made by respondent no. 3 were pending for consideration with the competent authorities and, as such, respondent no. 3 continued to discharge his duties on the existing post. The learned counsel pointed out that in the representation dated 2.11.2022 submitted by respondent no. 3,

he has requested the competent authority to give him posting at some different place at Aurangabad, if it is not possible to retain him on the existing post. The learned counsel submitted that the conduct of respondent no. 3 as is revealing from the documents on record does not lead to any such inference that he was instrumental in keeping applicant away from the subject post. The learned counsel pointed out that if certain allegations are made against any Government officer, he has to be made party in his personal capacity, which has not been done by the applicant. In the circumstances, according to the learned counsel, no such allegations can be even taken into consideration by the Tribunal. The learned counsel submitted that the circumstances, which are existing in the present matter, are unusual. Many times it happens that posting given earlier requires to be changed subsequently and the administrative authorities are within their right to effect such change. The learned counsel lastly submitted that when the Government has now decided to take a final call, no order can be passed in the present OA as has been prayed by the applicant. He has, therefore, prayed for rejection of the application.

9. I have duly considered the submissions advanced by the learned counsel appearing for the respective parties and the learned PO appearing for the State authorities. The following facts are not in dispute:-

(i) that the applicant got selected through MPSC and was appointed and posted on the post of Associate Professor in Community Medicine (Preventive and Social Medicine) at Rural Health Training Centre, Paithan vide order dated 1.11.2022.

(ii) that the applicant submitted an application to respondent no. 2 on 2.11.2022 to relieve him from his existing post to facilitate him to join on his promotional post. At the relevant time the applicant was working as Assistant Professor in Community Medicine (Preventive and Social Medicine) in Government Medical College at Aurangabad.

(iii) that vide order dated 11.8.2022 respondent no. 3 was promoted and posted as Professor in Community Medicine (Preventive and Social Medicine) at Shri Bhausahab Hire Government Medical College, Dhule.

(iv) that on 17.8.2022 respondent no. 3 made a written request to respondent no. 1 through proper channel seeking retention for few days on his existing post.

(v) that on 26.8.2022 respondent no. 3 preferred another representation to respondent no. 1 seeking extension for the period of next 2 months to join on his promotional post at Shri Bhausahab Hire Government Medical College, Dhule.

(vi) that on 13.10.2022 respondent no. 3 again wrote to respondent no.1, giving reference of all his earlier communications, and sought permission to resume at his promotional post at Shri Bhausahab Hire Government Medical College, Dhule.

(vii) that there is nothing on record to show whether any decisions was taken by respondent nos. 1 and 2 on the requests made by respondent no. 3 in his aforesaid letters.

(viii) that on 1.11.2022 applicant came to be posted in place of respondent no. 3.

(ix) that on 2.11.2022 the respondent no. 3 made an another representation thereby requesting respondent

no. 1 to give him posting at Aurangabad, if it is not possible to retain him on the existing post.

10. It is significant to note that respondent no. 2 was the authority at the relevant time to relieve the applicant, as well as, respondent no. 3. Respondent no. 2, however, did nothing. In the order dated 11.8.2022 i.e. the order of promotion of respondent no. 3 it has been specifically mentioned that if respondent no. 3 fails in resuming at the promotional/transferred post within 30 days, it will be deemed that candidate concerned is unwilling to accept the promotion so granted in his favour and the further necessary actions will be taken as provided in the GR dated 12.9.2016.

11. Respondent no. 1 in its affidavit in reply has not clarified or explained as to what orders were passed on the written requests made by respondent no. 3 respectively on 17.8.2022, 26.8.2022 and 13.10.2022. Respondent no. 2 has not explained why he did not relieve the applicant, as well as, respondent no. 3 when there were no orders from the State Government either for retention of respondent no. 3 on the existing post or granting extension of time for joining on the promotional post.

12. After having considered the facts and circumstances involved in the matter, it appears to me that respondent no. 2 and respondent no. 1 both have failed in taking timely decisions. Though some allegations are made by the applicant against respondent no.2, I may not indulge in making discussion on the said allegations for the reason that the said respondent has not been made party in his personal capacity

13. The present matter, however, cannot be kept pending for indefinite period. The present O.A. was filed on 7.12.2022. On 8.12.2022 an interim order was passed by the Tribunal restraining respondents from effecting any change in the posting order of the applicant. After filing of the OA the period of about 2 months has elapsed, however, no decision has been taken by the respondent authorities. Though it has been argued by the learned counsel Shri Avinash Deshmukh that the applicant is not vested with any indefeasible right to seek appointment on a particular post, I do not find said submission to be acceptable. There is nothing on record to show that the posting which has been given to the applicant vide the order dated 1.11.2022 is according to the choice given by the applicant or is any way influenced by the applicant. However,

once the posting was given, right has been created in favour of the applicant to join on the said post and if he is precluded from resuming charge of the said post, whatsoever may be the reason, he has every right to agitate against that.

14. The facts which have come on record reveal that as because respondent no. 3 is not relieved from the post in spite of the fact that he has also been promoted and then posted at Shri Bhausahab Hire Government Medical College, Dhule, the applicant could not resume the said post. Now it has become clear that respondent no. 3 is not accepting the promotion for certain reasons, which he has explained in the representation and has therefore expressed his unwillingness to join at Dhule as per the order dated 11.8.2022. If the contents and tenor of the said representation is seen, the only inference which can be drawn is that the respondent no. 3 has denied the promotion granted in his favour. In his last representation made on 2.11.2022, the respondent no. 3 had made alternate request for his posting. Respondent no. 1, however, has not taken any decision on the said representation.

15. I reiterate that there seems no propriety in keeping the present matter pending. Grievance of the applicant has to be

resolved. Right accrued in favour of the applicant cannot be denied or taken away for the reason that respondent no. 3 has not vacated the said post. As stated above, realizing that his retention on the existing post perhaps may not be possible, respondent no. 3 has already made an alternate request even prior to filing of the present O.A. by the applicant.

16. In the above circumstances, I deem it appropriate to pass the following order:-

ORDER

(i) Respondent no. 2 shall relieve the applicant, as well as, respondent no. 3 from their respective posts and get joined the applicant on the post of Associate Professor in Community Medicine (Preventive and Social Medicine) at Rural Health Training Centre, Paithan within 2 weeks from the date of this order.

(ii) In the aforesaid period of 2 weeks respondent no. 1 shall consider the representation dated 2.11.2022 submitted by respondent no. 3 for his alternate posting and give him the suitable posting.

(iii) Respondent nos. 1 and 2 shall ensure that respondent no. 3 is not kept in hanging position.

(iv) The Original Application stands allowed in the aforesaid terms. No order as to costs.

VICE CHAIRMAN

PLACE : Aurangabad.

DATE : 7.2.2023.

ARJ O.A.NO.1088-2022 (Joining)