

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 153 OF 2017

DISTRICT:- JALNA

Dr. Ramnath Bhojram Hemke,
Age-60 years, Occu. Medical Officer,
(retired on superannuation from P.H.C.
Wakulni, Tq. Badnapur Dist. Jalna)
at present residing at Flat No. 8,
Jainagar, Near Vishwaroop Hall,
Near Osmanpura, Aurangabad.

.. **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**
Through Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2. Director of Health Services,**
Arogya Bhavan, St. Georges
Hospital Campus, Near C.S.T
Mumbai.
- 3. Deputy Director of Health Services,**
Aurangabad Circle, Aurangabad.
- 4. The Chief Executive Officer,**
Zilla Parishad, Jalna.
- 5. The District Health Officer,**
Zilla Parishad, Jalna.
- 6. The Accountant General (A & E),**
Civil Lines, Nagpur.

.. **RESPONDENTS**

APPEARANCE : Shri J. S. Deshmukh, learned counsel
for the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

CORAM : **JUSTICE SHRI P.R. BORA, VICE CHAIRMAN**
AND
: **SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : **15.02.2024**

ORAL - ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri J.S. Deshmukh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

Shri A.D. Aghav, learned counsel for respondent Nos. 4 & 5 (**absent**).

2. The applicant has preferred the present Original Application seeking the following reliefs: -

“b) It be declared that, applicant is Gazetted Medical Officer Group-B under Maharashtra Medical and Health Services and not the Class-III employee under establishment of Zilla Parishad.

c) The suspension order dated 31.08.2012, initiation of Departmental Enquiry under provisions of Rule 6(2) of Zilla Parishad District Services (Discipline & Appeal) Rules, 1964 vide order dated 15.07.2013 and order dated 17.04.2015 imposing minor penalties, issued by Chief Executive Officer, Z.P. Jalna in respect of applicant may kindly be quashed and set aside being illegal.

d) The order dated 17.12.16 issued by the additional commissioner in appeal no. 216/15 may kindly be quashed and set aside.

e) The Respondents may kindly be directed to treat his suspension period for the period 31.08.12 to 21.02.2014 as duty period and pay him salary at the rate of 100% for the said period and accordingly his pension may fixed.

f) Respondents be directed to release all pensionary benefits and pay monthly regular pension forthwith.

g) Any other relief for which applicants are entitled may kindly be granted in the interest of justice.”

3. The entire thrust of the learned counsel for the applicant was on the point that the Chief Executive Officer of Zilla Parishad was not having any right or authority to issue the order of suspension against the present applicant nor was having any authority to initiate the disciplinary enquiry against him under the Zilla Parishad Rules. Learned counsel for the applicant submitted that treating the applicant as Class-III employee of Zilla Parishad the order of suspension was passed and thereafter the departmental enquiry was conducted against the applicant and minor punishment has been inflicted on him.

4. Learned counsel further submitted that in the meanwhile period, the officers like the applicant were given status of Group-A officers and were also given status of the

Gazetted officers by the Government. It is further submitted that having regard to the pay scale of the applicant, as per the classification as has been made by the General Administration Department in its Government Resolution dated 02.07.2002 also the applicant has to be held Group-A officer and not Group-C officer. Learned counsel further submitted that respondent No. 4 was not having any authority to take any action against the applicant. Learned counsel in the circumstances has prayed for setting aside the impugned order and allow the consequential reliefs in favour of the applicant.

5. Shri V.R. Bhumkar, learned Presenting Officer has resisted the contentions raised on behalf of the applicant. The respondents have submitted their affidavits in reply, thereby opposing the contentions raised in the OA, as well as, prayers made therein. Learned P.O. pointed out that though the order passed by the Revenue Commissioner, Aurangabad has been challenged in the present matter, the said officer has not been impleaded as party respondent in the present matter and, as such, the O.A. filed by the applicant is liable to be dismissed on that count alone. It is further contended that the same issues were raised by the applicant in the Writ Petition No. 417/2013 filed by him before the Hon'ble Bombay High Court Bench at

Aurangabad. Learned P.O. submitted that the Hon'ble Division Bench of the Bombay High Court rejected the contentions as were raised by the applicant and dismissed the said W.P. Learned P.O. further pointed out that though the review was sought of the said judgment and order, the said review also came to be dismissed.

6. Learned counsel appearing for the applicant at this juncture pointed out that while disposing of the review petition the Hon'ble Bombay High Court has given opportunity to the applicant to raise the issue of competence of the Chief Executive Officer of Zilla Parishad in taking disciplinary action against the applicant in the appropriate petition before appropriate forum. According to the learned counsel, the objection as has been raised by the learned P.O., therefore, may not sustain.

7. It is the matter of record that the applicant had filed W.P. No. 417/2013 before the Aurangabad Bench of the Hon'ble Bombay High Court. In the said writ petition the challenge was raised by the applicant to the order issued by the Chief Executive Officer, Zilla Parishad, Jalna on 31.08.2012. According to the applicant, he should not have been considered to be an employee of Zilla Parishad and, as such, the C.E.O. did not have competence to issue the order of suspension. The said

writ petition came to be rejected with liberty to the C.E.O. to complete the departmental proceedings against the applicant. Applicant sought review of the order as aforesaid passed by the Hon'ble High Court by filing Review Application St. No. 32624/2013 in writ petition No. 417/2013. However, the said Review Application was disposed of by the Hon'ble High Court by observing that, it was open for the applicant to raise the issue of competence of the C.E.O. of Zilla Parishad in taking disciplinary action against the applicant in the appropriate proceedings.

8. It is significant to note that during pendency of the Review Application before the Hon'ble High Court the applicant preferred the departmental appeal against the order passed by the C.E.O., Zilla Parishad, before the Revenue Commissioner. From the documents it is quite clear that the applicant did not disclose the fact of preferring an appeal by him before the Revenue Commissioner against the order passed by the C.E.O. of Zilla Parishad. The Revenue Commissioner vide his order dated 17.12.2016 partly allowed the appeal filed by the applicant and modified the punishment imposed upon him by the C.E.O., Zilla Parishad. From the record, it is thus evident that the appeal came to be decided by the Revenue Appellate

Authority after passing of the order by the Hon'ble High Court in the Review Application. From the contents of the order passed by the Revenue Commissioner in the departmental appeal, it is further revealed that the said departmental appeal was argued on behalf of the applicant on 31.08.2016 i.e. subsequent to passing of the order by the Hon'ble High Court in the Review Application.

9. As noted by us hereinabove, it was the contention of the applicant before the Hon'ble High Court that, he being a Class-I Gazetted Officer, C.E.O., Zilla Parishad was not having any right or authority to take any disciplinary action against him. It was the further contention of the applicant that, for initiating any disciplinary action against him, concurrence of the State Government was necessary. In view of the submissions as aforesaid, while disposing of the Review Application liberty was given to the applicant to raise the challenge as about the competence of the C.E.O., Zilla Parishad in taking disciplinary action against him before the appropriate forum in the appropriate proceedings.

10. In view of the facts as above, 02 questions arise, first that why the applicant did not disclose the fact of filing an appeal by him before the Appellate Authority of C.E.O., Zilla

Parishad against the order of punishment issued by him, and other that after having secured liberty from the Hon'ble High Court to raise the challenge as about the competence of the C.E.O. of Zilla Parishad to take any disciplinary action against him, why the applicant preferred to go ahead with the departmental appeal, when according to him, any disciplinary action against him should not have been initiated without concurrence of the State Government. The conduct of the applicant in filing and conducting departmental appeal against the order passed by the C.E.O., Zilla Parishad, demonstrates that he did accept the said hierarchy.

11. Having considered the facts as aforesaid it does not appear to us that the applicant possesses any right to challenge the competence of the C.E.O., Zilla Parishad in initiating disciplinary action against him. Moreover, from the documents on record it appears that the applicant has been awarded the status of Group-A officers w.e.f. 18.07.2013. At the relevant time thus the applicant was not falling in the category of Group-A officers. As such also, we do not see any reason to cause any interference in the impugned order. The applicant, though has sought quashment of the order passed by the Revenue Commissioner, Aurangabad, he has not been made party in the present application and has not been impleaded as respondent.

As such, no order can be issued as prayed for by the applicant.

The O.A., therefore, deserves to be dismissed and is accordingly dismissed.

12. At this juncture, the learned counsel for the applicant has submitted that the applicant be at least given declaration that he falls in the category of Gazetted Medical Officer, Group-B at the relevant time. Learned counsel brought to our notice the decisions time to time taken by the Government in this regard. Learned counsel placed on record the Resolution issued by the Government on 03.01.2024. According to the applicant, as per the said G.R. applicant has been awarded the status of Group-A Officers w.e.f. 18.07.2013. If such a status has been already awarded to the applicant, we do not see any reason to issue any further order in this regard.

13. Lastly, it has been submitted on behalf of the applicant that no pension or pensionary benefits have been released in his favour. In fact, there seems no reason for withholding the entire retiral benefits. The respondents must have paid the admissible retiral benefits to the applicant. As such, we deem it appropriate to direct the respondents to release the admissible retiral benefits in favour of the applicant within 08 weeks from the date of this order.

14. With the observations as above, the Original Application stands dismissed, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.153-2017(DB)-2024-HDD-D.E.