

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 204 OF 2019
WITH
ORIGINAL APPLICATION NO. 238 OF 2019
WITH
ORIGINAL APPLICATION NO. 239 OF 2019
(Subject – Increments)**

1. ORIGINAL APPLICATION NO. 204 OF 2019

DISTRICT : OSMANABAD

Dr. Bhagwat S/o Sadashiv Khadke,)
Age:42years,Occu. :Service,)
R/o :C/o Assistant Director Health)
Services (Leprosy), Osmanabad.)

.. APPLICANT

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Health Department,)
Mantralaya, Mumbai – 32.)
- 2. Director Health Department,**)
Arogya Bhawan, St. George)
Hospital, Compound, P.D. Mello)
Road, Mumbai 400001.)
- 3. The Deputy Assistant Director,**)
Latur, Dist. Latur.)
- 4. The Assistant Director,**)
Health Services (Laprosy),)
Central Building, Ground Floor,)
Block No. 15, Osmanabad.)

.. RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO. 238 OF 2019**DISTRICT : OSMANABAD**

1. **Dr. Akrush s/o Narhari Barate,)**
Age: 49 years, Occu. : Service,)
R/o :PrimaryHealthCenter, Moha,))
Tq. Kallam, Dist. Osmanabad.)
2. **Dr. Kisan s/o Dattopant Lomte,))**
Age: 47 years, Occu. : Service,)
R/o : Primary Health Center, Kond,))
Tq. &Dist. Osmanabad.)
3. **Dr. Ansari Mohd. Rafiquddin Md. Kabeeruddin,))**
Age: 46 years, Occu. : Service,)
R/o : C/o Taluka Medical Officer,)
Tuljapur, Tq. Tuljarpur, Dist. Osmanabad.)
4. **Dr. Pradipkumar s/o Shamrao Jadhav,))**
Age: 45 years, Occu. : Service,)
R/o : Taluka Medical Officer, Kallam,))
Tq. Kallam, Dist. Osmanabad.)
5. **Dr. Anil s/o Dadarao Waghmare,))**
Age: 47 years, Occu. : Service,)
R/o : C/o Primary Health Center,))
Salgara, Tq. Tuljapur, Dist. Osmanabad.)
6. **Dr. Sushil s/o Devendra Chavan,))**
Age: 40 years, Occu. : Service,)
R/o : Primary Health Center,)
Omerga, Dist. Osmanabad.)

.. APPLICANTS**V E R S U S**

1. **The State of Maharashtra,)**
Through its Secretary,)
Health Department,)
Mantralaya, Mumbai – 32.)
2. **Director Health Department,)**
Arogya Bhawan, St. George)
Hospital, Compound, P.D. Mello)
Road, Mumbai 4000001.)

3. **The Deputy Director of Health,**)
Latur, Dist. Latur.)
4. **The District Health Officer,**)
Osmanabad.)
5. **The Chief Executive Officer,**)
Zilla Parishad, Osmanabad.)

.. RESPONDENTS

W I T H

3. ORIGINAL APPLICATION NO. 239 OF 2019

DISTRICT : OSMANABAD

1. **Dr. Sachin s/o Manohar Deshmukh,)**
Age: 45 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
2. **Dr. Mahesh s/o Shankar Kanade,)**
Age: 46 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
3. **Dr. Rekha Haridas Tike,**)
Age: 39 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
4. **Dr. Santosh s/o Harischandra Patil,)**
Age: 43 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
5. **Dr. Satish Annarao Surwase,**)
Age: 42 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
6. **Dr. Bhaskar Mahadeo Sable,**)
Age: 43 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)

- 7. Dr. Gurubus Nagnath Shete,**)
Age: 48 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
- 8. Dr. Ravindra Bhagwanrao Papde,**)
Age: 44 years, Occu. : Service,)
R/o : Civil Hospital Osmanabad,)
Tq. & Dist. Osmanabad.)
- 9. Dr. Anil Devendra Chavan,**)
Age: 45 years, Occu. : Service,)
R/o : Women's Hospital, Osmanabad,))
Tq. & Dist. Osmanabad.) **.. APPLICANTS**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Health Department,)
Mantralaya, Mumbai – 32.)
- 2. Director Health Department,**)
Arogya Bhawan, St. George)
Hospital, Compound, P.D. Mello)
Road, Mumbai 400001.)
- 3. The Deputy Director of Health,**)
Latur, Dist. Latur.)
- 4. The Civil Surgeon,**)
Civil Hospital, Osmanabad.) **.. RESPONDENTS**

APPEARANCE : Shri M.B. Kolpe, Advocate holding for Shri
Vevek Deshmukh Advocate for the Applicants
in all these O.As.

: Shri N.U. Yadav, Presenting Officer for
Respondent Nos. 1 to 4 in O.A. Nos. 204/2019
& 239/2019 and for respondent Nos. 1 to 3 in
O.A. No. 238/2019.

: Shri S.V. Deshmukh, Advocate for respondent
Nos. 4 & 5 in O.A. No. 238/2019.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**
DATE : **29.10.2021.**

COMMON - ORDER

1. The respondents have proposed that the three Original Applications have common background facts, issues raised are common and similar reliefs sought and as such the three Original Applications may be heard together. Therefore, the 3 Original Applications have been heard together and a common order is being passed.

2. The Original Application No. 204 of 2019 has been filed by Dr. Bhagwat S/o Sadashiv Khadke on 28.02.2019. The Original Application No. 238 of 2019 has been filed by one Dr. Akrush Narhari Barate and 5 others on 28.02.2019. The co-applicants had been granted permission to sue jointly by order passed by this Tribunal in M.A. No. 106/2019 in O.A. St. No. 452/2019 and registered as O.A. No. 238 of 2019. The Original Application No. 239 of 2019 has been filed by one Dr. Sachin S/o Manohar Deshmukh & 8 Ors. on 28.02.2019. The co-applicants had been granted permission to sue jointly by order passed by this

Tribunal in M.A. No. 107/2019 in O.A. St. No. 450/2019 and registered as O.A. No. 239 of 2019.

3. As per information provided by the applicants, all the applicants in the three O.A.'s were initially appointed on the post of Medical Officers on ad-hoc basis as per the following details by order of Director/ Joint Director/ Deputy Director, Health Services/ Zilla Parishad and regularized by the Government of Maharashtra and absorbed in Government services as per notification dated 02.02.2009.

O.A. No.	Name of original Applicants	Date of appointment as Medical Officer on Ad-hoc basis	Details of notification for regularization and absorption in Government service as Medical Officer
204/2019	Dr. Bhagwat Sadashiv Khadke	Dy. Director, Health Services, Latur, dated 02.11.2004	Public Health Department, order dated 13.02.2009
238/2019	Dr. Akush Narhari Barate	Dy. Director, Health Services, Latur, dated 05.12.2001	Public Health Department, order dated 11.02.2009
	Dr. Kisan Dattopant Lomte	Director, Health Services, Mumbai, dated 24.10.1997	Public Health Department, order dated 09.02.2009
	Dr. Ansari Mohd. Rafiquddin Md. Kabeeruddin	Director, Health Services, Mumbai, dated 23.05.2001	Public Health Department, order dated 11.02.2009
	Dr. Pradipkumar Shamrao Jadhav	Dy. Director, Health Services, Latur, dated 10.05.2004	Public Health Department, order dated 22.02.2010
	Dr. Anil Dadarao Waghmare	Dy. Director, Health Services, Akole, dated 14.05.2003	Public Health Department, order dated 12.02.2010
	Dr. Sushil Devendra Chavan	Dy. Director, Health Services, Pune, dated 10.03.2003	Public Health Department, order dated 22.02.2010
239/2019	Dr. Sachin Manohar Deshmukh	<i>Not provided</i>	Public Health Department, order dated 15.05.2009
	Dr. Mahesh Shankar Kanade	Dy. Director, Health Services, Pune, dated 17.07.1996	Public Health Department, order dated 27.02.2009

Dr. Rekha Haridas Tike	Dy. Director, Health Services, Pune, dated 14.04.2004	Public Health Department, order dated 12.02.2009
Dr. Santosh Harischandra Patil	Dy. Director, Health Services, Mumbai, dated 26.07.2001	<u>Not provided</u>
Dr. Satish Annarao Surwase	Dy. Director, Health Services, Akola, dated 10.04.2000	Public Health Department, order dated 10.02.2009
Dr. Bhaskar Mahadeo Sable	Dy. Director, Health Services, Latur, dated 04.11.2004	Public Health Department, order dated 10.11.2004
Dr. Gurubus Nagnath Shete	District Civil Surgeon, Latur dated 21.11.1997	Public Health Department, order dated 15.05.2009
Dr. Ravindra Bhagwanrao Papde	Director, Health Services, Mumbai, dated 14.10.1999	Public Health Department, order dated 10.02.2009
Dr. Anil Devendra Chavan	Zilla Parishad, Satara, dated 06.12.2000	Public Health Department, order dated 09.02.2009

4. All the applicants in above mentioned three Original Applications had been initially appointed on ad-hoc basis and had been given benefits of regularization under provisions of Notification of *The Medical Officer in the Maharashtra Medical and Health Services, Group-A (one time absorption of Medical Officer appointed on ad-hoc basis in Maharashtra) (Social) Rules, 2009,* as all the applicants had fulfilled basic criterion as listed below and also given undertaking as stipulated in the said Rules:

- (a) Appointment on ad-hoc service as Medical Officer.
- (b) Completed three years as on 31.12.2007 as ad-hoc Medical Officer.
- (c) Were in service on the commencement of the above mentioned rules i.e. 02.02.2009.

5. All the applicants in above mentioned three Original Applications have approached the Tribunal invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 seeking relief for getting benefits of annual increments from initial appointment order.

6. All the respondents were served notice and service affidavits were taken on record. Affidavits in reply were filed as per following details:-

O.A. No.	Respondents	Date Service of notice	Date of filing of affidavit in reply
204/2019	Respondent Nos. 1 to 3	26-29.03.2019	28.02.2019
	Respondent No. 4	29.03.2019	<i>Not filed</i>
238/2019	Respondent Nos. 1 to 3	26-29.03.2019	22.11.2019
	Respondent No. 4	29.03.2019	23.09.2019
	Respondent No. 5	29.03.2019	<i>Not filed</i>
239/2019	Respondent Nos. 1 to 4	26-29.03.2019	22.11.2019

7. **Relief sought by the applicants:** Reliefs sought by the original applicants have been reproduced below. No interim relief was granted, as the interim relief and final relief being the same:-

“A. Original Application may kindly be allowed.

B. The respondents may kindly be directed to give the benefits of increments to the applicant from their initial appointment orders.

C. Any other appropriate relief this Hon'ble Tribunal deems fit and proper may kindly be granted."

8. Grounds given by the applicants for seeking reliefs prayed for may be summed up as follows:

(a) Applicants have pleaded that they are entitled for getting annual increments for the period of service rendered as ad-hoc Medical Officer, even though they may have been continued in ad-hoc service with technical break.

(b) The applicants have stated that this Tribunal had decided in various matters that the ad-hoc appointees, who have been in continuous service for more than one year, have been entitled for benefits of annual increments, as they are appointed in pay scale. The Tribunal orders had directed to condone the technical breaks, if any, and release annual increments. These orders of the Tribunal in relation to lecturers teaching in government medical colleges had been upheld by the Division Bench of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad Bench in W.P. No. 3484 of 2005, with W.P. No. 702/2006, with W.P. No. 1291/2006, with W.P. No. 1583/2006, with W.P. No. 3333/2005, with W.P. No. 3548/2005, with W.P.

No. 3554/2005, with W.P. No. 3565/2006, with W.P. No. 3566/2006, with W.P. No. 8416/2005, with W.P. No. 8417/2005, with W.P. No. 8418/2005, with W.P. No. 8419/2005 &with W.P. No. 8420/2005. Special Leave to Appeal (Civil) No. CC 18902-18915/2010 filed by the State Government before the Hon'ble Apex Court against the judgement of the Hon'ble High Court had been dismissed by the Hon'ble Apex Court by order dated 02.02.2011.

(c) The applicants have also cited the provisions of Maharashtra Civil Services (Pay) Rules, 1981, Rule 11 to substantiate their claim for pay fixation after allowing annual increments for the period of ad-hoc appointments.

(d) The applicants have also cited notification dated 22.04.2009 issued by the Finance Department (Government of Maharashtra) in respect of Maharashtra Civil Services (Revised) Rules, which came in force w.e.f. 01.01.2006, and relied on Rules 8, 11 and 26 of the said Rules to substantiate their claim.

(e) The applicants have also cited the order passed by this Tribunal in O.A. No. 824/2016 dated 25.09.2018

asserting that the same is precedent for this matter which is similar.

9. **Pleadings and arguments –**

(a) The learned Advocate for the applicants in the 3 O.As. submitted that there was no need to file rejoinder to the affidavit in reply filed by the respondents. Thus, as the pleadings were complete, the three O.As were kept for final hearing with consent of the contesting parties. The learned Advocate for the applicants had elaborated the case laws and rules cited in the 3 O.As. and, in addition, also cited judgments of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by a single judge bench in Writ Petition No. 3380/2019 & batch, dated 10.02.2021 in a matter concerning Shikshan Sevaks. The applicants have also cited judgment by a single judge bench in Writ Petition No. 11603/2015 & the batch, dated 24.07.2019.

(b) Learned Advocate for the applicant submitted written notes of arguments in the 3 O.A. on 12.10.2021. He later on filed a copy of G.R. dated 11.01.2019 issued by Medical Education Department of Government of Maharashtra and also a photo-copy of the order passed by the Principal seat

of this Tribunal at Mumbai in O.A. No. 242/2009 and batch dated 2.5.2016 on 13.10.2021.

(c) Learned Presenting Officer argued the case based on submissions already made in affidavit in reply filed on behalf respective respondents. He also stated that the affidavit in reply filed on behalf of respective respondents be taken as written notes of arguments.

(d) Learned Advocate Shri S.V. Deshmukh appearing for the respondent Nos. 4 & 5 in O.A. No. 238/2019 argued the case. He also filed a photo-copy of order dated 07.04.2017 passed by the Nagpur Bench of this Tribunal in O.A. No. 592/2011 and also a copy of judgment delivered by a Division Bench of the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 7681/2011 and the batch, dated 19.08.2015 and a copy of judgment delivered by a single judge bench of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 772/2016 & the batch, dated 23.11.2017 relating to matter of Medical Officers.

(e) These Original Applications were reserved for orderson 13.10.2021.

10. **Analysis of facts -**

(A) First of all, we run through judgments of Hon'ble High Court of Judicature at Bombay and Apex Court cited by the contesting parties.

(B) The learned advocate of the applicant has cited a judgment delivered by Division Bench of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad, dated 27.11.2008 in Writ Petition No. 3484 of 2005, with W.P. No. 702 of 2006 with W.P. No. 1291 of 2006, with W.P. No. 1583 of 2006, with W.P. No. 3333 of 2005, with W.P. No. 3548 of 2005, with W.P. No. 3554 of 2005, with W.P. No. 3565 of 2006, with W.P. No. 3566 of 2006, with W.P. No. 8416 of 2005, with W.P. No. 8417 of 2005, with W.P. No. 8418 of 2005, with W.P. No. 8419 of 2005 and W.P. No. 8420 of 2005, the *State of Maharashtra Vs. Sangita d/o Raghvir Phatale and Ors.* In the common order passed in the W.Ps., the Hon'ble High Court had upheld the orders of this *Tribunal which had directed government authorities to ignore all the artificial technical breaks by condoning the same or sanctioning earned leave in respect of such artificial technical breaks. The Tribunal had further allowed Original Applications praying for increments and*

certain allowances for the lecturers teaching in Government Medical College for 9 to 10 years. This fact was also taken into account by the Hon'ble High Court and the writ petitions filed by the state of Maharashtra were dismissed. Thereafter, the state of Maharashtra had filed Civil Appeal (CC) No. 18902-18915 of 2010 against the order of Hon'ble High Court. Hon'ble the Apex Court upon hearing Counsel made the order dated 02.02.2011 dismissing the Special Leave Petition on the ground of delay as well as merits.

(C) Learned Advocate for applicant has cited another case law in which Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad, had delivered common judgment on 23.11.2017 in writ petition No. 772 of 2016, Writ Petition No. 798 of 2016 with Writ Petition No. 800 of 2016. The W.Ps. had been filed by state of Maharashtra against the orders of the Tribunal. The facts in this matter are that the respondents in these Writ Petitions had approached the Maharashtra Administrative Tribunal for considering the services rendered on ad-hoc basis prior to selection by the M.P.S.C. as Medical Officer – Group-A to be counted for *grant of increments, as well as, Earned Leaves and for other*

purposes. The Tribunal partly allowed the applications holding that the petitioners therein were entitled to condonation of break in ad-hoc service prior to the selection by M.P.S.C. as Medical Officer – Group “A” and that their earlier services spent on ad-hoc and temporary basis may be counted for grant of increments, as well as, Earned Leaves and for no other purposes. The State had assailed the said judgment in the present Writ Petitions. The Hon’ble High Court had observed and decided as follows-

“3. Learned advocate pointed out that in case of similarly situated persons those who were appointed as Associate Professors on adhoc basis and subsequently were selected through MPSC, the State had challenged the judgment of the Tribunal and they have withdrawn the writ petition and the Government Resolution is issued giving them benefit as was directed by the Tribunal. Present respondents are entitled to same benefit. Learned advocate further submits that Division Bench of this Court in Writ Petition No. 11611 of 2015 dated 23.03.2016 has upheld the judgment of the Maharashtra Administrative Tribunal in case of similarly situated Medical Officers and said judgment is not assailed by the State before the Apex Court. Considering the fact that similar relief

granted to the similarly situated Medical Officers by the Tribunal, has been upheld by this Court, we do not find any illegality in the same. We also adopt the similar view.

4. In view of above, the Writ Petitions are dismissed. No Costs.”

(D) On the other hand, learned Advocate for the respondent Nos. 4 and 5 in O.A. No. 238/2019 has cited the common judgment of a Division Bench of the Hon'ble High Court of Judicature, at Bombay in W.P. No. 7681/2011 with a batch of 40 Writ Petitions of the year 2014, dated 19.08.2015, State of Maharashtra and Ors. Vs. Dr. Vimal Dagdu Shinde, in which the order of the Tribunal at Principal bench was quashed and set aside and the matter was remitted to the Tribunal. The judgment covers background facts in entirety which had not been presented to Hon'ble High Court of Judicature at Bombay in other Writ Petitions. The relevant paras of the judgment in this Writ Petition is being reproduced below for ready reference:-

“3. In this matter before the Division Bench of Hon'ble High Court of Judicature at Bombay the Respondents were initially appointed as Medical Officers, Group-A in the Director of Health Services purely on ad hoc basis, by a notification dated

02.02.2009 issued by the Public Health Department, Government of Maharashtra for one time absorption of all the Respondents. The Respondents have executed the respective undertakings thereby undertook to accept the terms & conditions of Notification dated 02.02.2009. In pursuance of the undertakings, Respondents have been absorbed in service permanently on the post of Medical Officer. All the respondents filed their respective individual Original Application in Maharashtra Administrative Tribunal (MAT), Mumbai thereby, seeking direction against the Petitioners to grant them all the service benefits after completing one year service w.e.f. their initial date of appointment and also sought direction to extend the benefits of annual increment by condoning the technical breaks and to pay the arrears till date of the Application. By order dated 13.07.2009, MAT has allowed the Original Applications filed by the Respondents, only on the basis of the judgment and order dated 27.11.2008 passed by the Division Bench at Aurangabad in Writ Petition No. 3484 of 2005 (State of Maharashtra vs Dr. Sangita Phatale without giving opportunity to the petitioner to file Reply and that resulted into impugned order which is similar in every matter. Hence, these Petitions.

4. The Petitioner-State Government has challenged impugned order dated 13.07.2009, whereby, in spite of Government Resolution/ Notification dated 02.02.2009 in reference granting appointment / absorption to all the Respondents who worked on ad hoc basis as Medical Officer in the Maharashtra Medical and Health Services of the Government of Maharashtra, Group-A in the Director of Health Services of the Government of

Maharashtra service benefits have been extended to them.

5. *The MAT also without assigning any specific reason overlooked the specific clause 4 (v) & (vi) of the notification dated 02.02.2009, apart from other clauses, purpose and object of such scheme as under:*

4(v) while making absorption, an undertaking from the ad hoc Medical Officers regarding acceptance of terms & conditions laid down by the Government shall be obtained. The ad hoc Medical Officers to whom the said terms & conditions are not acceptable, they should not be considered for absorption;

(vi) the service rendered by the ad-hoc Medical Officer prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme.

6. *A statement is made by the Counsel for the parties and there is no denial to the fact that all such Medical Officers, who got the service benefits of this notification dated 02.02.2009 have given undertakings, whereby, they have accepted the absorption / confirmation of their services based upon clauses/ contents of the Notification in question.*

7.....

8. *This notification along with undertaking so given, in our view, are the basic documents which require to be considered while passing any order of granting service benefits, but MAT has excluded*

specifically in clause 4 (vi) and the undertakings so recorded above.

9. All the Respondents, therefore, after accepting the Notification / absorption orders and having given undertakings are bound by the same for all the time to come unless by an appropriate process challenge the same. They are legally bound by their own action and the condition.

10. The submission made by learned Counsel appearing for the Respondents that considering the facts and in similarly situated matters the State Government has, in some cases even granted the benefits to all other similarly situated persons, is unacceptable, as there is nothing on record to show that any specific challenge was raised to the Notification and its effect and the undertakings so given are remained intact till the date or not set aside and / or withdrawn. Some benefits granted to some other, in no way can be reasoned for the High Court to overlook the specific notification and undertaking specially when based upon the same all the parties have already acted upon. There is no reason to overlook this.

11. To consider the case of the Petitioners based upon the other grounds / reasons so referred revolving around the Division Bench judgment of the Court dated 05.04.211 in Writ Petition No. 2158 of 2011 and other connected Petitions, (The State of Maharashtra & ors. vs. Dr. Sachin T. Bandichhode) (P.220) (Coram: A. M. Khanwilkar and Mrs. Mridula Bhatkar, JJ,) which according to the Respondents is confirmed by the Supreme Court is also unacceptable submission. Above distinguishable facts and law was not discussed and decided. That itself, in our view, is no reason to overlook a specific agreement between the parties apart from

undertaking so referred to. The issue which was specifically raised in these petitions was not raised even in the case of State of Maharashtra vs. Sr. Sangita R. Phatale (supra). On the contrary, in that matter there was no such undertaking and /or Notification involved. The facts and circumstances, therefore, are totally different. The benefits even if granted in some matters, in our view cannot be extended blindly by overlooking the specific provisions of the Notification and the respective undertakings. The orders passed prior to the Notification are also of no assistance to the Respondents.

12. The submissions of Respondents, therefore, that benefits ought to have been granted and /or extended to such Medical Officers as already granted and extended in other matters, in the fact and circumstances and in view of the above, we are not inclined to accept. MAT has relied upon Sangita (supra) as well as order passed by the Division Bench dated 05.04.2011 (supra), however, not considered the special clauses of the Notification and the respective undertakings"

(E) Learned Advocate for the applicants had also cited yet another judgment dated 24.07.2019 of a Division Bench of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 11603 of 2015 with W.P. No. 11604 of 2015, with W.P. No. 11616 of 2015, with W.P. No. 1323 of 2016. These petitions had been filed by the State of Maharashtra & Ors. to take exception to a common order dated 10.12.2014 passed in a group of Original

Applications bearing No. 510/2013, 511/2013, 512/2013, 513/2013, 514/2013, 515/2013, 516/2013, 517/2013, 518/2013, 519/2013 and 520/2013 passed by the Maharashtra Administrative Tribunal, Aurangabad Bench and there is no particular dispute on that, the Original Applicants' request for condonation of technical break and to extend benefits of increments and leave for the period of ad hoc service had been allows. The Hon'ble High Court had observed that :-

“3. The State had earlier on preferred writ petition No. 11611 of 2015 filed against order in respect of the Original Application bearing No. 517 of 2013. Division Bench of this High Court deciding aforesaid writ petition No. 11611 of 2015 had observed that the Maharashtra Administrative Tribunal had adopted a similar view in its decision in Original Application No. 531 of 2013 and companion matters and said order had attained finality. The technical breaks are condoned only for the purposes of claiming increments and earned leave and not for the purposes of claiming seniority. It had further been observed that there is no inconsistency or irrationality in the view taken by the Tribunal. The writ petition accordingly had been dismissed.

4. *Learned counsel for respondent points out that a challenge had been posed to similar order, referring to that State had approached Supreme Court against order rejecting writ petition No. 3338 of 2005 and group of writ petitions passed on 14.02.2011 by way of Special Leave Petition Nos. 18902 to 18915 of 2010 and said Special Leave Petition Nos. 18902 to 198015 of 2010 and said Special Leave Petitions failed on the ground of delay as well as on laches.*

5. *An overbearing position emerges that the reasons which have weighed with this court in group of writ petitions bearing no. 668 of 2011 and in the one dated 23.03.2016 in writ petition No. 11611 of 2015 coupled with recent orders passed in similar circumstances by another Division Bench of this Court dated 23.11.2017 in a group of writ petitions bearing No. 772 of 2016 and companion matters, endorsing orders in original applications are not liable to be faulted with. We deem it appropriate to follow the suit.*

6. *Writ Petitions, are devoid of substance and stand dismissed.”*

Conclusion- After considering all the facts before me, in my considered opinion, the ratio in W.P. No. 7681/2011 & a batch of 40 Writ Petitions of the year 2014 in the State of Maharashtra

and Ors. Vs. Dr. Vimal Dagdu Shinde, decided by Hon'ble High Court of Judicature, at Bombay are the same as that in the present O.A. Moreover, it is also clear from the judgment delivered by Hon'ble High Court of Judicature at Bombay in the group Writ Petition that complete facts had been placed before the Court and the Hon'ble High Court had delivered judgment dated 19.08.2015 considering earlier judgments too. Therefore, in my considered opinion, in the interest of justice, orders need to be passed in the present O.A. Nos 204/ 2019, 238 of 2019 and 239 of 2019 basing on the judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition 7681 of 2011 & companion Writ Petitions, dated 19.08.2015.

(A) Now, we proceed to analyse other arguments as follows-

(a) Rules 8, 11 and 12 of Maharashtra Civil Services (Revised Pay) Rules, 2009 and rule 11 of Maharashtra Civil Services (Pay) Rules, 1981 have been relied upon by the applicants. These rules have come in force w.e.f. 01.01.2006. As per rule 2(1) which reads as follows :-

“(2) These rules shall not apply to, -

(a) Government servants not in the whole time employment;

- (b) *Government servants on consolidated rates of pay;*
- (c) *Government servants employed on contract except where the contract provides otherwise;*
- (d) *Government servants paid out contingencies;*
- (e) *Government servants borne on work charged establishment who are not on regular time scale and whose pay scales are not identical with the pay scales of the corresponding posts on the regular establishment;*
- (f) *daily rated employees;*
- (g) *Government servants who retired on or before the 31st December 2005 and who were on re-employment on that date including those whose period of re-employment extended after that date;*
- (h) *Government servants specifically excluded wholly or in part by the Governor of Maharashtra from the operation of these rules.”*

On perusal of above provisions it is clear that these Rules are not applicable in respect of present O.A. as they will find application on regular employees and not on ad hoc employees.

(b) The applicant has also relied on rule 11 of Maharashtra Civil Services (Pay) Rules, 1981. However, the said rule deals with pay fixation on appointment on a new post. Therefore, this rule also does not find applicability in the instant matter.

(c) Learned Advocate for the applicants has also relied on the Government Resolution dated 11.01.2019 bearing No. आयुसे-१०१८/प्र.क. १८५/ आयु-१ issued by the Medical Education and Drugs Department, however, it has not been shown that this provisions of it are applicable to the Public Health Department or whether the details of schemes of the two department are identical or not.

11. **Conclusion :-** From above analysis, it is apparent that there are two views of Hon'ble High Court of Judicature at Bombay, one emerging from the judgment dated 23.11.2017 delivered by Hon'ble High Court at Bombay, Bench at Aurangabad in W.P. No. 772 of 2016 and batch is to allow annual increments and leave for the period of service as ad-hoc Medical Officers to Medical Officers regularized as per provisions of Notification dated 02.02.2009. As per the second view emerging from the judgment dated 19.08.2015, in W.P. No. 7681

of 2011 and batch of 40 other Writ Petitions, the Medical Officers are bound by the terms and conditions of the Notification dated 02.02.2009, which the ad-hoc Medical Officers had accepted as a pre-condition of getting regularized. For the reasons stated in preceding paragraphs, I pass following orders in the present O.As. No. 204, 238 and 239, all of 2019, guided by the judgment passed by Hon'ble High Court of Judicature in W.P. No. 7681 of 2011 and batch, dated 19.08.2015. Therefore, I pass following order:-

ORDER

- (A) Original Application No. 204 of 2019, 238 of 2019 and 239 of 2019 are, hereby, dismissed for reason of being devoid of merit.
- (B) No order as to costs.

PLACE : AURANGABAD.
DATE : 29.10.2021.

(BIJAY KUMAR)
MEMBER (A)