

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 258 OF 2017**

DIST. : AURANGABAD

Dr. Deepashri w/o Govind Choudhary, )  
Age. 35 years, Occu. : Medical Officer )  
Group-A, Rural Hospital, Bidkin, )  
Tq. Paithan, District Aurangabad. ) .. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra, )  
Through Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai – 32. )
2. The Director of Health Service, )  
Arogya Bhavan, )  
St. Georges Hospital Campus, )  
Near C.S.T., Mumbai. )
3. The Deputy Director of Health )  
Services, Aurangabad Circle, )  
Aurangabad. )
4. The District Civil Surgeon, )  
District Civil Hospital, )  
Aurangabad. )
5. The Medical Superintendent, )  
Rural Hospital, Bidkin, )  
Tq. Paithan, District Aurangabad.).. **RESPONDENTS**

---

APPEARANCE :- Shri J.S. Deshmukh, learned Advocate for  
the applicant.  
: Shri S.K. Shirse, learned Presenting Officer  
for the respondents.

-----  
**CORAM** : **Hon'ble Shri B.P. Patil, Acting Chairman**  
**RESERVED ON** : **9<sup>th</sup> December, 2019**  
**PRONOUNCED ON** : **10<sup>th</sup> December, 2019**  
-----

## **O R D E R**

1. The applicant has challenged the order dated 30.11.2016 issued by the res. no. 1 thereby treating her leave period from 20.1.2013 to 5.1.2014 as extra-ordinary leave (without pay) on medical ground and the order dtd. 29.3.2017 issued by the Respondent no. 5 on the basis of communication dtd. 30.11.2016 issued by the respondent no. 1 directing her to deposit the salary for the period from 1.1.2013 to 29.6.2013 i.e. for 180 days, which was paid to her on account of maternity leave sanctioned by the respondent no. 3 and prayed to quash the said orders and prayed to direct the respondents to declare that she was entitled to maternity leave for the period from 20.1.2013 to 29.6.2013.

2. The applicant has passed the M.B.B.S. and completed her internship in the year 2004. Initially she was appointed on ad-hoc basis by the order dtd. 9.6.2005 for the period of one year from 10.6.2005 to 9.6.2006 as a Medical Officer. Thereafter she has completed her Post Graduate Diploma in Anesthesia (DA) in the year 2008. After completion of her Post Graduate Diploma she was again appointed on ad-hoc basis for 11 months from

14.5.2009 by giving technical breaks of one or two days. Thereafter by the order 10.7.2012 she was appointed on the post of Medical Officer through M.K.C.L. on probation for two years and posted at Rural Hospital, Bidkin, Tq. Paithan, Dist. Aurangabad. She resumed her duty from 8.8.2012 and since then she was working there.

3. It is her contention that she was pregnant in the year 2012 and therefore she was directed to take rest. Her expected date of delivery was 20.2.2013. Therefore she has filed application for maternity leave of 180 days as per the policy of the State Government w.e.f. 1.1.2013. She was admitted in the private hospital and gave birth to a male child on 10.2.2013 and she was discharged from the hospital on 11.2.2013. It is her contention that as per the provisions of the rules and G.Rs. she is entitled to take maternity leave of six months from 1.1.2013 to 30.6.2013. However, She had extended her leave for child care till 5.1.2014 and thereafter she resumed the duty w.e.f. 6.1.2014. It is her contention that the Government has taken a policy decision dtd. 28.7.1995 to grant maternity leave of 90 days to the female employees who are not in the permanent service and who have completed one year service. But the Government has issued the G.R. dtd. 24.8.2009 and extended the period of maternity leave up

to 180 days. As per the said policy of the Government and as per the provisions of rule 74 of the M.C.S. (Leave) Rules, 1981 the respondent no. 3 granted her maternity leave of 180 days from 1.1.2013 to 29.6.2013. Accordingly she received the salary for the said period. As she extended her leave for child care after maternity leave, the respondent no. 3 who was competent authority had sanctioned the maternity leave for 180 days from 1.1.2013 to 29.6.2013 vide order dtd. 23.12.2014 and sent a proposal to the respondent no. 1 for grant of extended leave from 30.6.2013 to 5.1.2014. The respondent no. 1 by the order dtd. 30.11.2016 treated her leave period from 20.1.2013 to 5.1.2014 as extra ordinary leave (without pay) on medical ground. Ultimate effect of the order dtd. 30.11.2016 passed by the respondent no. 1 is that the order dtd. 23.12.2015 which was passed by the respondent no. 3 granting maternity leave for 180 days to the applicant was cancelled thereby sanctioning leave for the period from 1.1.2013 to 19.1.2013 for 19 days only and rest of the leave for 351 days is treated as extra ordinary leave without pay.

4. She has made detailed representation through proper channel to the competent authority and requested to grant her maternity leave and child care leave instead of extra ordinary leave without pay on medial ground on 3.2.2017. However, pursuant to

the order dtd. 30.11.2016 passed by the respondent no. 1, the respondent no. 5 has issued the order dtd. 29.3.2017 and directed the applicant to deposit salary paid to her for 180 days from 1.1.2013 to 29.6.2013 in lump sum with the government. On the same day the applicant made a representation and requested the respondents not to recover the said amount. It is her contention that the impugned orders are against the provisions of the M.C.S. (Leave) Rules, 1981 and the G.Rs. issued by the Government from time to time. She rendered the service for more than four years on ad-hoc / temporary basis and thereafter she had been appointed by nomination on regular basis on the post of Medical Officer therefore she is entitled to get the maternity leave as per the rules and the G.Rs. It is her contention that this Tribunal in cases of similarly situated persons granted maternity leave to the probationers, but the respondents had not granted her claim. The impugned orders have been issued by the respondents in violation of the rules and the G.Rs. Therefore she approached this Tribunal and prayed to quash the impugned orders and direct the respondents to grant maternity leave for the said period.

5. The respondent no. 1 resisted the contentions of the applicant by filing his affidavit in reply. It is his contention that the applicant was appointed as a Medical Officer by nomination

on 10.2.2012. As per rule 74 of the M.C.S. (Leave) Rules, 1981 and the G.Rs. of the Finance Department dtd. 28.7.1995 and 24.8.2009 the applicant has not completed one year service for claiming the maternity leave and therefore maternity leave was not sanctioned to her. Not only this, the applicant did not complete five years continuous service for grant of extra ordinary leave as per the provisions of rule 63 of the M.C.S. (Leave) Rules, 1981 and G.R. dtd. 2.6.2003. However extra ordinary leave without pay was granted to her on compassionate ground though she was not entitled to claim maternity leave as per the said provisions. It is his contention that the applicant filed the application for leave within four months from joining the service. She has not completed her probation and one year service therefore she is not entitled to claim maternity leave. Therefore her application was rejected in view of the provisions of the M.C.S. (Leave) Rules, 1981. It is his contention that there is no illegality in the impugned orders. Therefore he justified the impugned orders and prayed to dismiss the O.A.

6. I have heard the arguments advanced by Shri J.S. Deshmukh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the

respondents. I have also perused the documents placed on record by both the parties.

7. Admittedly the applicant was initially appointed as Medical Officer on ad-hoc basis by the order dtd. 9.6.2005 for a period of one year and accordingly she served for the period from 10.6.2005 to 9.6.2006. Thereafter, she joined the P.G. course in the year 2008. After completion of her P.G. Diploma she was again appointed on ad-hoc basis for a period of 11 months from 14.5.2009 and thereafter by giving technical breaks of one or two days she was regularly appointed till 10.7.2012. Thereafter by the order 10.7.2012 she was appointed on the post of Medical Officer by nomination through M.K.C.L. on probation for two years and posted at Rural Hospital, Bidkin, Tq. Paithan, Dist. Aurangabad. She proceeded on maternity leave from 1.1.2013 to 30.6.2013 and she was on leave till 5.1.2014. She applied for maternity leave for 180 days as per the policy of the Government and in view of the provisions of the M.C.S.(Leave) Rules, 1981. The respondent no. 3 by the order dtd. 23.12.2014 sanctioned maternity leave for 180 days for the period from 1.1.2013 to 29.6.2013 to the applicant and he forwarded a proposal for grant of extended leave to her from 30.6.2013 to 5.1.2014 to the respondent no. 1. The respondent no. 1 by the impugned order dtd. 30.11.2016 treated

her entire leave from 20.1.2013 to 5.1.2014 as extra ordinary leave (without pay) on medical ground resulting into cancellation of earlier order dtd. 23.12.2015 passed by the respondent no. 3 thereby granting maternity leave for 180 days to the applicant and sanctioning leave for the period from 1.1.2013 to 19.1.2013 i.e. for 19 days only to the applicant and treating the rest of the leave for 351 days as extra ordinary leave without pay on medical ground. Admittedly, on the basis of the order dtd. 30.11.2016 passed by the respondent no. 1, the respondent no. 3 issued the order dtd. 29.3.2017 and directed the applicant to deposit the salary paid to her for 180 days from 1.1.2013 to 29.6.2013 in lump-sum with the government.

8. Learned Advocate for the applicant has submitted that the applicant was in continuous service since the year 2009. Initially she rendered service on ad-hoc basis with technical break for one or two days. She completed her Post Graduate Diploma in Anesthesia (DA) in the year 2008. After completion of her P.G. Diploma she was again appointed on ad-hoc basis for 11 months from 14.5.2009 by giving technical breaks of one or two days. Thereafter by the order dtd. 10.7.2012 she was appointed by nomination on the post of Medical Officer through M.K.C.L. on probation for two years and posted at Rural Hospital, Bidkin, Tq.



Paithan, Dist. Aurangabad. Since the applicant rendered more than 5 years continuous service, she was entitled to claim the maternity leave in view of the provisions of the rule 74 of the M.C.S.(Leave) Rules, 1981 as well as the provisions of the G.R. dtd. 24.8.2009. He has submitted that the respondents had not interpreted the provisions of the rules of M.C.S.(Leave) Rules, 1981 with proper perspective and rejected the claim of the applicant for maternity leave illegally. He has submitted that the probationer can be treated as a permanent employee and therefore the probationer is entitled to maternity leave in view of the provisions of rule 64 (2) of the M.C.S. (Leave) Rules, 1981, but the respondents had not considered it properly. In view of the provisions of rule 74 of the M.C.S. (Leave) Rules, 1981 the applicant is entitled to get maternity leave for the period for 180 days, but the respondents had wrongly rejected her claim and directed to recover salary of that period paid to her. The impugned orders are illegal. Therefore he has prayed to allow the O.A.

9. Learned Advocate for the applicant has further argued that the issue involved in this matter has been dealt with and decided by this Tribunal **in O.A. no. 67/2010 [Dr. Poornima w/o Ashwin Sonkamble Vs. the State of Maharashtra & Ors.]** decided on

13.10.2010, wherein this Tribunal has held that the probationer can be considered for grant of leave, as if he is a permanent Government employee, and accordingly granted maternity leave to the applicant in that case.

He has further submitted that this Tribunal in **O.A. no. 40/2015 [Dr. Sonali d/o Bhausaheb Sayamber Vs. the State of Maharashtra & Ors.]** decided on 11.3.2015 has granted similar relief to the another employee working in the department continuously except the break of one or two days in a year.

10. The case of the applicant in the present matter is covered by the decisions of this Tribunal in the above mentioned cases and the applicant in this matter is entitled to get maternity leave as claimed by her. Therefore he has prayed to allow the O.A.

11. Learned Presenting Officer has submitted that the applicant was appointed as a Probationer Officer by nomination by the order dtd. 10.7.2012. She served hardly for four months before proceeding on maternity leave. She was on leave from 1.1.2013 to 5.1.2014. She applied for maternity leave but she had not rendered one year continuous service as provided under rule 74 of the M.C.S. (Leave) Rules, 1981 and therefore the respondents has rightly rejected her claim for maternity leave and granted extra

ordinary leave on compassionate ground, though she was not entitled to claim the extra ordinary leave in view of the provisions of rule 63 of the M.C.S. (Leave) Rules, 1981. There is no illegality in the impugned orders therefore he supported the same.

12. On perusal of record it reveals that the applicant was initially appointed on ad-hoc basis as a Medical Officer from 10.6.2005 to 9.6.2006. Thereafter she had joined the Post Graduate Diploma in Anesthesia (DA) in the year 2008. After completion of P.G. course she was again appointed as a Medical Officer on ad-hoc basis for 11 months during the period from 14.5.2009 to 10.7.2012 with technical breaks of one or two days. On 10.7.2012 she was appointed by nomination on the post of Medical Officer through M.K.C.L. and posted at Rural Hospital, Bidkin, Tq. Paithan, District Aurangabad. She proceeded on maternity leave for 180 days from 1.1.2013 to 29.6.2013 as per the rules and G.Rs. Thereafter she extended her leave up to 5.1.2014. On 6.1.2014 she resumed the duty. The respondent no. 3 initially granted maternity leave for 180 days to the applicant for the period from 1.1.2013 to 29.6.2013 and forwarded a proposal for extended leave from 30.6.2013 to 5.1.2014 to the respondent no. 1. The respondent no. 1 had granted extraordinary leave (without pay) on medical ground to the applicant for the period from 20.1.2013 to 5.1.2014, vide its order dtd.

30.11.2016, resulting into rejection of her maternity leave for 180 days, which was earlier granted by the respondent no. 3. In view of the said order of respondent no. 1 the earlier maternity leave granted for 180 days by the respondent no. 3 has been deemed to be cancelled. On the basis of the said order of respondent no. 3, the respondent no. 5 issued the order dtd. 29.3.2017 and directed the applicant to deposit the salary paid to her for the period from 1.1.2013 to 29.6.2013. The respondents relied on the provisions of the Rule 74 of the M.C.S. (Leave) Rules, 1981 while rejecting her claim.

13. On going through the provisions of the M.C.S. (Leave) Rules, 1981, it reveals that the Rule 64 provides leave to the probationer and apprentice. It provides that the probationer is entitled for leave under these rules as if he had held his post substantively otherwise than on probation. Rule 64(2) provides that a person appointed to a post on probation shall be entitled to leave under these rules. Rule 74 of the M.C.S. (Leave) Rules, 1981 provides that the female Government servant in permanent employment, who does not have three or more living children on the date of the application is entitled for maternity leave for a period of 180 days from the date of its commencement and during such period she shall be paid leave salary equal to the pay drawn immediately

before proceeding on leave. It is further made clear that said leave shall not be debited to the leave account. On plain reading of said provisions show that the probationer can be considered for granting leave as if she is a permanent Government employee and she can claim maternity leave in view of the provisions of rule 74 of the M.C.S. (Leave) Rules, 1981.

14. The issue as to whether the probationer is entitled to maternity leave or any type of other leave in the first year has been dealt with and decided by this Tribunal in case of **Dr. Poornima w/o Ashwin Sonkamble Vs. the State of Maharashtra & Ors.** in **O.A. no. 67/2010** decided on 13.10.2010 and this Tribunal held that the probationer is entitled to maternity leave during the first year and she can be considered as if permanent government employee for grant of leave. In that case this Tribunal had granted maternity leave to the applicant therein during her probation. In that case also the applicant proceeded on maternity leave within a period of six months since she was regularized in service and during her probation period. Facts in the present case are identical with facts in the above cited cases. Therefore the principles laid down therein are applicable in this case. Not only this, but this Tribunal in case of Medical Officers appointed on ad-hoc basis has granted maternity leave treating

that the services rendered by the ad-hoc employees with technical break of one or two days can be treated as continuous service and accordingly extended the benefit of maternity leave to those employees. The said principle is also applicable in the instant case and on that ground the applicant is entitled to claim the maternity leave.

15. The respondent no. 1 has not considered the provisions of rule 64(2) and rule 74 of the M.C.S. (Leave) Rules, 1981 with proper perspective and wrongly held that the applicant is not entitled to get the maternity leave during the probation period. The observations and the reasons recorded by the respondents are not in consonance with said provisions and therefore they require to be quashed. The order dtd. 29.3.2017 issued by the respondent no. 5 on the basis of the impugned order dtd. 30.11.2016 issued by the respondent no. 1 directing the applicant to deposit the salary paid to her for the period from 1.1.2013 to 29.6.2013 i.e. for 180 days is illegal and therefore it requires to be quashed. Since the impugned orders are not in accordance with the rules and G.Rs. issued by the Government from time to time, the same require to be quashed by allowing the present O.A.

16. In view of the discussion in foregoing paragraphs, I pass the following order :-

**ORDER**

- (i) The O.A. No. 258/2017 is allowed.
- (ii) The impugned order dated 30.11.2016 issued by the res. no. 1 to the extent of rejection of maternity leave to the applicant and the order dtd. 29.3.2017 issued by the Respondent no. 5 are hereby quashed and set aside.
- (iii) The respondents are hereby directed to grant maternity leave for the period from 1.1.2013 to 29.6.2013 i.e. for 180 days to the applicant as per the rules.

There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 10<sup>th</sup> December, 2019**