

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NOS. 385 & 478 BOTH OF 2021**

**1. ORIGINAL APPLICATION NO. 385 OF 2021**

**DISTRICT : AURANGABAD**

Sachin s/o Bhanudas Jadhav, )  
Age : 25 years, Occu. : Service, )  
Safaigar in Govt. Medical College & Hospital, )  
Aurangabad, )  
R/o : B-2, Room No. 12, In front of New )  
Medicine Building, Medical Quarters, Hospital )  
Campus, Aurangabad, Dist. Aurangabad. )

.. **APPLICANT**

**V E R S U S**

1. **State of Maharashtra,** )  
Through, Secretary, )  
Medical Education & Research )  
Department, Mantralaya, Mumbai-32. )

2. **The Director,** )  
Medical Education & Research Department,)  
St. Gorge Hospital Complex, 4<sup>th</sup> Floor, )  
Bori Bander, Mumbai-400001. )

3. **The Dean,** )  
Govt. Medical College, Aurangabad. )

.. **RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 478 OF 2021**

**DISTRICT : AURANGABAD**

Syed Mujahed Syed Qutabuddin, )  
Age : 33 years, Occu. : Service, )  
Kaksha Sevak in Govt. Medical College & Hospital,)  
Aurangabad, )  
R/o : Budhi Lane, Kabadpura, Aurangabad, )  
Dist. Aurangabad. )

.. **APPLICANT**

**V E R S U S**

1. **State of Maharashtra,** )  
Through, Secretary, )  
Medical Education & Research )  
Department, Mantralaya, Mumbai-32. )
2. **The Director,** )  
Medical Education & Research Department,)  
St. Gorge Hospital Complex, 4<sup>th</sup> Floor, )  
Bori Bander, Mumbai-400001. )
3. **The Dean,** )  
Govt. Medical College, Aurangabad. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri V.G. Pingle, Advocate for the Applicants in  
both the O.As..

: S/shri I.S. Thorat & B.S. Deokar, P.Os. for  
respective Respondents in respective O.As.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **05.01.2023**

**Pronounced on** : **11.01.2023**  
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**C O M M O N - O R D E R****(Per : Shri Bijay Kumar, Member (A))**

1. Original Applications No. 385 of 2021 has been filed on 23.07.2021 and the Original Application No. 478 of 2021 has been filed on 17.08.2021 by the respective applicants, each invoking provisions of Section 19 of the Administrative Tribunals

Act, 1985, thereby, challenging impugned orders each dated 09.12.2020 passed by the Dean, Medical College & Hospital Aurangabad who is respondent no. 3 in both the matters.

**2. The facts of the O.A. No. 385 of 2021** : facts in the present matter which are undisputed may be summed up as follows :-

(a) The applicant Shri Sachin Bhanudas Jadhav is son of late Shri Bhanudas Sampat Jadhav who was working as a Class-IV servant with the government medical college & hospital Aurangabad and died on 15.02.2012. The applicant applied to the respondent no. 3 on 02.05.2012 for appointment on compassionate ground.

(b) The applicant was appointed by respondent no. 3 on compassionate ground on the post of Sweeper (Safaigar), which is a class-IV post, on ad-hoc basis for initial period of 29 days vide order passed by the respondent no. 3, dated- 20.09.2013 and given pay scale of Rs. 4440-74440, Grade Pay of Rs. 1300. From plain reading of the appointment order, relevant part of which is quoted below, it appears that the ad-hoc appointment was given subject to submission of requisite documents:-

**“विषय :- अनुकंपा यादिवरील उमेदवारांना २९ दिवस तत्वावर तात्पुरत्या स्वरूपात नियुक्तीबाबत.....**

संदर्भ :- १) संचालनालयाने पत्र क्र. सर्वेशिवस/शावैमरुओ/अनुकंपा/७फ/१२, दिनांक ०९.०७.२०१२.

२) श्री सचिन भानुदास जाधव, यांचा अर्ज दिनांक ०२.०५.२०१२.

उपरोक्त संदर्भीय पत्राअन्वये या संस्थेत अनुकंपातत्वावर नियुक्तीसाठी दिनांक २२.०८.२००५ नंतरच्या उमेदवारांची वर्ग-४ ची ज्येष्ठता यादीनुसार नियुक्ती देण्याबाबतच्या सुचना या कार्यालयास प्राप्त झाल्या आहेत. त्यानुसार या कार्यालयाकडे दिनांक २२.०८.२००५ नंतरच्या उमेदवारांची वर्ग-४ पदावर नियुक्ती देण्याबाबतची कार्यवाही करण्याकरिता संबंधित उमेदवारांकडून त्यांनी सादर केलेल्या प्रस्तावात त्रुटीची पुर्तताकरून सदरिल उमेदवारांना अनुकंपातत्वावर निव्वळ तात्पुरत्या स्वरूपात (२९) दिवसांकरिता नियुक्ती देण्याबाबत व तसेच आवश्यकते हमीपत्र घेऊन नियुक्ती देण्याचा निर्णय झाला आहे.

उपरोक्त संदर्भ क्रमांक २ नुसार मयत संपत जाधव यांचे पाल्य (मुलगा) श्री. सचिन भानुदास जाधव यांनी या कार्यालयास अनुकंपातत्वावर नियुक्ती बाबतचा प्रस्ताव सादर केल्यानुसार व ते सफाईगार पदाची अर्हता पुर्ण करीत असल्यामुळे त्यांना त्यांच्या कागदपत्रांच्या त्रुटीची पुर्तता करण्याच्या अधिन राहून व संचालनालय / शासनाकडून नियुक्तीबाबतचे पुढील आदेश प्राप्त होईपर्यंत निव्वळ तात्पुरत्या स्वरूपात (२९) दिवसासाठी सफाईगार या रिक्त पदावर रु.४४४०-७४४० ग्रेड वेतन १३०० या वेतन श्रेणीत नियुक्ती देण्यात येत आहे. सदर आदेशाच्या दिनांकापासून ७ दिवसांच्या आत या कार्यालयास आपण सदर पदावर रुजू होणे आवश्यक आहे. तसेच कामावर रुजू होतांना हमीपत्र या कार्यालयास सादर करावे. आपण कामावर रुजू होतांना हमीपत्र सादर न केल्यास रुजू करून घेता येणार नाही व आपले आदेश रद्द करण्यात येईल. तसेच आपण विहित कालावधित सदर पदावर रुजू न झाल्यास आपला या कार्यालयाकडे नियुक्ती मागण्याचा हक्क राहणार नाही.

सही/-  
शासकीय वैद्यकीय महाविद्यालय रुग्णलय,  
औरंगाबाद.”

(c) The applicant had continued in service on the same post, on ad-hoc basis, with technical breaks up to 01.03.2019.

(d) Applicant's ad-hoc service was regularized vide order of respondent no. 3, dated 01.03,2019 with effect from the date of order of regularization, on the post of Safaigar, in the pay scale of Rs. 4440-7440, Grade Pay- Rs. 1300.

(e) The applicant made representation dated 25.11.2020 to the respondent No. 3 for condonation of 92 days technical break in temporary services rendered by him in exercise of powers under rule 48 of Maharashtra Civil Services (Pension) Rules, 1982 so that he can get benefits of regular service w.e.f. date of his first appointment on ad-hoc basis. However, respondent no. 3 rejected the representation of the applicant vide order dated 09.12.2020.

(f) Hence, this application before this Tribunal seeking relief has been filed.

3. **The facts in O.A. No. 478 of 2021:** facts in the present matter which are admitted by the two sides of this matter may be summed up as follows:-

(a) Father of the applicant Shri Sayed Mujahed Sayed Qutbuddin in this matter, was serving in the Government Medical College Hospital & Hospital, Aurangabad as a

Class IV servant, who died on 13.10.2013. After death of his father, the applicant applied on 11.12.2013 for appointment on compassionate ground.

(b) The applicant was appointed by respondent no. 3 on the post of Safaigar (Sweeper) which is a class IV post, on compassionate ground on ad-hoc basis for 29 days vide order passed by respondent no. 3, dated 10.02.2014, in the pay-scale of Rs. 4440-7440, Grade Pay of Rs. 1300. The appointment order was conditional subject to compliance of submission of all requisite documents as mentioned in appointment order issued in O.A. No. 385/2021 extract of which has been reproduced in para 2(b) of the order.

(c) The applicant continued as ad-hoc Safaigar from 10.02.2014 till 29.05.2020. Thereafter, the applicant was given regular appointment by respondent No. 3 vide his order dated 03.06.2020 in Senior scale S-1 with revised pay-scale of Rs. 15000-47600.

(d) The applicant submitted his representation dated 15.07.2021 to the respondent no. 3 (Annexure A-3, page 23 of the O.A.) for condonation of break in his ad-hoc services of 111 days, in exercise of powers vested in him by rule 48

of the Maharashtra Civil Services (Pension) Rules, 1962 which has been rejected by respondent no. 3 vide communication dated 23.07.2021 which is enclosed as Annexure A-4 at page 25 of the O.A.

(e) Hence the applicant has filed this application seeking relief.

4. As the facts in the two original applications are similar, they are being taken together and a **Common Order** is being passed with consent of the parties to the dispute, as doing so is not likely to cause prejudice to any of the parties to this matter.

**5. Relief Prayed for** :- The applicants in the two original applications had prayed for similar relief of condonation of technical break in their service prior to regular appointments and grant them benefits of continuous service from the date of their first ad-hoc basis appointments. For ready reference the prayers made in the two matters are being reproduced verbatim as follows:

(I) **Relief Prayed for in O.A. No. 385/2021 is as quoted below:-**

**“(VII) FINAL RELIEF:**

**IT IS THEREFORE PRAYED:-**

- (A) *The original application may kindly be allowed.*
- (B) *The impugned order dated 09.12.2020 passed by the respondent No. 3 may kindly be quashed and set aside.*
- (C) *By issuing order or direction respondent No. 3 may kindly be directed to count the continuity of service of applicant w.e.f. 20.09.2013 to 28.02.2019 by condoning break of 92 days service of applicant, to grant increments to applicant from his initial date of appointment i.e. 20.09.2013 and accordingly fix the pay scale.*
- (D) *By issuing order and direction the respondent may kindly be directed to pay arrears of increments from 20.09.2013 to applicant within reasonable time.*
- (E) *Any other relief to which the applicant is entitled may kindly be granted.*

(II) **Relief Prayed for in O.A. No. 478/2021 is as quoted below-**

**“(VII) FINAL RELIEF:**

**IT IS THEREFORE PRAYED:**

- (A) *The original application may kindly be allowed.*
- (B) *The impugned order dated 23.07.2021 passed by the respondent No. 3 may kindly be quashed and set aside.*
- (C) *By issuing order or direction respondent No. 3 may kindly be directed to count the continuity of service of applicant w.e.f. 12.02.2014 to 29.05.2020 by condoning break of 111 days' service of applicant, to grant increments to*



*applicant from his initial date of appointment i.e. 10.02.2014 and accordingly fix the pay scale.*

*(D) By issuing order and direction the respondent may kindly be directed to pay arrears of increments from 10.02.2014 to applicant within reasonable time.*

*(E) Any other relief to which the applicant is entitled may kindly be granted.”*

**6. Pleadings and Final Hearing:-**

(a) Affidavits in reply on behalf of respondent Nos. 1 to 3 in both the matters were filed by learned Presenting Officer on 08.06.2022, which were taken on record and copies thereof supplied to the other side. The Applicants filed affidavits in rejoinder on 27.06.2022 in both the matters which too were taken on record and copies thereof provided to the learned Presenting Officer. With consent of both the sides the matters were fixed for final hearing which took place on 05.01.2023, thereafter, the matters were closed for passing common orders.

(b) During final hearing held on 05.01.2023, the two sides could not clarify following critical points even upon being specifically asked for by this Tribunal, though answer to a number of them have been there in O.A./ Affidavits in

Reply or Rejoinder Affidavits, as the case may be. Such critical points and factual positions in respect of them are as elaborated below:-

*(i) What were the constraints of issuing ad-hoc appointment orders on compassionate ground in favour of the two applicants and continuing on ad-hoc basis for about 6 years' period with technical breaks of total 92 and 111 days respectively? It is observed that the respondent No. 3 has issued order w.r.t. a communication issued by the respondent No. 2 dated 09.07.2012. However, it is considered proper to analyze this issue separately and the same has been done in para 7 that follows.*

*(ii) From plain reading of ad-hoc appointment orders on compassionate ground issued in favour of the two applicants it is evident that the orders had been issued after verifying their eligibility but orders were subject to completion of applications in respect of submission of requisite documents. However, it has not been mentioned as to what were the documentary compliances subject to which appointments on ad-hoc basis were given and at what point of time compliances had been made?*

*(iii) Both the applicants have cited the case of condonation of break in ad-hoc services of one Shri Bhaskar K. Bhalerao by respondent no. 3 vides his order 25.02.2002, as a precedent, copy the related order is at page no. 18 of O.A. No. 385/2021 and also*

*at page no. 21 of O.A. No. 478/2021. The respondents have not given any cogent reply to this objection despite the fact that the said order itself contains the reference of this Tribunal's Order in O.A. No. 2789/1990, dated 28.09.1996 based on which respondent no. 3 had issued order dated 25.02.2002.*

*(iv) The applicants have cited another case of condonation of technical break in ad-hoc services of one Shri Ramdas Rohidas Dhillod vide order of respondent no. 3, dated 07.02.2018. The respondents have not been able to cite cogent reasons for not granting similar benefits to the applicants even though it is clear from the reference of order of this Tribunal in O.A. (Stamp) No. 20/ 2018 (O.A. No. 82/2018), dated 30.07.2018 has been made in the said order of condonation of break.*

*(v) Order dated 17.01.2019 regarding extension of ad-hoc appointment of the applicant in O.A. No. 385 of 2012, from 01.02.2019 to 01.03.2019, copy of which is at page no. 15 of O.A. No. 385 of 2012, shows that there were 32 similarly situated ad-hoc Class- IV workers as on 17.01.2019. Similarly, order dated 03.06.2020 regarding extension of ad-hoc appointment of the applicant in O.A. No. 478 of 2021 from 02.05.2020 to 29.05.2020, a copy of which is at page No. 19 of O.A. No. 478 of 2021, it appears that there were total 19 similar cases as on 03.06.2020. Respondents have not been able to clarify as to what*

*happened in respect of those other similarly situated class IV servants appointed on ad-hoc basis.*

*(vi) On matching the two orders of extensions, it appears that the extension order dated 17.01.2019 comprises of all the 19 names which appear in the order dated 03.06.2020. The respondents have not been able to clarify as to how the number of ad-hoc appointees in Class IV got reduced from 32 to 19 over a period from 17.01.2019 to 03.06.2020?*

**7. Analysis of Merit of Facts on Record and Oral Submissions Made:-**

(a) Respondents have submitted a copy of communication made by the respondent No. 2 with respondent No. 3 bearing No. सवैशिवस/शवेमरुओ/अनुकंपा/७फ/१२, dated 09.07.2012, which has a reference of Government Resolution dated 22.03.2012 issued by Finance Department bearing No. पदनि-२०१२/प्र.क.१५/१२/वित्तीय सुधारणा-१, मंत्रालय, मुंबई-३२. On perusal of the said G.R., it is clear that there had been a blanket ban on recruitment of applicants in wait list on or after 22.08.2005 for appointment on compassionate ground on Class-III and Class-IV posts in government offices and government owned institutions which receive grants from government. However, vide the said G.R. dated 22.03.2012, relaxation was granted in

matters of recruitment on compassionate grounds whose names appeared in waiting list up to 31.12.2011. As the applicants in the two O.As. had applied for appointment on compassionate grounds on 02.05.2012 and 11.12.2013 respectively, they were not covered by exemption provided from ban on appointment on compassionate ground on Class III and Class IV posts.

(b) Further, from the copy of communication made by the respondent no. 2 i.e. the Director, Medical Education & Research, Mumbai, bearing No. सविशिवस/शावेमरुओ/अनुकंपा/७फ/१२, dated 09.07.2012 addressed to respondent No. 2 it is also clear that the respondent No. 2 had advised the respondent No. 3 to appoint candidates on waiting list for appointment on compassionate ground to Class IV posts on 29 days' ad-hoc appointments. However, the respondent No. 2 has not specifically mentioned that candidates whose names appeared in waiting list for compassionate ground appointment after 31.12.2011 too have to be given appointment by resorting to appointment on ad-hoc basis. For ready reference, relevant parts of the directions issued by respondent no. 2 to respondent No. 3, a copy of which is

at page 35 of O.A. No. 385/2021) is being reproduced as follows :-

“ चतुर्थश्रेणी कर्मचा-यांच्या नियुक्तीसाठी आपण म्हणजेच संस्थाप्रमुख सक्षम प्राधिकारी आहेत. मात्र शासनाने (वैद्यकीय शिक्षण विभागाने) पत्र दि. ५ जून, २००९ व दि. १७ जानेवारी, २०११ च्या शासन निर्णयानुसार चतुर्थश्रेणी पद भरतीवर निर्बंध घातले आहेत व दि. १२ जानेवारी, २०१२ च्या शासन पत्रान्वये त्याचा पुनरुच्चार करण्यात आला आहे. शासनाच्या आदेशावरून संचालनालयाने वर्ग-४ संवर्गातील (अपंग संवर्ग वगळता) कोणतीही पदे भरू नये, असे निर्देश आपणांस दिले होते. असे असताना वित्त विभागाच्या दि. २२ मार्च, २०१२ च्या शासन निर्णयाचा आधार घेवून वर्ग-४ च्या संवर्गातील अनुकंपा तत्वावरील ७ उमेदवारांना आपण नियमित नियुक्त्या दिल्या आहेत. वर्ग-४ संवर्गातील पदे भरण्यावर शासनाचे म्हणजेच वैद्यकीय शिक्षण विभागाचे निर्बंध असताना, अनुकंपा तत्वावरील पदे का भरण्यात आली, याबाबतचा खुलासा तात्काळ या संचालनालयास सादर करावा.

आपल्या संस्थेत दि. १५.०४.२०१२ रोजी मा. संचालक, वैद्यकीय शिक्षण व संशोधन, मुंबई यांचे अध्यक्षतेखाली झालेल्या बैठकीत अनुकंपा तत्वावरील उमेदवारांना २९ दिवस तत्वावर निव्वळ तात्पुरत्या स्वरूपात आवश्यक ते हमीपत्र घेऊन नियुक्ती देण्याचा निर्णय झाला आहे. सदर बैठकीत झालेल्या निर्णयानुसार अनुकंपा तत्वावरील २९ दिवस तत्वावर नियुक्ती देण्याबाबतची कार्यवाही करण्यात यावी.

सही/-  
संचालक,  
वैद्यकीय शिक्षण व संशोधन, मुंबई”

8. **Conclusion:** Affidavits in reply on behalf of respondents Nos. 1 to 3 have been filed by an associate professor under respondent no. 3. The respondents have not clarified as to why the respondent No. 2 had permitted appointment of candidates from waiting list for compassionate ground on ad-hoc basis on 29 days? The respondent No. 2 has also not clarified whether he intended to permit ad-hoc appointment to the candidates who

came in waiting list after 31.12.2011, the cut-off of date set by G.R. dated 22.03.2012 (supra) for appointment on regular basis. It has also not been clarified by the respondents whether all similarly situated persons have been treated alike by respondent No. 3. It is also not clarified whether any proposal has been submitted by respondent no. 2 before respondent No. 1 for post-facto approval of the guidance issued by respondent No. 2 to respondent No. 3 regarding issuing appointment orders to wait listed candidates under compassionate ground in deviation with cost cut measures of the state government notified vide GR of Finance Department dated 22.03.2012 validity of which has not been challenged by the applicants. It is also not clarified by either of the contesting parties as on which date the ban on appointment on class-IV post on compassionate ground of candidates, whose names did not appear in waiting list dated 31.12.2011 was vacated. In view of totality of facts before us, following order is being passed :-

**ORDER**

Original Application No. 385 of 2021 with Original Application No. 478 of 2021 is being partially allowed in following terms :-

- (A) Respondent No. 3 is directed to condone technical breaks in ad-hoc services of the applicants in both the Original Applications, whose names appeared in waiting list after 31.12.2011, which had been applied after lifting of ban on appointment on class IV posts on compassionate grounds as per the G.R. dated 22.03.2012, by orders of competent authority. This action is directed to be completed within 6 weeks' of receipt of this order.
- (B) Respondent No. 2 shall submit within two weeks a proposal to respondent no. 1 for post facto sanction of directions issued by respondent no. 2 to respondent no 3, bearing No. सवैशिवस/शावेमरुओ/अनुकंपा/७फ/१२, dated 09.07.2012. Respondent No. 1 to take *appropriate* decision on the same within eight weeks from receipt of the proposal and communicate the same to respondent Nos. 2 and 3 for implementing the same.
- (C) Service benefits under this order shall be available to only those class-IV servants covered under clause (B) above, who had fulfilled eligibility criterion as prescribed under government resolution issued by



General Administration Department regarding appointment on compassionate ground such as waiting list number, qualification, age, nomination, and limitation etc., on the date of their first appointment on ad-hoc basis.

(D) Benefits allowed under this order may be extended to all other similarly situated Class IV servants under respondent no. 3 who had been granted appointment on compassionate ground by respondent no. 3 on the basis of communication issued by respondent no. 2 and bearing No. संवैशिवस/शवैमरुओ/अनुकंपा/७फ/१२, dated 09.07.2012.

(E) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb/D.B. O.A. No. 385 & 478 both of 2021 VDD & BK 2023 Appointment**