

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.44/2013

DISTRICT:- AURANGABAD

Dr. Rashmi d/o. Prabhakar Dhale,
Age : 30 years, Occ. Medical Practitioner,
Presently residing at 302, Royal Vista,
Opposite Dhantoli Park, Dhantoli,
Nagpur-12.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Medical Education and Medical Drugs
Department, Mantralaya, Mumbai.
2. The Director,
Medical Education and Research,
Government Dental College and Hospital
Building St. George's Hospital Compound,
Mumbai-400 001.
3. The Dean,
Government Dental College and
Hospital, GHATI, Aurangabad.

...RESPONDENTS

APPEARANCE : Shri Abasaheb D. Shinde, Advocate
for the Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

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

**Reserved on : 04-01-2024
Pronounced on : 28-02-2024**

O R D E R
(PER: JUSTICE SHRI P. R. BORA, V.C.)

1. Heard Shri Abasaheb D. Shinde, learned Counsel for the Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities.

2. By filing the present O.A. applicant has challenged the communication/order dated 20-12-2012 issued by respondent no.3 whereby the services of the applicant as Lecturer have been brought to an end and the applicant has been called upon to pay an amount of Rs.5,00,000/- (Rs. Five lacs only) as penalty for committing breach of the terms and conditions of the bond executed by her at the time of her admission to P.G. course.

3. Applicant did her MDS from the Government Dental College and Hospital, Aurangabad. As per the PGD-CET 2007 brochure, student selected for the post-graduate course (i.e. MDS course) was required to sign a bond with 2 sureties to serve the Government of Maharashtra/Local Self Government/Armed Force Services for a period of 2 years, failing which he/she will be required to pay Rs.500,000/- for default. Such a bond was executed by the applicant

while taking admission to the MDS course at Government Dental College & Hospital at Aurangabad.

4. After the applicant completed the course of MDS, an advertisement was published on 20-09-2010 thereby inviting applications from bonded candidates for the post of Lecturer. The applicant applied for the said post and was given an order of appointment on 19-10-2010 for a period of 120 days i.e. till 15-02-2011. Applicant accordingly joined the said post on 19-10-2010 and worked till the afternoon of 15-02-2011. By that time, further order of continuation in services was not received. The applicant, therefore, wrote a letter to the Head of the Department bringing to her notice that further order continuing her appointment beyond 15-02-2011 is not received. It is the case of the applicant that thereafter, the applicant stayed for few days at Aurangabad, waiting for the order of continuation of her service, it is her further contention that, since the orders were not issued, she left Aurangabad and returned to Nagpur i.e. at her native place.

5. It is the further contention of the applicant that in June, 2011 she came to know from Shri Digambar Kamble, who had remained as Surety for her, while

executing the bond, that letter dated 13-06-2011 was issued calling upon the applicant to report to work or else the bond amount of Rs.5,00,000/- (Rs. Five Lacs Only) will be recovered from her. On 20-06-2011, applicant gave reply to the notice dated 13-06-2011. She communicated that she has not disobeyed any order and as such was not liable to any action. She further communicated that she was pregnant and was advised to take complete rest. Certificate was also attached by the applicant to her said reply. On 27-06-2011 applicant sent a notice to the Dean, Government Dental College, Aurangabad through her lawyer for taking back the notice issued to the sureties on the bond. The applicant through the said notice also communicated to the Dean that she was prepared to join at Nagpur and serve for remaining bond period. Request was, therefore, made for giving her posting at Nagpur. It is the contention of the applicant that the respondents did not give any response to the request so made by the applicant.

6. According to the applicant, she did not commit any breach of the conditions of the bond and hence is not liable for any action against her. The applicant has, therefore, prayed for setting aside the order whereby the recovery has been directed against her of Rs.5,00,000/-.

The declaration has also been sought by the applicant as about the communication dated 20-12-2012 to be bad in law and contrary to the provisions of law.

7. Respondents have filed their joint affidavit in reply. It is the contention of the respondents that for continuation of the services of the applicant beyond 120 days, Medical Fitness Certificate of the applicant as well as Police Verification Report and Special Assessment Report from the Head of the concerned department were to be submitted. However, since the applicant left Aurangabad before 17-02-2011, the aforesaid formalities could not be completed. It is further contended that Assistant Commissioner of Police, Nagpur vide his letter dated 19-03-2011 conveyed that the applicant was working in Mumbai and her relatives refused to give the information and as such it was not possible for him to complete the police verification and to issue certificate accordingly in favour of the applicant. It is the further contention of the respondents that on 17-02-2011, appointment was issued for further period of 120 days i.e. for the period of 18-02-2011 to 17-06-2011. Respondents have claimed that the aforesaid letter was received to the applicant. It is the further contention of the respondents that thereafter on

27-04-2011 a notice was sent to the applicant requiring her to immediately report for duties. However, applicant did not act upon the said notice. It is the further contention of the respondents that subsequently on 13-06-2011, 16-08-2011 and 08-12-2011 reminders were sent to the applicant and despite that since the applicant did not report for duties, the respondents were compelled to cancel her appointment of 364 days and to direct recovery of bond amount of Rs.5,00,000/- from her. On all aforesaid grounds, the respondents have prayed for dismissal of the O.A.

8. Shri Abasaheb D. Shinde, learned Counsel appearing for the applicant submitted that the appointment for the period of 364 days as alleged by the respondents was never issued in favour of the applicant. Learned Counsel submitted that respondents have not produced on record copy of the said order, most probably, for the reason that no such order was ever issued by the respondents. Learned Counsel further submitted that bonded candidates used to be temporarily appointed 120 days at a time. Learned Counsel invited our attention to the advertisement dated 28-09-2010 to buttress his contention that it was also pertaining to the appointments of bonded candidates

for the period of 120 days. Learned Counsel thereafter invited our attention to the order of appointment issued in favour of the applicant on 19-10-2020 and more particularly clause 15 thereof, and submitted that terms and conditions mentioned in the said clause were never observed by the respondents. Learned Counsel submitted that the applicant cannot be said to have committed breach of the bond for the reason that the respondents did not issue any further order of appointment after the applicant rendered the services for 120 days in pursuance of the order of appointment dated 19-10-2010.

9. Learned Counsel pointed out that though the respondents have contended that the next appointment order was issued on 17-02-2011, no such order ever was issued in favour of the applicant. Learned Counsel pointed out that information which the applicant collected through Right to Information Act reveals that the proposal for continuation of the order of appointment of the applicant was not forwarded till 15-02-2011 and till said date, there were no orders of the Government for continuation of the applicant after 15-02-2011. Learned Counsel further submitted that in the legal notice sent by the applicant through her lawyer, it was specifically averred that the

applicant was prepared to join at Nagpur and serve for the remaining period of the bond. Learned Counsel submitted that in view of this undertaking given by the applicant respondents must have given her an opportunity to complete her bond period by giving her suitable posting in the Dental Hospital at Nagpur or at any other like institution. Learned Counsel pointed out that the applicant even in the present O.A. has reiterated her undertaking to complete the remaining bond period by filing additional affidavit in rejoinder in that regard. Learned Counsel in the circumstances prayed for allowing the O.A.

10. Shri V.R.Bhumkar, learned P.O. reiterated the contentions raised in the affidavit in reply filed on behalf of the respondents. He further argued that the applicant was fully aware of the fact that as per the bond executed by her she was under an obligation to give her services for the period of about 2 years in any Government Hospital or Institution run by the Local Organization or in the Defense Services and inspite of that the applicant did not make any amend to complete the bond period. In the circumstances, according to the learned P.O. the respondents have, per se, proved that the applicant has committed breach of bond executed by her and she is, therefore, liable to pay the

amount of Rs.5,00,000/-. Learned P.O. in the circumstances, prayed dismissal of the O.A.

11. We have duly considered the submissions made and the documents produced on record by the applicant as well as by the respondents. It is not in dispute that while taking admission to P.G. course the applicant executed bond to the effect that after completing the said course she will serve the Government of Maharashtra or Local Self Government or Armed Force Services for two years. The question is how and in what manner the applicant or any other bonded candidate could have discharged the aforesaid obligation ? It is not that immediately after a student completes the post-graduation, job is kept ready for him and he has to work on the said post and continue to work for the period not less than 2 years. From the G.Rs. and Circulars placed on record by the applicant, it is abundantly clear that the State Government has to provide such appointment and the bonded candidate at his own cannot join on any post in the Medical College and/or Hospital and start giving services there for the period not less than 2 years.

12. G.Rs. dated 10-08-2001, 10-04-2002 and 07-09-2010 and Circular dated 27-02-2004 which are produced on record in the present matter deal with the process to be adopted for giving appointments to the bonded candidates in the various Government Medical Colleges and Hospitals. Conjoint reading of the aforesaid G.Rs. and Circular reveal that:

(i) The bonded candidates are being temporarily appointed on the post of Lecturer in the Government Medical Colleges to fill up vacant posts for the period till MPSC selected candidates become available to be appointed on the said posts.

(ii) The bonded candidates are appointed to fill up such posts initially for the period of 120 days only.

(iii) Having regard to the vacancies available in the cadre of Assistant Lecturers if the initial appointments of the bonded candidate is decided to be continued for the further period, more particularly, to continue the bonded candidates for the period of 360 days, such proposal is to be forwarded to the Director, Medical Education before 60 days of the expiry of the period of first appointment of the said bonded candidate.

(iv) If appointment for 360 days is not possible the bonded candidate may be re-appointed for the further period by giving one day's break. For that purpose the exhaustive proposal with reasons is to be submitted to the Director, Medical Education at least 2 months before the period of his first appointment expires.

(v) If such proposal is received the Director, Medical Education shall submit the said proposal to the Government and approval of the Government is to be obtained.

(vi) If the proposal for continuation of the bonded candidate for the further period is received after expiry of the period of first appointment, the Government will not approve such proposal.

(vii) The bonded candidate is required to execute the bond that he will work on the post on which he is appointed for the maximum period of 2 years and even before expiry of the said period if regularly selected candidate becomes available to be appointed on the said post, he will vacate the said post.

13. At this juncture itself it has to be stated that in paragraph 15 of the first order of appointment dated 19.10.2010 issued in favour of the applicant it has been specifically stated that if the continuation order is not received within 120 days from the date of appointment, the first appointment order for the period of 120 days would automatically cease to operate thereafter.

14. In light of the terms and conditions as aforesaid, it has to be examined whether the action initiated against the applicant can be sustained.

15. We deem it appropriate to reproduce hereinbelow the order dated 20.12.2022 as it is in vernacular (paper book page 48 of O.A.), which reads thus:

“महाराष्ट्र शासन

शासकीय दंत महाविद्यालय व रुग्णालय, औरंगाबाद

GOVT. DENTAL COLLEGE & HOSPITAL, AURANGABAD.

Phone:- 2402383, 2402382, 2402381

Fax : (0240) 2402383,

क्र. रु // र्द / त्र/ 9668/12 र्द :- 20 DEC 2012

र्द

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. श प्र दा ,

- , अपाटमेन्ट,

प्लॉ . - , र्द , गं , ४४००१०.

र्द :- . श प्र दा , त्र ल

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त्र ा फि त्र क्क रु , , /- (रु
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स्वाक्षरी/—

अधिष्ठाता,

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प्र द फि शिक्षण , माहितीस्तव फि .”

16. Perusal of the aforesaid letter-cum-order reveals that the respondents held the applicant guilty of

unauthorisedly remaining absent w.e.f. 15-02-2011. To hold the applicant guilty on the aforesaid count, first it must be shown that there was an appointment order for the said period and inspite of that applicant did not join the duties and remained absent. Appointment order dated 19-10-2010 was only up to the office hours of 15-02-2011 (120 days). In the said appointment order it was specifically mentioned that if the continuation to the said order or fresh appointment order is not received before the period of said appointment expires, after office hours of 15-02-2011 the applicant shall cease to be in the employment. Undisputedly, no continuation order was received till 15-02-2011 and the applicant was, therefore, left with no option except to record the said fact and submit it to her Head of the Department. Letter so submitted by the applicant to the Head of the Department is at Exhibit-E in the paper book of the present O.A. It bears acknowledgement evidencing receipt of the said letter in the concerned department. Respondents also have not denied or disputed the said fact since there was no continuation order, there was no reason for the applicant to continue on the post on which she was temporarily appointed. Even otherwise, without order of continuation or fresh order,

even the Head of the Department or Dean also would not have allowed the applicant to discharge the duties of the said post. In the circumstances, it is difficult to accept that the applicant was unauthorisedly absent from 15-02-2011.

17. Moreover, the basic question arises how on the basis of the order allegedly issued on 08-07-2011, the applicant can be alleged to have unauthorisedly remained absent w.e.f. 15-02-2011. Neither in the order dated 20-12-2012 nor 23-11-2011 there is reference of any order evidencing appointment of the applicant for the period from 15-02-2011 onwards.

18. In the affidavit in reply submitted on behalf of the respondents, it is mentioned that a fresh order dated 17-02-2011 was issued in favour of the applicant for next 120 days i.e. up till 17-06-2011, however, applicant did not join and remained absent. Applicant has candidly denied that any such order was received to her at any point of time. It is also the contention of the applicant that no such order was ever issued in her favour. In view of the specific denial by the applicant, the burden was on the respondents to prove that, the order dated 17-02-2011 was served upon the applicant or that it was within the knowledge of the

applicant. In the affidavit in reply filed on behalf of the respondents, it has been also mentioned that one day's technical break was given to the applicant i.e. on 16-02-2011 and her services were to be continued from 17-02-2011. If this is the case of the respondents, then it is contrary to the averments in the letter-cum-order dated 20-12-2012 or the order dated 23-11-2011 wherein the applicant is alleged to be unauthorisedly absent from 15-02-2011.

19. It is significant to note that, neither in the letter dated 20-12-2012 nor in the order dated 23-11-2011, there is any reference of the order dated 17-02-2011. Alongwith the affidavit in reply, respondents have annexed the copies of the letters dated 06-04-2011, 27-04-2011 and 13-06-2011. Contents of the letter dated 06-04-2011 reveal that the applicant was given an appointment for 364 days for the period between 16-02-2011 to 14-02-2012. In the said letter, the reference is given of order dated 19-10-2010 as well as the application that was submitted by the applicant on 15-02-2011 and the 3rd reference is of some office order dated 05-03-2011. We deem it appropriate to reproduce hereinbelow the first paragraph of the letter, which reads thus [paper book page 69 of O.A.]:

“उपरोक्त संदर्भीय क्रमांक (१) आदेशानुसार आपणांस अधिव्यख्याता, दंतपरिवेष्टनशास्त्र या पदावर दि. १९.१०.२०१० ते १५.०२.२०११ पर्यंत (१२०) दिवसांसाठी तात्पुरत्या स्वरूपात नियुक्ती देण्यात आली होती. आपण संदर्भ क्र.(२) च्या अर्जात शासनाकडून नियुक्ती पुढे चालू ठेवणेबाबत आजतागायत आदेश प्राप्त झाले नसल्याचे दमूद केले आहे. त्यानंतर आपणास दिनांक १६.२.२०११ ते १४.२.२०१२ पर्यंत (३६४) दिवसांकरिता नियुक्ती देण्यात आलेली आहे. परंतु आपण दि.१७.२.२०११ पासून कामावर गैरहजर असल्याबाबतचे विभाग प्रमुखांनी या कार्यालयास कळविले आहे.”

20. In letter dated 06-04-2011 there is no reference of the order dated 17-02-2011. It refers to an appointment order allegedly issued in favour of the applicant for 364 days during the period between 16-02-2011 to 14-02-2012. The said order is not placed on record by the respondents. The material aspect to be noted is that, altogether different facts and dates have come on record. In the order dated 23-11-2011 as well 20-12-2012 there is reference of order dated 08-07-2011 for appointment of 364 days starting from 19-10-2010 to 17-10-2011 whereas in the letter dated 06-04-2011 the period is given as 16-02-2011 to 14-02-2012. In their affidavit in reply, respondents have not provided any explanation in this regard nor have produced on record the relevant documents i.e. the appointment orders.

21. In the letter dated 06-04-2011, the applicant is given ultimatum in last paragraph that if she fails to join within 7 days of receipt of the said letter, she will be subjected to deposit the bond amount and the necessary actions will be initiated in that regard. In the subsequent letter dated 27-04-2011, there is reference of the letter dated 06-04-2011. In the said letter, it is stated that since the applicant had not resumed the duties as directed in the letter dated 06-04-2011, she has become liable to pay the bond amount of Rs.5,00,000/- to the Government. In the said letter again the applicant is called upon to resume the duties immediately after receipt of the said letter. In the letter dated 13-06-2011, there is reference of both the aforesaid letters dated 06-04-2011 and 27-04-2011. In the said letter it is again reiterated that since applicant has not reported to the duties, she is entitled to pay the bond amount and further that such process is being initiated. In none of the aforesaid letters the order dated 17-02-2011 is, however, referred.

22. It is asserted by the applicant that none of the aforesaid letters is served upon her. In so far as the letter dated 13-06-2011 is concerned the applicant came to know

about the said notice from Dr. Digambar Kamble, who was one of the sureties to the applicant on the bond executed by her since the copy of the said letter was also marked to him. In the affidavit in reply filed on behalf of the respondents they have referred to the aforesaid documents. We reiterate that in the order dated 23-11-2011 or in the letter-cum-order dated 20-12-2012, there is absolutely no reference of the alleged order dated 17-02-2011 and the letters dated 06-04-2011, 27-04-2011 as well as 13-06-2011.

23. In the letter dated 06-04-2011, there is no reference of the order allegedly issued on 17-02-2011; on the contrary, in the said letter, the order which is stated to be issued in favour of the applicant is from 16-02-2011. In the affidavit in reply, a different fact is stated that on 16-02-2011 technical break was given to the applicant. In the affidavit in reply the order dated 17-02-2011 is stated to be for the period between 18-02-2011 to 17-06-2011. Thus, in the order dated 17-02-2011, in the letter dated 06-04-2011 in the order dated 23-11-2011 and the further order dated 20-12-2012, different dates and different periods have come on record in so far as the appointment of the applicant after 15-02-2011 is concerned.

24. Respondents have annexed one letter dated 12-09-2011 with their affidavit in reply. Said letter was sent to the Collector, Nagpur by the Dean of the Government Dental College and Hospital, Aurangabad (Respondent No.3). In the said letter, the Collector, Nagpur has been requested to initiate action against the applicant for recovering the bond amount of Rs.5,00,000/- from her alleging breach of the conditions in the said bond. It is necessary to note that, in the said letter there is no reference of the order dated 08-07-2011. In the said letter respondent no.3 has corroborated the fact that order dated 19-10-2010 was for 120 days only. It is further stated that a proposal was forwarded to Government for 364 days appointment of the applicant. It is however not stated whether such 364 days appointment was issued or not. If the further averments in the said letter are considered, the only inference which emerges therefrom is that no such appointment was issued. Respondents have not explained why there is no reference of the order dated 08-07-2011 in the notice which was issued more than two months thereafter.

25. In the communication dated 12-09-2011 it is averred that proposal for 364 days appointment to the applicant could not be processed because applicant did not remain present after 15-02-2011. The question arises on what basis then the order dated 08-07-2011 was issued and that too retrospectively w.e.f. 19-10-2010 and for 364 days.

26. As per the G.R. dated 10-08-2001, which lays down the procedure for appointments of bonded candidates in the Government Medical Colleges, if the 364 days continuation is to be given to the bonded candidates appointed for 120 days, the proposal in that regard is to be forwarded prior to minimum 60 days preceding to the date on which the period of first appointment would expire. As per the information obtained by the applicant under Right to Information Act, such proposal was not forwarded within that period but was forwarded on 15-03-2011. Respondents have not placed on record the copy of the said proposal. In teeth of the allegations that applicant unauthorisedly remained absent w.e.f. 15-02-2011, the question arises why the respondent no.3 then forwarded the proposal for continuation of the applicant for 364 days on 15-03-2011. As per the G.R. dated 10-08-2001, even for

continuation of the applicant for next 120 days, the proposal was to be forwarded to the Government before 60 days preceding to 15-02-2011. It is not the contention of the respondents that such proposal was forwarded. In the circumstances, how the appointment order dated 17-02-2011 was issued by respondent no.3 has not been explained by the respondents.

27. Applicant has denied the issuance of any such order. Respondents have not brought on record any evidence showing that the said order was served upon the applicant. Moreover, as we have noted hereinabove in none of the subsequent correspondence allegedly made by the respondents, there is reference of the said order. On the contrary, in the immediate next letter dated 06-04-2023 the reference is given of 364 days appointment issued on some different date and not of 17-02-2011. Copy of the said appointment order of 364 days is not produced on record. In absence of any such evidence and considering the other correspondence containing contrary information, it is difficult to hold that order dated 17-02-2011 was issued by respondent no.3.

28. Considering the pleas raised by the respondents in their affidavit, additional affidavit and the documents filed on record by them, it is evident that respondents have utterly failed in substantiating that after the period of first appointment expired on 15-02-2011 any other appointment for further period was ever issued in favour of the applicant. Without such order, applicant could not have served and/or rendered her services. In the circumstances, it is difficult to accept the allegation raised by the respondents that applicant remained unauthorisedly absent w.e.f. 15-02-2011 and hence is liable to pay the bond amount of Rs.5,00,000/- to the Government.

29. Respondents have filed on record Government Order/G.R. dated 23.11.2011 (Exhibit 'R-2'). Vide the said order the respondents have cancelled the appointment of the applicant on the post of Assistant Professor in Dental Periodontics at Government Dental College and Hospital at Aurangabad made vide order dated 08.07.2011 for the period between 19.10.2010 to 17.10.2011 (364 days). In the said order it is further directed that the Director, Medical Education and Research shall according to the Rules recover the bond amount from the applicant for her unauthorized absence from duty w.e.f. 15.02.2011.

Respondents have not placed on record order dated 08.07.2011. Order which is not placed on record and there is no evidence on record showing that the said order was served upon the applicant, the said order has been cancelled and the recovery has been directed of the bond amount holding that the applicant had committed breach of the bond conditions by unauthorisedly remaining absent from 15.02.2011. In no case absence of the applicant from 15.02.2011 can be held to be unauthorized absence and can be made actionable on the basis of the order which was not served upon her.

30. We reiterate that, applicant (bonded candidate) at her own could not have worked on any post in the Government Medical College or Government Hospital. To prove the fact that applicant remained unauthorisedly absent w.e.f. 15.02.2011 respondents must have brought on record the evidence showing that, the appointment order was issued in favour of the applicant appointing her on the post of Assistant Professor in Dental Periodontics in Government Medical College and Hospital at Aurangabad w.e.f. 15.02.2011.

31. We have elaborately discussed hereinabove that the respondents have not brought on record any evidence to show that any order was issued and served upon the applicant continuing her services after the period of her first appointment expired. We have also discussed that different dates have come on record through the affidavit in reply as well as the documents annexed thereto by the respondents. Respondents have utterly failed in substantiating their contentions that despite issuance of the appointment orders applicant failed in resuming the duties. Respondents have utterly failed in establishing that relevant orders of appointment were served upon the applicant.

32. After having considered the entire facts on record we have no hesitation in holding that the respondents have utterly failed in bringing on record any evidence showing that after expiry of her first appointment on 15.02.2011, the applicant was ever served with any other appointment order for 364 days as per the contentions raised by them in their affidavit in reply. In absence of such evidence, it is difficult to accept the contention of the respondents that applicant unauthorisedly remained absent and hence, is liable to pay

the bond amount of Rs.5,00,000/-. **The order dated 20.12.2012, therefore, deserves to be quashed and set aside. It is accordingly, quashed and set aside.**

33. Lastly, we wish to observe that the applicant way back in the year 2013 had shown her willingness to work for the remaining period of the bond. It was her further contention that since she had at that time shifted to Nagpur and had suffered certain problems in her pregnancy, she be given appointment on any vacant post at Nagpur. Respondents have not denied or disputed the said fact. Respondents have not explained whether any response was given to the request so made by the applicant. In the rejoinder affidavit the applicant had reiterated her readiness and willingness to serve the Government for remaining period of the bond. The Government is not precluded from taking appropriate decision in that regard.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 28-02-2024.