

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 598 OF 2023

DISTRICT : LATUR

Dr. Jitendra s/o Gokulprasad Jaiswal,)
Age : 44 years, Occu. Service as)
Medical Officer Group-A, Rural Hospital)
Babhalgaon, Tq. & Dist. Latur,)
At present : Pediatrician Group-A at)
District General Hospital, Palghar,)
Tq. & Dist. Palghar.)

V E R S U S

- 1) The State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
8th Floor, G.T. Hospital,)
New Mantralaya, Mumbai – 1.)
- 2) The State of Maharashtra,)
Through its Secretary,)
General Administration Department)
Mantralaya, Mumbai – 32.)
- 3) The Commissioner, Health Services,)
Directorate of Health Services,)
Arogya Bhavan, Near CST Station))
St. Georg Hospital Compound,)
National Health Mission, Mumbai.)
- 4) The Director,)
Health Services, Maharashtra State,))
Arogya Bhawan, Saint George Hospital))
Campus, Mumbai.)

) .. **RESPONDENTS**

APPEARANCE : Shri S.B. Bhosale, Counsel for Applicant.
: Shri N.U. Yadav, Presenting Officer for
respondent.

CORAM : JUSTICE P.R. BORA, VICE CHAIRMAN.

RESERVED ON : 06.11.2023

PRONOUNCED ON : 02.01.2024

ORDER

Heard Shri S.B. Bhosale, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent.

2. The applicant has applied for the post of Medical Officer (Pediatrician) in response to the advertisement No. 283/2021 issued by the Maharashtra Public Service Commission (for short the M.P.S.C.). Total 14 posts were to be filled in. On 13.12.2022, the M.P.S.C. published the list of the candidates eligible for recommendation. The name of the applicant was included in the said list at sr. no. 04 in order of merit. On 19.1.2023, Email from the Government was received to the applicant requiring the applicant to opt the revenue division of his choice and accordingly submit the indemnity bond with the Government. On 19.1.2023, the applicant opted for Aurangabad Revenue Division and accordingly submitted the indemnity bond. However, when the postings were given by

the respondents, the applicant was posted in a different revenue division i.e. at Malegaon in Nasik Revenue Division vide order dated 28.4.2023. Within 24 hours, another communication was received to the applicant, whereby the respondents had cancelled the earlier posting of the applicant at Malegaon in Nasik Division and a fresh posting was given to the applicant at Palghar in Konkan-1 Division.

3. It is the grievance of the applicant in the present Original Application that the respondents have wrongly given posting to the applicant firstly at Malegaon in Nasik Division and thereafter on the next day i.e. on 29.4.2023 at Rural Hospital at Palghar, District Thane in Konkan-1 Revenue Division discarding his request or option exercised by him for his appointment in Aurangabad Revenue Division. It is the further contention of the applicant that while issuing the order of appointments at the places beyond the choices exercised by the applicant, the respondents have violated the provisions of Maharashtra Government Allotment of Revenue Divisions for appointment by nomination and promotion to the posts in Group 'A' and Group 'B' (Gazetted and Non-Gazetted) Rules, 2021. It is the further contention of the applicant that in Aurangabad Revenue Division, for which the applicant had

exercised the option, still 02 posts are vacant. It is the further contention of the applicant that on the strength of the Rules of 2021 the options were called for by the candidates considering the vacancy position and when the vacancies are there in the Aurangabad Division, the respondents must have given the appointment on the vacant post in Aurangabad Revenue Division.

4. Learned counsel for the applicant submitted that the provisions under Revenue Division Allotment Rules, 2021 are not followed in the proper spirit and prospective and on this ground alone, both the appointment orders issued by the Government are liable to be quashed. It has also been argued by the learned counsel that the respondents have not explained why within 24 hours the appointment made of the applicant at Malegaon in Nasik Revenue Division was cancelled and for what reason the applicant has been given appointment at Rural Hospital, Palghar, which comes under Konkan-1 Revenue Division. On all these grounds, the applicant has sought quashment of the order passed by respondent no. 01 on 29.4.2023. The applicant has further sought direction against the respondent no. 02 to consider his case for appointment in Revenue Division at Aurangabad. In the alternative, the applicant has prayed for directions against the respondents to

consider and decide his representation dated 29.4.2023 submitted by him for change in his Revenue Division.

5. The respondents have resisted the contentions raised and the prayers made in the Original Application. The respondents have not disputed that the applicant had exercised his option for Aurangabad Revenue Division and further that there were vacant posts at the relevant time in Aurangabad Revenue Division. It is, however, the further contention of the respondents that the Revenue Division Allotment for appointment by nomination and promotion to the posts of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 and Notification to that effect published on 28.4.2015 are superseded by the "Maharashtra Government Allotment of Revenue Divisions for appointment by nomination and promotion to the posts in Group 'A' and Group 'B' (Gazetted and Non-Gazetted) Rules, 2021" and these rules of 2021 are presently holding the field. It is the further contention of the respondents that the allotment of Revenue division is being done in the order of merit. It is further contended that the respondents had decided to allot 02 posts of Medical Officer (Pediatrician) in the specialist cadre in Aurangabad Revenue Division and since, the applicant stands

at Sr. No. 04 in the merit list, considering the preferences given by the candidates, who were there in the merit list ahead of the applicant, and the posts to be filled in in Aurangabad Revenue Division were allotted to the said candidates. It is further contended that, in the circumstances, there was no other option except to give posting to the applicant in some other Revenue Division than Aurangabad. It is further contended that the applicant cannot insist for a particular place for his posting. On the above grounds, the respondents have prayed for dismissal of the Original Application.

6. I have duly considered the submissions made on behalf of the applicant, as well as, the respondents. Majority facts are not in dispute, hence I would not repeat the same. Admittedly, "Rules of 2015" are substituted with "Rules of 2021" and presently said Rules are holding the field. As mentioned in the Original Application, in "Rules of 2015" there was a provision to extend the benefit of couple convenience and interchange in Revenue Division. As per Rule 6(5)(a) of Allotment Rules of 2021, the allotment of Revenue Division is made by taking into consideration the preferences given by the officers as per their rank/number in the Merit List / Select list and within the limit of number of posts decided for allotment in equal

proportion of Revenue Division wise vacant posts as specified in rule 6(4)(d). Rule 6(5)(b) of the said Rules provide that after following the procedure as prescribed in rule 6(5)(a), if there is no post available in the Revenue Division preferred by the applicant, then the allotment of Revenue Division to such officer shall be made by rotation in the remaining Revenue Divisions, which are remained for allotment. It is further provided that while allotting Revenue Division by rotation, the order of allotment shall be in the sequence of Nagpur, Amravati, Aurangabad, Kokan-1, Nashik, Kokan-2 and Pune. As further provided in the said Rule, the Revenue Division will be allotted in accordance with rank/number in Merit List / Select List of the candidate concerned.

7. It has been argued on behalf of the respondents that having the considered the Rules as aforesaid, the respondents have not committed any illegality as alleged by the applicant. Admittedly, the number of the applicant is at Sr. No. 04 in the merit list. In the circumstances, if the first 02 candidates, who are admittedly holding the more meritorious position than the applicant if had opted for Aurangabad Revenue Division, obviously the seats were to be allotted in their favour. In this context, it has been argued by the learned counsel appearing for

the applicant that more than 02 posts of Medical Officer (Pediatrixian) were vacant in Aurangabad Revenue Division and in the circumstances, despite the fact that first 02 candidates were given Aurangabad Revenue Division, the applicant will also could have been allotted the Aurangabad Revenue Division and accordingly, posting at vacant post of Medical Officer (Pediatrixian) in Aurangabad Region. The contention so raised on raised on behalf of the applicant is difficult to be accepted in view of the provisions under Rule 6(5)(a) of the Rules of 2021, which provides that the allotment of Revenue Division would be made within the limit of number of posts decided for allotment in equal proportion of Revenue Division wise vacant posts as specified in rule 6(4)(d).

8. After having considered the facts as aforesaid in background of the Allotment Rules of 2021, there appears no error on part of the respondents in not allotting the Revenue Division of Aurangabad to the applicant for which he had given his preference for the reason that it was allotted to some more meritorious candidate than the applicant.

9. It is, however, the case of the applicant that the applicant opted Aurangabad Revenue Division on account of

illness of his father. As has been submitted by the applicant, father of the applicant is cardiac patient and requires constant attention and treatment. The applicant has placed on record the relevant papers in that regard. Learned counsel for the applicant has brought to my notice that still few posts are vacant of the Medical Officer (Pediatrician) in Aurangabad Revenue Division and in the circumstances; the applicant can very well be accommodated on the said vacant post.

10. The respondents have not explained as to why earlier posting was given to the applicant at Malegaon in Nashik Revenue Division and why for said appointment was required to be cancelled and substituted with an order, whereby the applicant has been given posting at Palghar, which come under Konkan-1 Division. As has been informed by learned counsel, the applicant has joined at Palghar and is discharging the duties of his post at the said place.

11. Learned counsel submitted that considering the serious ailment of the father of the applicant, the respondents can now also be directed to consider the case of the applicant for change in Revenue Division. Learned counsel submitted that such change is permissible under Rules of 2021.

12. My attention was invited to the provisions under Rule 12 of Rules of 2021. Rule 12 (1) provides that after allotment of Revenue Division as per the provisions of rules, the concerned officer may apply for change in the Revenue Division only after completion of one year service in the allotted Revenue Division, on account of the serious ailments to the officer himself or his spouse or children or father or mother, brother or sister and in case of lady officer, her father-in-law or mother-in-law, who are dependent on her and staying together. In the ailments, which are notified, the heart disease is included therein. As has been further informed by the applicant, the applicant will be completing the period of 01 year within few days.

13. Considering the facts as aforesaid, it appears to me that the present Original Application can be disposed of with the following directions: -

ORDER

- (i) It would be open for the applicant to submit a fresh application for change in Revenue Division after completing the period of 01 year of service at Palghar by elaborating the reasons therein.

- (ii) If such an application is submitted by the applicant, the respondents shall consider the same sympathetically within a period of 06 weeks from the date of filing of such application, however, in accordance with the Rules of 2021.
- (iii) The Original Application stands disposed of in above terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 02.01.2024