

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 675 OF 2021
WITH
MISC. APPLICATION NO. 410 OF 2021

DIST. : NANDED

Dr. Balaji s/o Madhavrao Mirkute,)
Age. 39 years, Occ. : Medical Officer,)
Group – A, Primary Health Centre,)
Kapsi (Bk), Tq. Loha, Dist. Nanded.).. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Public Health Department,)
8th floor, G.T. Hospital Bldg.,))
New Mantralaya, Mumbai – 1.)
2. The Commissioner of Health &)
Director (N.H.M), 3rd floor,)
Arogya Bhavan,)
St. Georges Hospital Campus)
Near C.S.T., Mumbai.)
3. Deputy Director of Health Services,))
Latur Circle, Latur, MIDC Latur.)
4. The Chief Executive Officer,)
Zilla Parishad, Nanded.)
5. Dr. Shamrao s/o Laxman Sawant,))
Age – Major, Occ. Medical Officer,))
Group –A, P.H.C. Kurula,))
District - Nanded.).. **RESPONDENTS**

APPEARANCE :- Shri J.S. Deshmukh, learned Advocate
for the applicant.
: Shri I.S. Thorat, learned Presenting
Officer for the respondent authorities.
: Shri V.B. Wagh, learned counsel for
respondent no. 5.
: Shri A.B. Shinde, learned counsel for
respondent no. 4 (**absent**).

CORAM : Hon'ble Shri Justice P.R. Bora, Vice Chairman
DATE : 10th January, 2023

ORDER

1. Heard Shri J.S. Deshmukh, learned counsel for the applicant, Shri I.S. Thorat, learned Presenting Officer for respondent authorities and Shri V.B. Wagh, learned counsel for respondent no. 5. Shri A.B. Shinde, learned counsel for respondent no. 4 (**absent**).

2. By filing the present Original Application the applicant has challenged order dated 13.10.2021 whereby respondent no. 5, Dr. Shamrao s/o Laxman Sawant, has been transferred and posted at P.H.C., Kapshi, Tq. Loha, Dist. Nanded.

3. Few facts, which are relevant to be noted down for decision of the present OA, are thus :-

Vide order dated 9.8.2021 the applicant was transferred at Loha, Dist. Nanded on the post of Taluka Health Officer. Applicant accordingly resumed the charge of the said post and then made a request for his transfer from the said post. His representation was considered and vide order dated 17.9.2021 the applicant was transferred as Medical Officer at PHC, Sindhi, Tq. Umri, Dist. Nanded. However vide the same order dated 17.9.2021 one Dr. Maroti Jagdish Hanmant was also transferred as Medical Officer at PHC, Sindhi, Tq. Umri, Dist. Nanded. Since there was only one post of Medical Officer at Sindhi and dual posting was made on the said post the Chief Executive Officer, Zilla Parishad, Nanded made a correspondence with the Deputy Director of Health Services, Latur Circle to give suitable posting to the applicant. Accordingly vide communication dated 22.9.2021 the Deputy Director, Health Services, Latur Circle directed the District Health Officer, Zilla Parishad, Nanded to give posting to the applicant at PHC, Kapsi (Bk), Tq. Loha, Dist. Nanded, subject to *post facto* approval of the State. Accordingly the applicant sought permission vide his letter dated 23.9.2021 to join at

Kapsi, Tq. Loha, Dist. Nanded as Medical Officer at PHC there. The CEO, ZP, Nanded accordingly passed an order on 1.10.2021 thereby posting the applicant at PHC at Kapshi, Tq. Loha, Dist. Nanded and relieved him from the post of Taluka Health Officer, Loha, Dist. Nanded.

4. It is the contention of the applicant that from 1.10.2021 he is discharging the duties as Medical Officer at PHC, Kapshi, Tq. Loha, Dist. Nanded. Subsequently on 13.10.2021 the Government issued an order and thereby transferred respondent no. 5 as Medical Officer at PHC at Kapshi, Tq. Loha, Dist. Nanded where the applicant was already discharging his duties. Aggrieved by the order so passed, the applicant has approached this Tribunal by filing present OA seeking quashment of the said order dated 13.10.2021. At the time of filing application, the applicant had also requested for interim relief thereby seeking stay to the order dated 13.10.2021. However, the then learned Member did not accept the request made by the applicant observing that it was mere apprehension of the applicant that because of posting of respondent no. 5 vide the impugned order he was likely to be ousted from the said post. It was also observed by the Tribunal that there were 2 posts of Medical Officer at PHC, Kapshi, Tq. Loha, Dist. Nanded

and at the relevant time as there was nothing specific on record as to in whose place respondent no. 5 was appointed out of 2 MOs there, it would not be appropriate to grant the stay.

5. However, thereafter on 13/14.12.2021 further order came to be passed whereby respondent no. 5 was posted in place of the present applicant as Medical Officer, PHC at Kapshi, Tq. Loha, Dist. Nanded and the applicant was transferred and posted to the post of Medical Officer, PHC at Kurala, Dist. Nanded. After such an order was passed the applicant preferred Misc. Application No. 410/2021 seeking stay to the subsequent order dated 13/14.12.2021. This Tribunal vide order passed on 20.12.2021 has stayed the said order dated 13/14.12.2021. The applicant is thus till today working on the post of Medical Officer at PHC at village Kapsi, Tq. Loha, Dist. Nanded.

6. Learned counsel for the applicant submitted that the applicant was already posted at PHC, Kapsi, Tq. Loha, Dist. Nanded on the strength of order passed by the Deputy Director of Health Services, Latur Circle and when proposal was already forwarded by the Deputy Director seeking post facto approval vide his communication dated 22.9.2021, no order could have

been passed of posting respondent no.5 in place of the applicant as Medical Officer at PHC, Kapsi. Learned counsel submitted that though the applicant was transferred at PHC at Sindhi, he did not press for further order allowing him to resume the said post for the reason that in the same order one Dr. Maroti Jagdish Hanmant was appointed on the same post and there was thus dual posting on the said post. Request was, therefore, made by the applicant to post him at some different place and accordingly under orders of Deputy Director of Health Services, Latur Circle, the CEO Zilla Parishad, Nanded posted the applicant at Kapsi and accordingly, the applicant resumed the charge of the said post on the strength of order dated 13.10.2021. Learned counsel further submitted that respondent No. 5 was also posted at some different place and on his request subsequent order dated 13.10.2021 came to be passed thereby posting him as a Medical Officer at PHC at Kapsi. Thus, so far as appointment on the post of Medical Officer at PHC Kapsi is concerned, there has been dual posting however, as the applicant was already working there it was respondent no. 5, according to contention of the applicant, to make request before appropriate authority for his suitable posting at some different place. Learned counsel for the

applicant submitted that even otherwise propriety demands that person who was given the posting subsequently, has to make a request before appropriate authority for his suitable posting and it was unjust and improper to again transfer the applicant from the said post at some different PHC. Learned counsel in the circumstances has prayed for setting aside the order dated 13.10.2021.

7. Despite availing due opportunities the respondents i.e. respondent Nos. 1 to 4 failed to file their affidavits in reply and hence, matter has been directed to be proceeded without affidavits in reply by my learned Predecessor. Respondent No. 5 has filed affidavit in reply and has opposed the contentions made in the O.A., as well as, prayers made therein. In the affidavit in reply it is the contention of respondent No. 5 that posting given to the applicant vide order dated 22.9.2021 was a temporary arrangement subject to approval from the State Government. It is further contended that since the Government has not approved the said proposal and on the contrary has posted respondent No. 5 on the said post it has to be impliedly held that no sanction was accorded to the appointment of applicant on the post of Medical Officer at PHC at Kapsi Tq. Loha. It is the further contention of the said respondent that

order dated 13.10.2021 has been passed by the competent authority whereby respondent No. 5 has been posted as Medical Officer at PHC at Kapsi and as against it there is no order from the State Government posting the applicant as Medical Officer at PHC at Kapsi. In the circumstances, according to respondent No. 5, applicant has not made out any case for causing interference in the impugned order, whereby applicant has been posted as Medical Officer at PHC at Kapsi. Learned counsel for respondent No. 5 has submitted that the applicant himself did not make any representation with the competent authority i.e. the State Government, seeking posting at some different place in view of the fact that there was dual posting on the post of Medical Officer at PHC at Sindhi. For the aforesaid reason, according to respondent no. 5, the applicant has lost right to challenge the order dated 13.10.2021 whereby the applicant has been posted as Medical Officer at PHC at Kapsi, Tq. Loha, Dist. Nanded. The learned counsel submitted that no case is made out by the applicant for quashment of the order dated 13.10.2021. He, therefore, prayed for rejection of the OA.

8. According to the learned PO, the Government has not committed any error in posting respondent no. 5 at PHC at village Kapsi vide the impugned order. It is further contended

that even otherwise also the posting of the applicant at PHC at village Kapsi was subject to approval from the State Government. It is further contended that posting of respondent no. 5 at the said place must be held as impliedly rejection of the proposal forwarded to the Government seeking post facto sanction for posting of the applicant at PHC at village Kapsi. Learned PO also therefore prayed for dismissal of the OA.

9. I have duly considered the submissions advanced on behalf of respective parties, as well as, learned PO appearing for the State authorities. I have gone through the pleadings of the parties and the documents filed by them in support of their respective contentions. It is not in dispute that initially the applicant was transferred at Loha, Dist. Nanded vide order dated 9.8.2021. It is further not in dispute that the applicant resumed at the transferred place and then made a representation seeking posting at village Shindhi, Tq. Umri, Dist. Nanded as Medical Officer at PHC there. It is also not in dispute that request so made by the applicant was considered and vide order dated 17.9.2021 the applicant was given posting at village Sindhi as Medical Officer of PHC there. It is further not in dispute that vide same order one Dr. Maroti Jagdish Hanmant was also posted as Medical Officer at PHC at village

Sindhi. In view of the fact that dual transfers were made at village Sindhi, the applicant made a request with the respondents to post him at any suitable place. Accordingly the Deputy Director of Health Services, Latur Region directed the District Health Officer, Z.P., Nanded to post the applicant as Medical Officer at PHC at village Kapsi. It is further not in dispute that the Deputy Director of Health Services, Latur Region vide communication dated 22.9.2021 sought post facto approval for posting given to the applicant at PHC at village Kapsi. It appears to me that when the proposal dated 22.9.2021 was already under consideration of the Government and when there is reason to believe that the Government was quite aware of the fact that the applicant has been posted at village Kapsi as Medical Officer of PHC there, it could not have posted respondent no. 5 on the same post.

10. The State authorities have admittedly not filed any affidavit in reply to the OA. Since there is nothing on record from the side of the State Government as to what was the reason for not considering the proposal forwarded by the Deputy Director of Health Services, Latur Region seeking post facto approval to the posting given to the applicant at PHC at

village Kapsi, even if it is accepted that there was dual posting on the post of Medical Officer at PHC at village Kapsi, first claim on the said post must be held of the applicant, who was discharging his duty on the said post. In the order dated 13.10.2021 or in the order thereafter passed on 13/14.12.2021 no reason has been assigned for shifting the applicant from the said post. It, therefore, appears that there was no special reason for shifting the applicant from the place where he was already working. I, therefore, see substance in the objection raised on behalf of the applicant against the order dated 13.10.2021. Without taking any decision on the proposal forwarded by the Deputy Director of Health Services, Latur Region in respect of posting given to the applicant at PHC at village Kapsi no further order could have been passed by the respondents thereby posting respondent no. 5 in place of the applicant. The impugned order, therefore, deserves to be set aside and quashed. Hence, the following order :-

ORDER

- (i) The Original Application and Misc. Application both stand allowed. The interim relief granted vide order dated 20.12.2021 in the M.A. stands merged in this final order.

(ii) The impugned order dated 13.10.2021 is accordingly quashed and set aside.

(iii) There shall be no order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 10th January, 2023