

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 841 OF 2019

DIST. : AHMEDNAGAR

Dr. Sandip Jagannath Ghugare,)
Age. 41 years, Occu. : Service as)
Medical Officer, Group-A,)
R/o Vidya Nagar, Miri Road,)
Near Shevgaon Court, Shevgaon,)
Tq. Shevgaon,)
Dist. Ahmednagar - 414 502) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
10th Floor, Complex Building,)
G.T. Hospital, Complex Building,)
M.S. Mantralaya,)
Mumbai-400 001.)
2. The Commissioner of Health Services,)
Aarogya Bhavan,)
Saint Georges Hospital,)
Near C.S.T., Mumbai.).. **RESPONDENTS**

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.
: Shri I.S. Thorat, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 28th November, 2019

PRONOUNCED ON : 30th November, 2019

ORDER

1. The applicant has challenged the order dated 29.8.2019 issued by the res. no. 1 thereby transferring him from the post of Medical Officer (Group-A), Civil Hospital, Ahmednagar, Dist. Ahmednagar to the post of Medical Officer (Group-A), Rural Hospital, Wada, Dist. Palghar, by filing the present O.A. and also prayed to direct the respondents to consider his representations dtd. 6.6.2019 and 26.7.2019 for giving posting at the vacant post in Ahmednagar District.

2. Applicant has completed his M.B.B.S. in the year 2003. Thereafter he was selected by the M.P.S.C. in the year 2004 and accordingly he was appointed as a Medical Officer. He worked at P.H.C. Sanvatsar, Tq. Kopargaon, P.H.C. Bodhegaon, Tq. Shevgaon, P.H.C. Dhamne, Dist. Dhule, P.H.C. Tisgaon, Tq. Pathardi, P.H.C. Dhorjalgaon, Tq. Shevgaon. In the year 2016 he was selected for "in-service P.G. course" and accordingly the Director of Health Services, Mumbai passed the order dtd. 29.6.2016 and directed him to complete his P.G. course from District Hospital, Aundh, Dist Pune in Diploma in Gynecologist & Obstetrics. Accordingly he was relieved by the Civil Surgeon, Ahmednagar on 30.7.2016 and he joined the said course starting from 1.8.2016. The applicant could not be able to complete the

P.G. course in first attempt and he failed in the first attempt. Therefore the respondent no. 1 issued the order dtd. 5.3.2019 and posted him at Civil Hospital, Ahmednagar as a Medical Officer. Accordingly the applicant joined the new posting in the Civil Hospital, Ahmednagar on 24.4.2019 and started discharging his duties as a Medical Officer (Group-A). Thereafter he appeared for P.G. examination and after successful completion of P.G. course in second attempt he submitted representation dtd. 6.6.2019 to the respondents along with passing certificate and requested to allow him to continue in Civil Hospital, Ahmednagar or post him at Rural Hospital, Ghodegaon as per his qualification, on the ground that his son is suffering from intellectual disability to the extent of 50%. But no decision had been taken by the respondents on the said representation. Therefore he filed another representation dtd. 26.7.2019 to the respondents and requested to give him regular posting at Civil Hospital, Ahmednagar and also submitted disability certificate of his son along with it. But the respondents had not considered his both the representations and issued the impugned order dtd. 29.8.2019 thereby giving him posting at Rural Hospital, Wada, Dist. Palghar.

3. It is contention of the applicant that he has completed D.G.O. course and therefore he ought to have been posted on the vacant post of D.G.O. in Civil Hospital, Ahmednagar or Rural Hospital, Ghodegaon by considering his family problems, but the respondents have not considered the same. Earlier posting was given to him in Civil Hospital, Ahmednagar, but the respondents have illegally issued the impugned order dtd. 29.8.2019 and transferred him in Rural Hospital, Wada, Dist. Palghar. It is his contention that because of the impugned order inconvenience is caused to him and his family members. Therefore, he approached this Tribunal and prayed to quash the impugned order by allowing the present O.A.

4. Respondent nos. 1 & 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the applicant has been transferred by the impugned order. It is their contention that it is a posting order given to the applicant after completion of P.G. course. It is their contention that initially the applicant failed to complete the P.G. course and therefore after his failure a posting was given to him at Civil Hospital, Ahmednagar by the order dtd. 5.3.2019. Thereafter an opportunity was given to the applicant and other Medical Officers, who were unsuccessful to clear the P.G. course in the first

attempt, to complete the P.G. course. Accordingly the applicant appeared for the next P.G. examination and he completed the same successfully. On successful completion of P.G. course as per administrative exigencies and as per the qualification of the Medical Officers the respondents used to fill up the vacancies in Rural Hospitals for serving poor and needy people in rural areas and accordingly the applicant has been given posting in Rural Hospital, Wada, Dist. Palghar by the impugned order dtd. 29.8.2019. It is their contention that it is the duty of the Government to utilize the services of the Government employees for the poor & needy people as per the vacancy position. It is their contention that the certificate regarding disability of the son of the applicant has not been submitted to the respondents. It is their contention that the applicant is working as a Medical Officer and he is competent to provide necessary medical aid to his son and therefore he cannot claim posting at his desired place on that ground. It is their contention that the order dtd. 5.3.2019 is not a transfer order. Moreover, the impugned order dtd. 29.8.2019 is also not a transfer order. Therefore, the orders dtd. 5.3.2019 & 29.8.2019 are regarding posting of the Medical Officers on completion of P.G. course successfully or on failure to complete the P.G. course. It is their contention that the impugned order

has been issued on account of administrative exigency and there is no illegality therein. Therefore they prayed to dismiss the O.A.

5. The applicant filed rejoinder affidavit to the affidavit in reply of respondents. He has asserted that he has submitted the certificate dtd. 26.6.2019 regarding disability of his son to the respondents. It is his contention that in view of the G.R. dtd. 26.8.1993 and memorandums dtd. 15.2.1991 and 6.6.2014 the respondents ought to have considered his problem regarding disability of his son, but the respondents had not considered the same. It is his contention that the post of Gynecologist is vacant at Civil Hospital, Ahmednager, but the respondents had not considered his claim to post him on that post. He has contended that the respondents have illegally issued the impugned order and therefore he prayed to quash the same by allowing the present O.A.

6. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

7. Learned Advocate for the applicant has submitted the applicant was recommended for in-service P.G. course in Diploma

in Gynecology & Obstetrics in the year 2016 and accordingly he joined the said course in District Hospital, Aundh, Dist Pune for the year 2016. He was unsuccessful in completing the P.G. course in the first attempt. Therefore the respondents by considering his qualification posted him in Civil Hospital, Ahmednagar by the order dtd. 5.3.2019. He has submitted that accordingly the applicant joined the said post on 8.4.2019 and started discharging his work. He has submitted the applicant was rendering his service as Gynecologist in Civil Hospital, Ahmednagar. Thereafter the applicant completed his P.G. course in the second attempt and he submitted the certificate to that effect immediately to the respondents on 6.6.2019. He has submitted that the applicant has made a representation to the respondents to post him at Civil Hospital, Ahmednagar or at Rural Hospital, Ghodegaon, Dist. Ahmednagar as posts were vacant there. The applicant made a request to the respondents to post him in Civil Hospital, Ahmednagar on the ground that his son is suffering from mental disability to the extent of 50%, but the respondents have not considered it. Therefore, he filed another representation on 26.7.2019, but the respondents had not considered the said representation and issued the impugned order dtd. 29.8.2019 and posted him as a Medical Officer at Rural Hospital, Wada, Dist. Palghar. The said order is in violation of the

office memorandums dtd. 15.2.1991 and 6.6.2014 and G.R. dtd. 26.8.1993 and therefore he prayed to quash the impugned order. He has further submitted that the post of D.G.O. is vacant at Civil Hospital, Ahmednagar. As there is need of Medical Officer on that post, the respondents deputed four Medical Officers at Civil Hospital, but without considering the vacancy position they issued the impugned order and posted the applicant in Rural Hospital, Wada, Dist. Palghar instead of posting him in Civil Hospital, Ahmednagar or in the Rural Hospital, Ghodegaon. He has submitted that the respondents had not considered the medical problems of the son of the applicant and therefore he prayed to quash the impugned order and direct the respondents to consider his representation and post him on any vacant post in Ahmednagar district.

8. Learned Presenting Officer has submitted that the applicant has failed to complete the P.G. course in the first attempt. Therefore he was given posting as a Medical Officer in Civil Hospital, Ahmednagar by the order dtd. 5.3.2019 and accordingly the applicant joined the said post. Thereafter one more opportunity was given to the applicant to appear for P.G. examination. Accordingly the applicant appeared for the P.G. examination and successfully cleared the same. On completion of

P.G. course the Government is bound to give appointment to the specialist Medical officers as per vacancy position, need and as per the administrative exigency. Respondents accordingly issued the impugned order and posted the applicant on the vacant post in Rural Hospital, Wada, Dist. Palghar for providing medical aid to the needy and poor persons. He has submitted that it is the duty of the respondents to utilize the services of the specialist Medical Officers in the department by giving them posting at appropriate place and accordingly the impugned order has been issued. There is no illegality in the impugned order and therefore he prayed to reject the present O.A.

9. Learned Presenting Officer has submitted that since the year 2004 the applicant is working in Ahmednagar District except for two years. Therefore, the respondents decided to post him in the Rural Hospital, Wada, Dist. Palghar and there is no illegality therein. Therefore he supported the impugned order and prayed to dismiss the present O.A.

10. On perusal of record it reveals that the applicant was appointed in the year 2004 and posted as a Medical Officer (Group-A) in Ahmednagar District. He worked in Ahmednagar district since the year 2004 till issuance of the impugned order dtd. 29.8.2019, except for two years during which he was

transferred to P.H.C., Dhamne, Dist. Dhule in the year 2011. In the year 2016 the applicant was recommended for “in-service P.G. course” by the respondents and accordingly he has been relieved on 30.7.2016 to join the course starting from 1.8.2016. He was not able to pass the P.G. course in the first attempt and therefore he has been posted as a Medical Officer (Group-A) in Civil Hospital, Ahmednagar by the order dtd. 5.3.2019 and accordingly he joined that post on 24.4.2019. Thereafter he completed the P.G. course in the second attempt. On completion of P.G. course the respondents used to give posting to those Medical Officers, who completed the P.G. course as per the need and considering the vacancies in the State of Maharashtra and as per the exigency of administration. Accordingly the respondents issued the impugned order dtd. 29.8.2019 and posted the applicant as a Medical Officer in D.G.O. at Rural Hospital, Wada, Dist. Palghar. There is no illegality in the impugned order. It has been issued considering the vacancy position and need of specialist Medical Officers in the particular area. Therefore, the impugned order cannot be said to be arbitrary, mala-fide and illegal.

11. It is contended on behalf of the applicant that the respondents had not considered his family problems i.e. his son is suffering from intellectual disability to the extent of 50% while

issuing the impugned order. On verifying the medical certificate produced by the applicant, it reveals that the son of the applicant is suffering from mild intellectual disability to the extent of 50%. This certificate has been issued on 26.6.2019 which show that that his son was born on 14.2.2014 and at the time of issuance of said certificate he was five years old. No doubt, care has to be taken in respect of mentally retarded child. Applicant is a Medical Officer and he is the best person to take care of his son and therefore it cannot be said that because of his transfer his child would suffer and he cannot take care of his child properly. It is material to note that the applicant was away from his house since 1.8.2016 to 24.8.2019 i.e. for three years when his son was two years old for completing P.G. course. During that period his child has maintained by his family members and his family members have taken care in the absence of the applicant. Therefore it cannot be said that because of the impugned order inconvenience is causing to the applicant or his family members. Therefore, on that ground the impugned order cannot be quashed.

12. As discussed above the impugned order dtd. 29.8.2019 has been issued by the respondents after completion of P.G. course by the applicant as per the policy of the Government and he has been posted as a specialist Medical Officer at Rural Hospital, Wada,

Dist. Palghar to serve the needy persons in that area. The impugned order has been issued by the respondents to utilize the services of the specialist Medical Officers in the Department and it has been issued on account of administrative exigency and therefore I find no illegality in it. Therefore no interference is called for in the said order. There is no merit in the O.A. Consequently the O.A. deserves to be dismissed.

13. In view of the discussion in foregoing paragraphs the Original Application no. 841/2019 stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 30th November, 2019