

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 891 OF 2018

DIST. : AURANGABAD

Dr. Uddhav Shankar Khaire,)
 Age: 55 years, Occu. Service,)
 R/o Plot No. 193, Nandanvan Colony,)
 Aurangabad, Dist. Aurangabad.).. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Medical Education and Drugs)
 Department, Annexe Building,)
 Mantralaya, Mumbai.)
2. The Director of Medical Education)
 & Research, Dental College Building,)
 Saint George's Hospital Campus,)
 C.S.T., Mumbai.).. **RESPONDENTS.**

 APPEARANCE :- Dr. Uddhav Shankar Khaire – party in
 person.
 : Shri N.U. Yadav, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **02.02.2024**

O R A L - O R D E R

[Per :- Justice P.R. Bora, Vice Chairman]

1. Heard Dr. Uddhav Shankar Khaire – party in person
 and Shri N.U. Yadav, learned Presenting Officer for the
 respondent authorities.

2. The applicant has preferred the present Original Application seeking the following reliefs:-

“A) The Original Application may be allowed.

B) To hold and declare the applicant is entitled for the benefit of his past service on the post of Lecturer in Medicine (I.C.U.) since 03.05.1993 to 22.01.2009 and to grant all the consequential benefits to the present applicant.

C) To quash and set aside the condition No. 7 of the Government Resolution dated 04.05.2009 by declaring it ultra-virus of the Constitution of India.

D) Pass any such further orders as this Hon’ble Court may deemed fit and proper in the interest of justice.”

3. **Facts in brief :-**

(i) The applicant possesses the qualification as M.D. (Medicine). He was for the first time appointed vide appointment order dated 3.5.1993 on the post of Lecturer in Medicine at Government Medical College at Aurangabad. As is mentioned in the Original application, more particularly in para VI(1) of the application, the Divisional Selection Board was established and after following the due procedure by giving an advertisement, the aforesaid appointment order was issued in favour of the present applicant. It was a temporary appointment for the period of 120 days. Thereafter the applicant was continued even beyond the period of 120 days. In the meanwhile the applicant preferred Original Application No. 41/1994 and the said O.A. was disposed of by this Tribunal by giving directions to the respondents to

continue the applicant in service till regularly selected candidates from the Maharashtra Public Commission becomes available. As such, the services of the applicant were continued.

4. In the year 2009 and more particularly on 22.1.2009 the decision was taken by the Government to regularize the services of the candidates, who are working in Group-B category in the pay scale of Rs. 8000-13500 on the post of Lecturers, since no candidates were made available through the M.P.S.C. We deem it appropriate to reproduce herein below the said G.R. with its preamble, which reads thus:-

शासकीय वैद्यकीय व दंत महाविद्यालयातील तात्पुरत्या नियुक्तीने कार्यरत सेवा नियमित करण्याबाबत

महाराष्ट्र शासन
वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग,
शासन निर्णय क्रमांक एलईसी १४०८/ प्र. क्र १९६/वैसेवा ३,
मंत्रालय, मुंबई ४०० ०३२
दिनांक १५ जानेवारी, २००९.

प्रस्तावना:-

महाराष्ट्र वैद्यकीय शिक्षण व संशोधन सेवा गट ब मधील रु. ८०००- १३५०० या वेतनश्रेणीतील अधिव्याख्यात्यांच्या पदांवर १०० टक्के सरळसेवेने लोकसेवा आयोगामार्फत नियुक्त्या करण्याची तरतूद संबंधित पदांच्या सेवा प्रवेश नियमात आहे. तथापी मागील काही वर्षे नियमितरित्या महाराष्ट्र लोकसेवा आयोगामार्फत नामनिर्देशनाने उमेदवार उपलब्ध होत नसल्यामुळे, शासकीय वैद्यकीय व दंत महाविद्यालयातील अधिव्याख्याता तसेच दंतशल्यचिकित्सक या पदांच्या रिक्त पदांच्या संख्येत, सेवानिवृत्ती, राजीनामा इत्यादी कारणांमुळे वाढ होत होती. सदर पदे रिक्त राहिल्यामुळे रुग्णालयातील रुग्णांची तसेच महाविद्यालयात शिक्षण घेणा-या विद्यार्थ्यांच्या शैक्षणिक कार्यपध्दतीवर विपरीत परिणाम होत होता. ही वस्तुस्थिती विचारात घेऊन महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवाराची नियुक्ती होईपर्यंत वैद्यकीय महाविद्यालयांचे अधिष्ठाता यांच्या अध्यक्षतेखाली स्थापन करण्यात आलेल्या स्थानिक विभागीय निवड मंडळामार्फत विहित कार्यपध्दतीचा अवलंब करून पात्र उमेदवारांच्या सदर पदांवर तात्पुरत्या/ तदर्थ नियुक्त्या करण्यात आलेल्या आहेत.

२. अशा प्रकारे वैद्यकीय महाविद्यालयांचे अधिष्ठाता यांच्या स्तरावर स्थापन करण्यात आलेल्या विभागीय निवड मंडळामार्फत अधिव्याख्यातांच्या / दंतशल्यचिकित्सक यांच्या पदांवर तात्पुरत्या/ तदर्थ नियुक्त्याने किमान दोन वर्षे इतक्या कालावधीपासून कार्यरत असलेल्या व अद्यापी सेवेत असलेल्या शासकीय वैद्यकीय व दंत महाविद्यालयातील अधिव्याख्याता / दंतशल्यचिकित्सक यांच्या तात्पुरत्या सेवा खास बाब म्हणून नियमित करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय:-

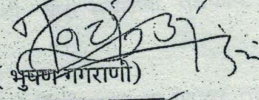
प्रस्तावनेत नमूद केल्यानुसार, महाराष्ट्र वैद्यकीय शिक्षण व संशोधन सेवा गट ब मधील रु. ८०००- १३५०० या वेतनश्रेणीतील, वैद्यकीय व दंत महाविद्यालयात, दिनांक १५/१/२००९ रोजी अखंडित / खंडित सेवेने कार्यरत

असलेल्या, म्हणजेच दिनांक १५/१/२००७ पर्यंत तात्पुरत्या नियुक्तीने सेवेत लागलेल्या आणि सदर शासननिर्णय निर्गमित होतेवेळी तात्पुरत्या नियुक्तीनेच सेवेत कार्यरत असलेल्या अधिव्याख्याता / दंतशल्यचिकित्सक यांच्या तात्पुरत्या सेवा नियमित करण्यास एक विशेष बाब म्हणून मंजूरी देण्यात येत आहे.

त्यासंबंधीच्या तपशीलवार अटी व शर्ती स्वतंत्रपणे निर्गमित करण्यात येतील.

सेवा नियमित केल्या जाणा-या शासकीय वैद्यकीय व दंत महाविद्यालयातील अधिव्याख्याता तसेच दंतशल्यचिकित्सक यांची यादी संचालक, वैद्यकीय शिक्षण व संशोधन, मुंबई यांच्या कार्यालयातून वितरीत करण्यात येईल.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,


(भुष्ण शर्गणी)

सचिव, महाराष्ट्र शासन

प्रति,

संचालक, वैद्यकीय शिक्षण व संशोधन, मुंबई (यासंबंधीची यादी संचालकांमार्फत निर्गमित करण्यात येईल.)
सर्व अधिष्ठाता, शासकीय वैद्यकीय महाविद्यालय व रुग्णालय,
अधिदान व लेखा अधिकारी, मुंबई
निवासी लेखा परिक्षा अधिकारी, मुंबई
महालेखापाल, महाराष्ट्र १/२ (लेखा परिक्षा/लेखा व अनुज्ञेयता), मुंबई/ नागपूर
मा. मुख्यमंत्री, महाराष्ट्र राज्य,
मा. मंत्री (वैद्यकीय शिक्षण), महाराष्ट्र राज्य
मा. राज्य मंत्री (वैद्यकीय शिक्षण), महाराष्ट्र राज्य
सार्वजनिक आरोग्य विभाग, मंत्रालय, मुंबई
सामान्य प्रशासन विभाग, मंत्रालय, मुंबई
वित्त विभाग, मंत्रालय, मुंबई
निधी व न्याय विभाग, मंत्रालय, मुंबई
सर्व कार्यासने, वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, मंत्रालय, मुंबई

5. Thereafter another G.R. was issued by the Government on 4.5.2009, whereby the rules and regulations governing the services of the candidates, who are regularized on the basis of G.R. dated 22.1.2009 were prescribed. The condition no. 07 therein was thus:-

“७. तात्पुरती सेवा नियमित केलेल्या अधिव्याख्याता/दंतशल्यचिकित्सक यांना त्यांच्या पूर्वी केलेल्या तात्पुरत्या सेवेचे कोणतेही फायदे मिळणार नाहीत.”

6. Because of the aforesaid condition the respondents reckon the period of service of the applicant from the date of G.R. i.e. 22.1.2009. The applicant preferred a representation to the respondents with a request to consider the services rendered by him prior to said date i.e. from the year 1993 till the date of issuance of G.R. dated 22.1.2009 as his regular service period and prayer was also made for treating the applicant in regular service from the date of initial appointment. Since the said request has been refused by the respondents, the applicant has approached this Tribunal by filing the present Original Application.

7. The applicant has relied upon the judgment delivered by the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in **Writ Petition No. 8327/2013 (Mrs. Kunda w/o Ramchandra Lakhkar vs. the State of Maharashtra & Ors.)** on 10.2.2015. The applicant has come out with a case that he stands at par with the petitioner in W.P. no. 8327/2013. It is his further contention that on the basis of G.Rs. dated 22.01.2009 and 04.05.2009 the said writ petitioner was also refused the benefit of earlier services rendered by her prior to 2009. The Hon'ble High Court in the judgment delivered in the aforesaid W.P. has passed an order thereby

directing the respondents to extend all the benefits as the regular employee to the said petitioner since the date of her initial appointment. We deem it appropriate to reproduce herein-below paragraph nos. 11 & 12 of the said judgment, which are relevant in the context of the present matter.

“11. The respondents themselves suo moto have taken decision to regularize the services of the petitioner with effect from 22.01.2009. Now in the present petition, the respondents are taking up the case that the petitioner was not qualified that is the petitioner did not possess the necessary qualification. In fact, the petitioner was appointed by duly constituted Divisional Selection Board and when they are intending to regularize the service of the petitioner since 2009, then the stand that the petitioner is not qualified cannot be accepted. All along the petitioner has been treated as a permanent and regular employee. At no material point of time the petitioner was ever given an understanding that the petitioner is not in permanent and regular employment. On the contrary, after completion of 8 years of service, the petitioner is given senior/higher pay scale as is given to other permanent employees. The petitioner is also given increments as is given to employee appointed on permanent post. For all purposes the petitioner is treated as regular employee, atleast after completion of eight years of service as was given higher pay scale and all other benefits which were available for a person holding permanent and regular post. After 33 years of service, it would be too late in the day for respondents to contend that, the petitioner would stand regularized from the year 2009 and the petitioner would not be entitled for any benefits of past service. The said action would be unjust. It is not a case of back door entry of the petitioner. The petitioner initially in the year 1977 was appointed by Dean, Medical College and thereafter in the year 1978 was interviewed and selected by duly constituted Divisional Selection Board and was issued appointment order in the year 1979

with effect from 24.10.1977. All the aforesaid facts would unequivocally go to show that the petitioner was treated as an employee holding a permanent post. Even the Tribunal has observed that for all these 33 years not a single advertisement was given by the M.P.S.C. for the said post. Be that as it may, the petitioner was not once given notice during all these years that the petitioner is not qualified or that petitioner is not regularly appointed. The respondents could have discontinued the petitioner. It is also a fact that, for all these years the respondents could not appoint a candidate who has come through M.P.S.C. for the said post. In view of the above, the act of respondents in treating the petitioner as regular since 2009 only is illegal.

12. In the light of the above, the impugned order of tribunal is set aside and modified. The impugned show cause notices are quashed and set aside. So also the Government Resolution dated 22.01.2009 and 04.05.2009 shall be held not binding on the petitioner and the petitioner shall be treated as regular employee as was treated earlier and shall be entitled to all the benefits of her service as that of regular employee since the date of her initial appointment.

Rule accordingly is made absolute in above terms. No costs.”

8. In the present matter also the very initial appointment of the applicant was made by following due procedure of law and by duly constituted Divisional Selection Committee. The applicant was paid salary in the prescribed pay scale from day one. The applicant was also extended all the increments for which he was entitled and thus, he was always treated at par with the regular employee.

9. Considering all these aspects it is difficult to accept the contention raised on behalf of the respondents that entry in the services of the applicant was backdoor entry. Same argument was advanced in the aforesaid W.P. before the Hon'ble High Court and same has been rejected by the Hon'ble High Court.

10. The learned Presenting Officer sought to contend that the services of the applicant were continued under the orders passed by the Tribunal and, as such, the said period cannot be considered as the period of regular service rendered by the applicant. The argument so made deserves to be rejected for the reason that said order was not challenged by the respondents and on the contrary was acted upon. Though copy of the said judgment is not on record so also reply filed by the respondents in the said matter is also not produced on record, there is every reason to believe that the Tribunal has passed order thereby directing the respondents to continue the applicant in service till regularly MPSC selected candidate is appointed, it is difficult to accept the contention of the learned P.O. that the period of service rendered by the applicant by virtue of said order cannot be considered.

11. After having considered the facts involved in the present matter we are convinced that the case of the applicant is identical with the case of the petitioner in W.P. No. 8327/2013. In the said W.P. G.R. dated 22.01.2009, as well as, subsequent G.R. dated 04.05.2009 both have been referred and discussed by the Hon'ble High Court. In such circumstances, it appears to us that the applicant deserves to be granted same relief as has been granted in favour of the petitioner in W.P. No. 8327/2013. Hence, the following order: -

ORDER

(i) It is held and declared that the Government Resolutions dated 22.1.2009 and 4.5.2009 shall be held not binding on the applicant and the applicant shall be treated as regular employee as was treated earlier and shall be entitled to all the benefits of his service as that of regular employee since the date of his initial appointment.

(ii) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 02.02.2024

ARJ O.A. NO. 891 OF 2018 (CHALLENGING G.R.)