

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 897 OF 2019
(Subject – Hardship Allowances)**

DISTRICT : AHMEDNAGAR

Dr. Uttam s/o Karbhari Ambre,)
Age : 61 years, Occu. : Retired Medical Officer,))
R/o. Kacheri Road, Near Shramik Complex,))
Akole, Tq. Akole, Dist. Ahmednagar.))

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its : Principal Secretary,)
Heard Department,)
Mantralaya, Mumbai – 32.)

2. Lok Ayukta & Up- Ayukta,)
Maharashtra State, Madam Kama Road,))
Mumbai – 32.)

(Deleted)

3. The Director of Health Services,)
Directorate of Health Services,)
8th Floor, Arogya Bhavan, Saint George)
Hospital Compound, P.D. Demello Road,))
Mumbai.)

4. The Deputy Director,)
Health Department, Nasik Circle,)
Regional Referral Service Hospital Campus,))
Indira Gandhi Chow, Shalimar Square,)
Nasik, Dist. Nashik 422001.)

5. The District Health Officer,)
Zilla Parishad, Nashik, District Nashik.)

6. Taluka Health Officer,)
Panchayat Samiti, Baglan, District Nashik.)

...RESPONDENTS

APPEARANCE : Shri M.V. Dhongade, Advocate for the
Applicant.

: Shri N.U. Yadav, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **30.08.2022.**

ORDER

1. The present Original Application is filed challenging the impugned order / communication dated 06.05.2019 (Annexure A-5) issued by the respondent No. 5 i.e. the District Health Officer, Zilla Parishad Nashik, Dist. Nashik, thereby refusing to pay the hardship allowances payable to the applicant during the period of 01.04.2017 to 31.05.2018, during which period the applicant performed his official duties in specified remote and tribal area i.e. Primary Health Centre, Salher, Tq. Satana, Dist. Nashik and seeking direction to decide the representations dated 01.07.2019 and 23.07.2019 (Annexure A-6 collectively) made by the applicant in that regard.

2. The facts in brief giving rise to this Original Application are as follows :-

(a) The applicant is retired as Government Medical Officer being superannuated from Primary Health Centre, Salher, Tq. Satana, Dist. Nashik w.e.f. 31.05.2018 after completion of service tenure of 28 years.

(b) The applicant is having educational qualification of BAMS (Ayurvedacharya). He was selected through MPSC to the post of Medical Officer, Group-A (Class-II) and joined on 12.10.1990 at Primary Health Centre, Ladgaon, Tq. Akole, Dist. Ahmednagar. Thereafter, he was posted at various places. While working as a Medical Officer, he got admission for the course of M.S. (Ayurved), which he completed in the year 2007. Thereafter, on 31.05.2007 he was appointed as Medical Officer, Group-A (Class-II) by the Asst. Director, Health Services, Mumbai at Primary Health Centre, Kotul, Tq. Akola, Dist. Ahmednagar. Before his retirement on superannuation on 10.07.2013, he was transferred to Primary Health Centre, Salher, Tq. Satana, Dist. Nashik i.e. out of district transfer. The said place of transfer was situated in specified remote place, as well as, tribal area and as such, the applicant was entitled for hardship allowances in terms of Guidelines 2016-17 issued in this regard by the authority of Commissioner (Family

Welfare) Cum Director, National Health Mission, State Health Society, Mumbai (page Nos. 35 and 36 of the paper book). It is the grievance of the applicant that he has not received requisite hardship allowances for the period of 01.04.2017 till his retirement on superannuation on 31.05.2018, while he was working in the said remote and tribal area viz. Primary Health Centre, Salher, Tq. Satana, Dist. Nashik.

(c) It is further submitted that the applicant made various representations dated 21.06.2018, 27.06.2018 and 28.05.2019 (Annexure A-3 collectively) to the respondent No. 5 i.e. the District Health Officer, Zilla Parishad Nashi, Nashik, but in vain. Hence, the applicant made grievance in writing dated 26.012.2018 (Annexure A-4) to the office of Lok Ayukta and Up-Lok Ayukta, Maharashtra State, Mumbai. Thereafter, in view of the letter dated 16.03.2019 received from the office of Lok Ayukta and Up-Lok Ayukta, Maharashtra State, Mumbai, the respondent No. 5 without giving any opportunity of hearing to the applicant all of a sudden issued the impugned order / communication dated 06.05.2019 (Annexure A-5) addressed to the applicant refusing to give hardship allowances for the period of 14

months as prayed for by the applicant. The said order is issued behind back of the applicant and without giving any opportunity of hearing. In view of the same, the applicant made further representations dated 20.06.2019, which is received by the respondent No. 5 on 01.07.2019 and 22.07.2019 which is received by the respondent No. 5 on 23.07.2019 (Annexure A-6 collectively) seeking hardship allowances in accordance with law. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 4 by one Shri Rohidas S/o Vedu Padvi, working as In-charge Chief Administrative Officer in the office of Deputy Director of Health Service, Nashik Circle, Nashik i.e. the respondent No. 4, thereby he denied all the adverse contentions raised in the Original Application and specifically contended that as per the guidelines issued by the Commissioner (Family Welfare) Cum Director, National Health Mission, State Health Society, Mumbai, it is specifically provided as under :-

*“1) the employees eligible for **“Hardship Allowance”** have compulsion to stay at the Headquarter, 2) It is also clearly mentioned that, delivery ratio must be increased*

by 25% proportion to the previous year delivery ratio, 3) It is also clearly mentioned that, if the Government employee is on leave more than one week then his Hardship Allowance should be reduce, 4) It is clearly mentioned that, it is expected that target of Family Welfare Programme should be minimum 80% and lastly it is made clear that, Hardship Allowance should be paid to those employees those who are fulfill all the terms and conditions laid down in the guidelines given by the Commissioner (Family Welfare) cum Director National Health Mission, State Health Society, Mumbai.”

It is further submitted that the applicant did not fulfill the criteria, as the documents collected from the concerned office in respect of working of the applicant on the place is revealed that the documents (Annexure R-1) obtained from the office of Health Department, Zilla Parishad, Nashik and Gram Panchayat Salher. In view of the same, the impugned order refusing hardship allowances was passed appropriately and the applicant is not entitled for hardship allowances. There is no merit in the O.A. and therefore, the same is liable to the dismissed.

4. I have heard the arguments advanced at length by Shir M.V. Dhongade, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on the other hand.

5. After having considered the rival pleadings and documents on record, it is evident that the applicant is agitating his right of hardship allowances for the period of 14 months i.e. from 01.04.2017 to 31.05.2018 as per the guidelines issued by the Commissioner (Family Welfare) Cum Director, National Health Mission, State Health Society, Mumbai (page Nos. 35 and 36 of the paper book) having been worked in remote and tribal area at Primary Health Centre situated in Salher, Tq. Satana, Dist. Nashik. It is not disputed that the said Primary Health Centre is situated in remote and tribal area as specified in guidelines issued by the Commissioner (Family Welfare) Cum Director, National Health Mission, State Health Society, Mumbai (page Nos. 35 and 36 of the paper book). However, according to the respondents, the applicant does not fulfill the criteria for getting such hardship allowances as per the said guidelines.

6. In this regard, perusal of the impugned order / communication dated 06.05.2019 (Annexure A-5) issued by the respondent No. 5 would show that the said order / communication came to be passed in view of the letter dated 16.03.2019 received by the said authority of the Hon'ble Lok Ayukta and Up-Lok Ayukta, Mumbai. It appears that as regards the grievance of the applicant, he had made representations

dated 26.12.2018 (Annexure A-4) to the office Hon'ble Lok Ayukta, Maharashtra State Mumbai and after receipt of the letter from the said office, the respondent No. 5 said to have been issued this impugned order. Perusal of the said impugned order does not show that after receipt of the letter dated 16.03.2016 from the office of Lok Ayukta and Up-Lok Ayukta, Mumbai, any opportunity of hearing was given to the applicant, so that he would have substantiated his claim by producing any requisite documents / evidence. No doubt before issuance of the said impugned order dated 06.05.2019 (Annexure A-5), the respondent No. 5 obtained some requisite documents from the office of Health Office, Zilla Parishad, Nashik and Gram Panchayat Salher, but without considering the nature of claim made by the applicant. Opportunity ought to have been given to the applicant to produce certain documents to substantiate the claim of hardship allowances. That opportunity is not given to the applicant. In view of the same, the grievance of the applicant seems to be justifiable. Therefore, the impugned order dated 06.05.2019 (Annexure A-5) issued by the respondent No. 5 cannot be upheld or approved. It is also a matter of record that after issuance of the said impugned order dated 06.05.2019 (Annexure A-5) issued by the respondent No. 5 the applicant

made several representations dated 20.06.2019 and 22.07.2019 (Annexure A-6 collectively), which were received by the respondent No. 5 on 01.07.2019 and 23.07.2019 respectively. However, the applicant has not received any response to the said representations. The applicant has sought directions to the respondent No. 5 to consider those two representations after giving him opportunity of hearing. In the facts and circumstances, in my considered opinion, it would be just and proper to give direction to the respondent No. 5 to consider and decide the above-said two representations made by the applicant in accordance with law by giving opportunity of hearing to the applicant and of production of documents / evidence. Hence, I proceed to pass following order:-

ORDER

The Original Application No. 897 of 2019 is party allowed in following terms :-

- (A) The impugned communication / order dated 06.05.2019 (Annexure A-5) issued by the respondent No. 5 is hereby quashed and set aside being passed *ex-parte* and without giving opportunity of hearing to the applicant.

- (B) The respondent No. 5 i.e. the District Health Officer, Zilla Parishad, Nashik, Dist. Nashik is directed to consider and decide the representations dated 20.06.2019 and 22.07.2019 (Annexure A-6 collectively), which were received by the respondent No. 5 on 01.07.2019 and 23.07.2019 respectively by giving an opportunity of hearing and production of evidence to the applicant in accordance with law within a period of three months from the date of this order and to communicate the decision thereof to the applicant in writing.
- (C) No order as to costs.

PLACE : AURANGABAD.
DATE : 30.08.2022.

(V.D. DONGRE)
MEMBER (J)