

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.950 OF 2019
(Subject:-Posting/Termination)**

DISTRICT: - DHULE

Jayashri Thansingh Thakur,)
Age:- 40 years, Occu: Service,)
R/o. Kapadne, Tq. & Dist. Dhule,)
District:-Dhule.)...**APPLICANT**

V E R S U S

- 1. TheState of Maharashtra,**)
Through it's Principal Secretary,)
Public Health Development,)
Mantralaya, Mumbai-32.)
 - 2. The Director of Health Services,**)
Maharashtra State, Mumbai.)
8th Floor, Aarogya Bhavan. St. George's)
Hospital Compound, P. D. Mello Road,)
Mumbai.)
 - 3. The Civil Surgeon,**)
District :-Dhule.)
 - 4. The Deputy Director of Health Services)**
Nashik Circle, Trimbak Road, New)
Civil Hospital Compus,)
Opp. Rajddot Hotel, Nashik 422002)
 - 5. The District Health Officer,**)
Zilla Parishad,)
Dhule, Sakti Road, GarudNaav,)
Navnath Nagar, Dhule, 424001.)**.RESPONDENTS**
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APPEARANCE : Shri H.A. Joshi, learned Advocate for
the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
And
Shri Bijay Kumar, Member (A)

Reserved on : **16.02.2023.**

Pronounced on : **21.04.2023.**

ORDER

(Per: Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction to consider application for grant of posting of Medical Officer, Group –B being one time absorption allowed by Notification dated 11.01.2019 issued by the Respondent No.1 the State of Maharashtra, through it's Principal Secretary, Public Health Development, Mantralaya, Mumbai. During pendency of this Original Application, services of the applicant were terminated vide impugned order dated 22.10.2019 (Annexure 'A-8') issued by the respondent No.4 i.e. the Deputy Director of Health

Services, Nashik Circle, Nashik which is challenged by amending the Original Application suitably.

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

(i) The applicant is possessing educational qualification of Bachelor of Ayurvedic Medicine & Surgery (BAMS). She was eligible to be considered, selected and appointed as a Medical Officer in respondent No.1 Department.

(ii) The respondent No.4 i.e. Deputy Director of Health Services, Nashik by order dated 17.06.2006 (Annexure 'A-1') appointed the applicant for 11 months as a Medical officer at Public Health Centre, Prakasha, Tq. Shahada, Dist. Nandurbar. The applicant joined the said post on 22.06.2006. After lapse of 11 months every time the applicant was continued on the said post up to the year 2018 by issuing appointment orders from time to time, which are produced at Annexure 'A-2' collectively.

(iii) Lastly, by order dated 17.07.2018 (Annexure 'A-3') the applicant was appointed for the period of 28.06.2018 to 27.05.2019. The Government in public Health Department framed Medical officer, Group-B (BAMS) in the Maharashtra

Medical and Health Services (one-time absorption of Medical Officer appointed on ad-hoc basis) Rules, 2018. The applicant states that, these rules are framed to absorb the Medical Officer like applicant to be absorbed in regular services of the State of Maharashtra.

(iv) The applicant states that, as a part of procedure the District Health Officers, Zilla Parishad, Dhule issued no enquiry certificate dated 20.03.2019 (Annexure 'A-4') in favour of applicant.

(v) It is further contended that when the applicant was on the verge of being absorbed and posted as a Medical Officer, she was falsely implicated in an offence under Section 7 of Prevention of Corruption Act, 1988 as per FIR dated 30.05.2019 (Annexure 'A-5'). She was enlarged on bail in the said case as per order dated 31.05.2019 (Annexure 'A-6') passed by the learned Additional Sessions Judge.

(vi) The respondent No.2 i.e. the Director of Health Services published instructions dated 16.07.2019 (Annexure 'A-7') directing the persons, who were absorbed by virtue of Rules of 2018 to remain present for counseling to be held for the purpose of grant of posting. The name of the applicant

figured at Sr. No. 43 in the said list (part of Annexure 'A-7') and as such she was required to be remained present on 18.07.2019.

(vii) Accordingly, the applicant remained present. However, her case was kept aside citing reason of pendency of crime against her. All other persons/candidates have been granted posting and they have accordingly joined the posts.

(viii) It is a rule of law and presumption that any accused is innocent until proved guilty. In view of that the respondents have committed an error by withholding the grant of posting to the applicant. A right is created in her favour to be absorbed in Government service.

(ix) Without considering the accrued right of the applicant of getting absorbed in the Government service, during pendency of the O.A., the respondent no.4 i.e. the Deputy Director, Nashik Circle, Nashik illegally passed impugned order dated 22.10.2019 (Annexure A-8) terminating the services of the applicant, which is totally illegal. Hence, this application.

3. Affidavit in reply on behalf of the respondent nos.1 to 3 to Original Application is filed by one Rohidas Vedu Padvi,

working as In charge Chief Administrative Officer in the office of the Deputy Director of Health Services, Nashik Circle, Nashik and another affidavit in reply to amended O.A. filed on behalf of the respondent nos.1 to 3 and newly added respondent no.4 i.e. Deputy Director, Nashik Circle by one Gajanan Marotrao Lanjewar, working as the Chief Administrative Officer, in the Office of respondent no.4. Thereby they have denied the adverse contentions raised in the Original Application and amended Original Application.

(i) It is specifically contended that clause 6 of the last appointment order of the applicant dated 17.07.2018 (Annexure A-3) states that the services are terminable at any time if she is found guilty of misconduct, misbehavior or misappropriation.

(ii) Moreover, the applicant on 30.05.2019 alleged to have committed the offence of corruption by receiving bribe of Rs.5000/- through her assistant Shri Ashok Raghav Shinde, retired ambulance driver and thus violated terms and stipulations of appointment order. In view of that no question arises to consider and grant her posting under the scheme of

One Time Absorption of Medical Officers appointed on ad-hoc basis as per Rules, 2018.

(iii) It is further submitted that as per clause 10 of the last appointment order dated 17.07.2018 (Annexure A-3), the services of the applicant come to an end by efflux of time on 27-05-2018, when the 11 months' period of contract was over. Hence, there is no any illegality in the impugned order of termination dated 17-07-2018 (Annexure A-3). In the circumstances, the Original Application is devoid of merit and is liable to be dismissed.

4. We have heard the arguments advanced by Shri H.A. Joshi, learned Advocate for the applicant on one side and Shri V.R. Bhumkar, learned P.O. representing the respondents on the other side.

5. After having considered the rival pleadings, documents and submissions made on behalf of both the parties, it is evident that the applicant entered into service on the post of a Medical Officer, Group-B by first appointment order/letter dated 26.09.2006 on ad-hoc basis for 11 months. By giving technical break she was given appointments on ad-hoc/temporary basis from time to time. Her last appointment order/letter is dated 17.07.2018 (part of

Annexure A-2, collectively). As per the said letter, period of applicant is from 28.06.2018 to 27.05.2019.

6. It is further evident and admitted position that even after completion of her tenure on 27.05.2019, the applicant continued to attend duty and work as a Medical Officer at Primary Health Centre, Kapadane, Tq. & Dist. Dhule the respondent no.5 i.e. the District Health Officer, Zilla Parishad, Dhule.

7. The applicant's services were terminated by impugned order dated 22-10-2019 (Annexure A-8) by respondent no.4 i.e. Deputy Director quoting efflux of time on 27-05-2019 as well as by referring alleged incident of acceptance of bribe through her assistant on 30-05-2019, while she was on duty but not under any continuation order. In view of that the impugned termination order of the applicant is not simplicitor termination order by efflux of time as sought to be contended by the respondents in their affidavit in reply, but it is in fact a punitive stigmatic termination order.

8. In this background learned Advocate for the applicant placed reliance on a citation reported in [2005 (2) Mh.L.J. 295] in the matter of **Dattatray Kaluram Dedge V/s. Union of India through the Secretary, Ministry of Defence & Anr.** In the said

cited case, the order of discharge of the employee from government service was challenged. The order of discharge was passed for the reason of giving incorrect information by the employee that he was never arrested or prosecuted earlier. In the circumstances, it was held that Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 was not applicable as termination was not by way of simple discharge, but was a punitive and stigmatic termination. Hence, order of discharge was not sustainable.

9. In the background of the ratio laid down in abovesaid citation, if facts of the present case are considered, the fact was similar to the fact of the cited case. Perusal of the impugned order of the applicant dated 22.10.2019 (Annexure 'A-8') would show that it is punitive/stigmatic order when there is reference to the alleged misconduct by the applicant of acceptance of bribe. Only in affidavit in reply it is sought to be contended that the order of transfer is simplicitor termination, which is not a fact. Hence, the said contention/explanation is not sustainable in the eyes of law. Consequently the impugned order of termination of the applicant dated 22.10.2019 (Annexure 'A-8') is liable to be quashed and set aside.

10. In the Original Application, the applicant is also claiming the relief of grant of posting on the basis of the document of Instruction dated 16.07.2019 (Annexure 'A-7') issued by the respondent No.2 i.e. the Director/Commissioner of Health Services, Mumbai, thereby directing the persons including the applicant, who were absorbed by virtue of Rules, 2018 to remain present for counseling to be held for the purpose of grant of posting. The name of the applicant figures at Sr. No. 43 thereof. Accordingly, she remained present at venue in Nashik for counseling. But her case was kept aside citing reason of pendency of criminal case against her.

11. As discussed earlier, the services of the applicant were terminated by impugned order dated 22.10.2019 (Annexure 'A-8') issued by the respondent No.4 i.e. the Deputy Director of Health Services, Nashik w.e.f. 27.05.2019 citing the reason of registration of crime under Prevention of Corruption Act in the alleged incident of trap dated 30.05.2019. On 30.05.2019, the applicant was on duty, but without any further appointment order by giving technical break. However, perusal of earlier appointment order (Annexure 'A-2' collectively) would show that

on earlier such occasions, the orders of appointment were received somewhat belatedly. This would be mere irregularity.

12. In fact the record and more particularly perusal of the document of Instruction dated 16.07.2019 (Annexure 'A-7') would show that absorption of temporary Medical Officer, Group -B is done by Government Notification dated 11.01.2019. As on 11.01.2019, the applicant was on duty as contractual Medical Officer. Her contractual period came to an end on 27.05.2019. But for registration of crime under Prevention of Corruption Act on 30.05.2019, the relief of absorption is said to have been denied to the applicant. As on 11.01.2019, right to be absorbed was accrued to the applicant. Denying such benefit to the applicant in view of subsequent event would amount to defeating valuable and accrued rights of the applicant and would be against the principles of natural justice. Needless to mention that the applicant shall have to face legal consequences of the alleged incident of crime touching to her service condition in accordance with law.

13. In the totality of circumstances, in our considered opinion, the applicant shall be entitled also for the relief of direction to consider the applicant for grant of posting in terms of Notification

dated 11.01.2019. Hence, we proceed to pass the following order:-

ORDER

- (A) The Original Application is allowed.
- (B) The respondents are directed to consider the applicant for grant of posting in accordance with Notification dated 11.01.2019 within the period of one month from the date of receipt of certified copy of this order.
- (C) The impugned order dated 22.10.2019 (Annexure 'A-8') issued by the respondent No.4 is hereby quashed and set aside.
- (D) No order as to cost.

MEMBER (A)

MEMBER (J)

Place:-Aurangabad

Date :. 21.04.2023

SAS O.A.950/2019