

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 307/ 2019 (MUMBAI)
ORIGINAL APPLICATION NO. 272/2017 (AURANGABAD)**

DISTRICT : JALGAON

Dr. Vaishali d/o Pandurang Deshpande,)
Occ – Service as Medical Officer, Group-A)
[Pediatrician] at Civil Hospital,)
Jalgaon, R/o Jalgaon for the present.)
Permanent r/o: 48/B, Dnyaneshwar Society,)
Regency Estate Complex, Kalyan Shil Phata Rd,)
Dombivli [E], Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Public Health Department,)
G.T Hospital, Sankul Bldg, 10th floor,)
New Mantralaya, Mumbai 400 001.)
2. The Director of Health Services,)
8th floor, ‘Aarogya Bhavan’,)
St. Georges Hospital Campus, CST,)
Mumbai 400 001.)
3. The Deputy Director of Health Services,)
District Civil Hospital Campus,)
Tryambak Road, Opp. Hotel Rajdoot)
4. The Civil Surgeon,)
Civil Hospital, Jalgaon, Dist-Jalgaon.)...**Respondents**

Dr Vaishali P. Deshpande, applicant in person.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri P.N Dixit (Vice-Chairman) (A)

DATE : **23.02.2021**

PER : **Shri P.N Dixit (Vice-Chairman) (A)**

J U D G M E N T

1. The applicant, a Medical Officer, at present jobless, prays that Conditions No. 3 to 8 in the resolution dated 7.6.2016 issued by the Respondent no. 1, Public Health Department, to be declared as arbitrary, illegal and unreasonable and accordingly the same be quashed and set aside. She further prays that directions be given to Respondents no 1 to 4 to allow her to join the duties forthwith and the period of absence to be treated as duty period by treating the said period as study leave. She also prays that the period from 22.4.2014 till now be treated as continuous service and on that basis she be granted all consequential benefits including pay and allowances attached to the post of Medical Officer, Group-A.

2. The brief facts of the matter are as follows:-

The applicant has acquired MBBS Degree. She also completed the Post Graduate Diploma in Developmental Neurology. In addition she also possessed higher education in International Post Graduate Pediatric Certificate in 2011. The applicant had received the order of appointment on 9.4.2014 as Medical Officer, Group-A (Pediatrician) at Civil Hospital, Jalgaon. At the relevant time, the applicant was working as Fellowship student at Nair Hospital, Mumbai from 15.2.2014. She joined her duty at Jalgaon on 22.4.2014. However, she was asked to bring the movement order from the concerned authority. In between she gave application for

study leave on 30.4.2014. Thereafter on 10.5.2014, the applicant had sought one month's leave on account of serious health problem of her father as his multiple organs failed. However, she gave another application on 5.6.2014 for extension of leave as the leave of one month which she had sought for prosecuting fellowship had expired during the period of her father's illness. Then she gave application to Respondent no. 1 on 18.6.2015 to allow her join duties. Her Fellowship came to an end successfully on 30.6.2015. It is the contention of the applicant that she was not allowed to join duties thereafter on the ground that she went on unauthorized leave as her study leave was never sanctioned by the concerned authority.

3 It is further contended that on 7.6.2016, after one year, the Government issued G.R with a view to accommodate some Medical Officers from Group-A, who were on unauthorized leave and were absent throughout and so also for the officers who were absent without sanctioned study leave for their Post-Graduation. However, the Government on certain conditions, allowed them to join the duty.

4. It is useful to reproduce Conditions no. 3 to 8 of the said G.R dated 7.6.2016, which is the subject matter of this O.A.

“(३) सेवेत रुजू झाल्यानंतर किमान ५ वर्षे शासन सेवा करतील व राजीनामा अथवा स्वेच्छा सेवानिवृत्ती घेणार नाहीत अशा आशयाचे बंधपत्र लिहून घ्यावे. तसेच समावेशानाने नियुक्ती झालेले वैद्यकीय अधिकारी सेवेत रुजू झाल्यानंतर किमान १० वर्षे शासन सेवा करतील व राजीनामा अथवा स्वेच्छासेवानिवृत्ती घेणार नाहीत अशा आशयाचे बंधपत्र संबंधित वैद्यकीय अधिका-यांकडून लिहून घ्यावे.

(४) अनधिकृत गैरहजर असल्यामुळे त्यांना अनधिकृत गैरहजेरीच्या दिनांकापासून प्रत्याक्ष रुजू होईपर्यंतच्या कालावधीचे वेतन व इतर कोणतेही अनुषंगिक लाभ अनुज्ञेय होणार नाहीत. अनधिकृत गैरहजर कालावधी हा विनावेतन म्हणून गणला जाईल तसेच सदर अनधिकृत कालावधीतील कोणतीही रजा मंजूर केली जाणार नाही. तसेच सदरचा कालावधी कोणत्याही प्रयोजनार्थ नियमित केला जाणार नाही वा त्यासंबंधी कोणतेही निवेदन विचारात घेतले जाणार नाही. अशा आशयाचे सहमतीपत्र तसेच १००/- रुपयाच्या स्टॅम्प पेपरवर शपथपत्र घ्यावे.

(५) अनधिकृत गैरहजेरीच्या दिनांकापासून प्रत्याक्ष रुजू होईपर्यंतचा अनधिकृत गैरहजेरीचा कालावधी हा “सेवाखंड” समजण्यास त्यांची कोणतीही हरकत नसल्याबाबत रु.१००/- च्या स्टॅम्प पेपरवर शपथपत्र लिहून ते नोटरी करून सादर करावे.

(६) अनधिकृत गैरहजेरीबाबत नियमानुसार प्रशासकीय कार्यवाही करण्यात येईल व त्याचा निर्णय संबंधितांवर बंधनकारक राहिल.

(७) अनधिकृत गैरहजर असल्यामुळे सदर अधिका-यांना त्यांना रजा, रजावेतन, सेवाखंड क्षमापित करून सेवा नियमित करणे इत्यादी बाबत कोणत्याही न्यायलयात अथवा लोक आयुक्त/ उप लोक आयुक्त यांचेकडे दाद मागणार नसल्याबाबत रु.१००/- च्या स्टॅम्प पेपरवर शपथपत्र लिहून घ्यावे.

(८) अनुपस्थितीच्या कालावधीच्या प्रमाणात संबंधितांचा परिविक्षा कालावधी वाढविण्यात यावा.”

5. Conditions No 3 to 8 of the said G.R are summarized as follows:-

(3) The officers are required to give a Bond of five years and they shall not take VRS during that period. (The condition of 10 years Bond is not applicable to the present applicant hence no details given)

(4) The officers are not entitled to any consequential benefit of the period for which he/she remained on unauthorized leave. The period of said unauthorized leave will be considered without pay and the said period shall not be regularized and no leave can be granted for this period of absence. The Bond to that effect is also to be executed on oath by such Medical Officer.

(5) There will be no objection from the applicant to treat unauthorized absence as break in service and statement on oath to be furnished to this effect.

(6) Decision regarding the unauthorized absence will be dealt with as per the administrative procedures and the decision taken in this regard will be binding on the Medical Officers.

(7) The Medical Officers will furnish statement on oath that they shall not approach any judicial forum/Lok Ayukta, Up-Lokayukta for regularizing the leave period and consequential services.

(8) The probation period of Medical Officers for the period of absence will be extended proportionately.

6. During hearing learned P.O on instructions from Shri Umesh Rathod, Section Officer & Shri Shekhar T. Jadhao, Assistant Section Officer, Public Health Department, states that the Department has taken decision to omit Condition no. 7 in the G.R, namely, prohibiting the Medical Officers from approaching the judicial forum/ Lok Ayukta, Up-Lokayukta regarding regularizing the period of unauthorized absence.

7. As far as the other terms and conditions are concerned, including taking a Bond of service for a period of 5 years after joining, treating the period of absence as without pay, treating the period of unauthorized absence as break in service, deciding the period of absence as per the administrative rules appear to be just, hence we find no reason to consider these as violative of law or principles of natural justice.

8. We find that the Applicant had violated the provisions of study leave. For ready reference Rule 80(5) of the Maharashtra Civil Services (Leave) Rules, 1981, is reproduced below:-

80. Conditions for grant of study leave:-

5. Study leave shall not ordinarily be granted to a Government servant –

a) who has rendered less than five years' service under the Government;

9. The reading of the above rules makes it clear that the Government servant cannot proceed on study leave unless the Officer has completed 5 years of service and it is certified that the study is relevant and useful for the Department.

10. In the present case before us, the applicant has worked for not more than 20 days and therefore, her absence from the duty without getting sanction of the study leave cannot be considered as her right. To obtain study leave is not a right as such of any Government employee unless he fulfills the conditions as mentioned in the Rule 80 of Maharashtra Civil Services (Leave) Rules, 1981. In fact the rule contemplates a duty to render service to the Society for minimum 5 years. It is obligatory on the part of the Government servant to deliver his best service to the establishment where he is working so that the people at large are benefited. Thus, the facility of study leave necessarily follows the duty to render service for a stipulated period. This is completely absent in the case of the present applicant. As the Respondents have withdrawn Condition No. 7 of G.R dated 7.6 .2016 of approaching the judicial forum / Lok Ayukta, Up-Lokayukta, we find the other terms and conditions are legal and therefore there is nothing objectionable in the same. However, learned P.O on instructions submits that the applicant may join, if she desires, after making representation to the Department by following the terms and conditions mentioned in the G.R dated 7.6.2016.

11. In view of the foregoing, we find no merit in the Original Application and the same stands dismissed. No order as to costs.

Sd/-

(P.N Dixit)
Vice-Chairman (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 23.02.2021
Dictation taken by : A.K. Nair.