

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.469 OF 2012 WITH
ORIGINAL APPLICATION NO.682 OF 2013 WITH
ORIGINAL APPLICATION NO.879 OF 2015**

DISTRICT : MUMBAI

1) ORIGINAL APPLICATION NO.469 OF 2012

1. Dr Anilkumar Ramkrishna Tarale)
Presently posted on deputation at)
Poddar Ayurved College,)
Mumbai 400 025.)
2. Dr. Shrikrushna M. Mohrut.)
3. Dr. Nandkishor S. Manatkar.)
4. Dr. Ashok Manohar Wagh.)
5. Dr. Chandrakant A. Dabhere.)
6. Dr. Prafulla V. Bahekar.)
7. Dr. Sheshrao N Kalwaghe.)
8. Dr. Kavita K. Nagalkar)
9. Dr. Gangadhar Namdeo Kshirsagar)
10. Dr. Sanjay Dayaram Chavhan.)
11. Dr. Jaipalsing Chouhan.)
12. Dr. Md. Mushir Patel.)
13. Dr. Anil Nilkanthrao Bodkhe.)
14. Dr. Rajesh Sadanand Amolik.)
15. Dr. Sunil Seetaram Parve.)
16. Dr. Satish Padmakar Neve.)
17. Dr. Shankar Yadaorao Dhale.)
18. Dr. Gulabrao Baburao Lahane.)
19. Dr. Arun Namdeorao Jawanjal.)
20. Dr. Vandana Tejrao Jumbad.)
21. Dr. Mrs Aruna Ganeshrao Deshmukh)
22. Dr. Vasant Rao Raysing Sirsat.)
23. Dr. Pankaj Ramchandra Patil.)
24. Dr. Bharat Sheshrao Sapkal.)
25. Dr. Babarao Ramji Rathod.)
26. Dr. Dinesh Krushnarao Wankhede.)
27. Dr. Sunil D. Ratnaparkhi.)
28. Dr. Ravindra S. Aarya.)

29. Dr. Prafulla S. Pachghare.)
 30. Dr. Sanjivaneer G. Deshmukh.)
 31. Dr. Prakash M. Chincholkar)
 32. Dr. Ganesh U. Sanap.)
 33. Dr. Nilkant Baburao Chavan.)
 34. Dr. Suryakant S. Dalvi.)
 35. Dr. Sadguru G. Deshmukh.)
 36. Dr. Arun S. Panzade.)
 37. Dr Mangla G. Deshmukh.)
 38. Dr. Avinash V. Band.)
 39. Dr. Arun Janardan Thakare.)
 40. Dr. Rajabhau Welchand Sangale.)
 41. Dr. Dnyaneshwar R. Parate.)
 All are working as Medical Officers,)
 Group-A, Class-II at different)
 Primary Health Centres.)...**Applicants**

Versus

1. The State of Maharashtra)
 Through Addl. Chief Secretary,)
 Public Health Department,)
 Having office at Mantralaya,)
 Mumbai 400 032.)
2. The State of Maharashtra,)
 Through Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 400 032.)
3. Director of Health Services,)
 Arogya Bhavan, St. Georges Hospital))
 Campus, Near C.S.T, Mumbai.)
4. The District Health Officer,)
 District-Buldhana.)...**Respondents**

2) ORIGINAL APPLICATION NO. 682 OF 2013

1. Dr Mahendra Babanrao Deollikar,)
 Occ-Medical Officer, Group-A,)
 Presently working as Taluka Health)
 Officer, Dindori, Tal-Dindori,)
 Dist-Nasik.)

2. Dr. Rajendra Rambhau Trymbake,)
Occ-Medical Officer, Group-A,)
Presently working as Talukar Health)
Officer, Sinnar, Tal-Dindori,)
Dist-Nasik.)
3. Dr Ravindra N. Sapkale,)
Occ-Medical Officer, Group-A,)
Working as Taluka Health Officer,)
Kalwan, Tal-Kalwan, Dist-Nasik.)...**Applicants**

Versus

1. The State of Maharashtra)
Copy served on C.P.O, M.A.T,)
Bench, Mumbai.)
2. Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
3. Director of Health Services,)
Arogya Bhavan, St. Georges Hospital)
Campus, Near C.S.T, Mumbai.)
4. Deputy Director of Health Services,)
Nasik Circle, Nasik.)
5. The Chief Executive Officer,)
Zilla Parishad, Nasik.)
6. The District Health Officer,)
Zilla Parishad, Nasik.)...**Respondents**

3) ORIGINAL APPLICATION NO. 879 OF 2015

1. Dr Gajanan P. Wadekar)
Occ-Medical Officer, Primary Health)
Centre, Peth, Tal-Ambegaon,)
Dist-Pune.)

2. Dr Supriya G. Wadekar)
Occ-Medical Officer,)
Primary Health Centre, Kadus,)
Tal-Khed, Dist-Pune.)
3. Dr. Vikarm B. Kale.)
Occ-Medical Officer,)
Primary Health Centre,)
Dhamani, Tal-Ambegaon,)
Dist-Pune.)
4. Dr. Varsha Aadesh Gaekwad)
Occ-Medical Officer,)
Primary Health Centre,)
Wagholi, Tal-Haveli, Dist-Pune.)
5. Dr. Sunil B. Chidrawar,)
Occ-Medical Officer,)
Supervisory Urban Leprosy Unit,)
Pimpri, Pune, Dist-Pune.)
6. Dr. Dnyandeo Swaji Sabale,)
Occ-Medical Officer,)
District Neucleas Team,)
ADHS Leprosy, Pune-1, Dist-Pune.)
7. Dr. Shahadeo I. Kamble.)
Occ-Medical Officer,)
Primary Health Centre, Pait,)
Tal-Khed, Dist-Pune.)
8. Dr. Vaman Pangaji Genaje,)
Occ-Medical Officer,)
Primary Health Centre,)
Yelase, Tal-Maud, Dist-Pune.)
9. Dr. Anilkumar Baburao Patil,)
Occ-Epidemic Medical Officer,)
Zilla Parishad, Pune, Dist-Pune.)
10. Dr. Kashinath Tulshidas Denge,)
Occ-Medical Officer,)
Primary Health Centre,)
Tadawale, Tal-Barshi,)
Dist-Solapur.)
11. Dr Rajiv Anant Kulkarni,)

- Occ-Medical Officer,)
 Primary Health Centre, Bholudni,)
 Tal-Pandharpur, Dist-Solapur.)
12. Dr. Balaji Keraba Lakade,)
 Occ-Medical Officer,)
 Primary Health Centre, Mann,)
 Tal-Mulshi, Dist-Pune.)
13. Dr. Shailaja M. Kulkarni,)
 Occ-Medical Officer,)
 Primary Health Centre, Khadkala,)
 Tal-Maud, Dist-Pune.)
14. Dr. Meena Srikisan Sarada,)
 Occ-Medical Officer,)
 Ayurved Dispensary, Daund,)
 Dist-Pune.)
15. Dr. Umesh Vasant Tagade,)
 Occ-Medical Officer,)
 Primary Health Centre, Mandavgan,)
 Tal-Srigonda, Dist-Ahmednagar.)
16. Dr Milind Bandu Yadav,)
 Occ-Medical Officer,)
 Primary Health Centre,)
 Nimgaon Savd, Tal-Junnar,)
 Dist-Pune.)
17. Dr. Dadasaheb V. Salunke,)
 Occ-Epedimic Officer,)
 Z.P Ahmednagar, Dist-Ahmednagar.)
18. Dr Sanjay A. Kakde,)
 Occ-Medical Officer,)
 Primary Health Centre,)
 Chmbipada, Tal-Bhiwandi, Thane.)...**Applicants**

Versus

1. The State of Maharashtra)
 Through Addl. Chief Secretary,)
 Public Health Department,)
 Having office at Mantralaya,)
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2. The State of Maharashtra,)
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3. Director of Health Services,)
Arogya Bhavan, St. Georges Hospital))
Campus, Near C.S.T, Mumbai.)
4. Deputy Director of Health Services,)
Pune Circle, Pune.)
5. Deputy Director of Health Services,)
Mumbai Circle, Thane.)
6. Deputy Director of Health Services,)
Nasik Circle, Nasik.)
7. The Chief Executive Officer,)
Zilla Parishad, Pune.)
8. The Chief Executive Officer,)
Zilla Parishad, Solapur.)
9. The Chief Executive Officer,)
Zilla Parishad, Ahmednagar.)
10. The Chief Executive Officer,)
Zilla Parishad, Thane.)...**Respondents**

Mr. Bhushan A. Bandiwadekar, learned Advocate for the Applicants in O.A.No.469/2012.

Mr. R.M. Sarada, learned Advocate for the Applicants in O.A.No. 682/2013.

Mr. N.Y. Chavan, learned Advocate along with Mr. Rahul Khot, learned Advocate for the Applicants in O.A.No.879/2015.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

RESERVED ON : **09.12.2021**

PRONOUNCED ON : **04.01.2022**

PAR : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. All these Original Applications are heard together and disposed of by a common order as the issues involved are similar.

2. The applicants are all working as Medical Officers having basic qualification of BAMS working at different Public Health Centre in State of Maharashtra. Initially, all the applicants appointed as Ayurvedic Vaidya, Group-C in District Technical Services claim their entitlement in Group-A with Pay Band of Rs.15000-39100 + Grade Pay Rs.5400.

3. Original Application No.469/2012 was dismissed by Division Bench of this Tribunal on 25.06.2016. In the said Original Application, all the applicants are temporary Gazetted Officers of the State Government, working in the post of Medical Officer. They seek relief that they are to be given the Grade Pay of Rs.5400 with Pay Band of Rs.15600-39100 w.e.f June, 2011. It is also further prayed that the applicants are entitled for being continued to paid the monthly pay and allowances w.e.f June,

2011 and the Government Notification dated 04.11.2009 issued by Respondent no.2 in the Pay Band of Rs.15600-39100 with Grade Pay of Rs.5400/- to be granted with all consequential benefits. They are to be paid monthly pay and allowances in the post of Medical Officer, Group-A in the Pay Band of Rs.15600-39100 with Grade Pay of Rs.5400/- on the basis of earlier corresponding pay scale of Rs.8000-13500 read with Government decision dated 27.02.2006 and 04.11.2009. It is to be declared that the action of the Respondent no. 4 of paying the applicants salary in the post of Medical Officers in the pay band of Rs.9300-34800 with G.P of Rs.4400/- is illegal.

4. In O.A.No.682/2013, the applicants have challenged the letter dated 3.7.2013 issued by Public Health Department reverting the applicants from Group-A to Group-C posts be quashed and set aside and the applicants be declared that they are Gazetted employees and at par with MBBS Doctors as per policy decision taken by the Government.

5. In O.A.No.879/2015, the applicants working as Medical Officers, in Primary Health Centre in various hospitals pray that the communication dated 20.5.2015 issued by the Under Secretary and communication dated 18.6.2015 issued by the Director, Health Services is to be quashed and set aside in view of the decision of the Anomaly Committee dated 11.2.2013 and the

Respondents be restrained from down grading the status of the applicants from Group-A to Group-B employees and it is to be declared that they are entitled to pay scale of Rs.15600-39100 with Grade Pay of Rs.5400/-.

6. The O.A.No.469/2012 and the other two Original Applications No.682/2013 and 879/2015 were also dismissed by order dated 25.06.2015 by the Maharashtra Administrative Tribunal, Mumbai. Review Application No.25/2015 was filed in all the three Original Applications and the Review Application was partly allowed on 11.07.2016. The Division Bench in the Review Application held that the applicants' demand of Pay Band of Rs.15600-39100 and Grade Pay of Rs.5400 cannot be accepted. However, it held that the applicants are absorbed in Group-B posts of Medical Officers from 28.5.2001 and are eligible to get pay in the Pay Band of Rs.9300-34800 + G.P of Rs.5400/-. Thereafter, Writ Petition No.2562/2017 and Ors. were filed before the Hon'ble High Court, Aurangabad Bench. The said Writ Petitions were remanded to this Tribunal by order dated 16.4.2018. Similarly, W.P.No.4523 /2017 along with W.P.No.9386/2017 were filed before the Hon'ble Bombay High Court, wherein the Division Bench of the Hon'ble Bombay High Court set aside the judgment and order of the Tribunal by order dated 5.7.2018 and remanded the matters back to the Tribunal.

7. The learned Advocate for the Applicants Mr. Bhushan A. Bandiwadekar, Mr. R.M. Sarada, Mr. N.Y. Chavan, along with Mr. Rahul Khot have submitted that the Applicants are eligible and entitled for their entry in Group-A from Group-C as all of them have long back completed three years of their service in Group-C. It is unjust on the part of Government to give them entry in Group-A when there is specific provision in the Recruitment Rules of 2000 of their eligibility in Group-A. Since 2006 they were receiving the revised pay in the pay band of Rs.15600-39100 + Grade Pay Rs.5400. The Government Notification of 04.11.2009 which was applicable to Medical Officer, Group-A wherein the Applicants are at par with M.B.B.S. Doctors, hence their prayer of giving them Group-A since 2006 or 2009 is to be allowed.

8. The learned P.O. while opposing these Original Applications has relied on various affidavits. However, she pointed out by referring to the affidavit-in-reply dated 08.12.2021 of Dr. Ms. Neelima Kerkatta, Principal Secretary, PHD, Mantralaya that the applicants are though eligible the Respondent-State has to issue the necessary orders of putting them in Group-A which are not yet received and now by G.R. of 2014 they are given the cadre of Group-B, so gradually the required G.Rs. and orders will be issued by the Government. She has further relied on the report of Hakim Committee pointing out the Anomaly in the pay scale of the applicants and has submitted that the G.A.D. who is also the

Respondent has taken stand that the applicants are not entitled to Group-A in view of the affidavit dated 08.12.2021 and G.R. dated 11.02.2013.

9. The learned Counsel of both sides have unfolded the cases on the basis of G.R. and the documents. The learned P.O. has rendered abled assistance by placing the required affidavits of the Respondents and explaining the hurdles in their placement in Group-A. We have realized that in this matter the most of the averments are admitted by the Respondents and the issue is only in respect from when and how to place the applicants in Group-A. It is to be noted that all the Original Applications are pending since 2012 and 2013 and the Government has issued the modification of Rules by Notification in November, 2012 and so also in the Recruitment rules in 2013, therefore we have only given gist of the submissions as both of them have relied on the documents. As the arguments of both the learned Counsel are more regarding the Recruitment Rules and G.Rs which we are also analyzing and discussing herein.

10. The Applicants in all the three matters are having Bachelors of Ayurveda Medical and Surgery (BAMS) degree qualification. Most of them are now retired and few are in service. They were given pay scale of Group-C, Medical Officers like initially 4th Pay Commission w.e.f. 01.01.1986 for Group-C, Zilla Parishad the Pay

band was Rs.2000-3500/-, then w.e.f. 01.01.1996 they were given 5th Pay Commission wherein the Pay band was Rs.6500-10500. The Applicants through their association were consistently demanding to take the policy decision and confer the status of Group-A, Medical Officers to all the Medical Officers like them working in Zilla Parishad in the District Technical Service, Group-C. On 28.05.2001 the Respondent, Public Health Department (PHD) of the State of Maharashtra issued G.R. and gave the status of Gazetted Officer to the Medical Officers working in the District Technical services (DTS) in Maharashtra and put them from Group-C to Group-B and as per Clause 3 of the said G.R. the services of the applicants thereafter were taken under the State Level from the District Level.

11. The Finance Department by Notification dated 22.04.2009 published the Maharashtra Civil Services (Revised Pay) Rules, 2009 w.e.f. 01.01.2006 on the basis of 6th pay commission recommendations which was followed by the Respondent-State by issuing Notification dated 04.11.2009, extending the pay scale of Rs.15600-39100 with Grade pay of Rs.5400/- for the medical officer in Group-A and Group-B. The Applicants who had earlier drawn the salary of Rs.8000-13500 were also put in the higher pay band of Rs.15600. The Hakim Committee report and G.R. dated 27.02.2009 has mentioned that the services of District Technical Service, Medical Officers should have been taken under Public

Health Department. However, the Public Health Department did not take any decision and therefore the Grade Pay fixed in the District Technical Service could not be taken. Hakim Committee was constituted and it gave recommendations. It was argued that the services of these applicants in fact remained with the Rural Development at District level.

12. By Notification dated 04.11.2009 Respondent No.2 approved the pay band of Rs.15600-39100 with Grade pay of Rs.5400 of the medical officers, Group-A, Clause II, who were earlier getting the pay scale of Rs.8000-13500. As the applicants were getting the salary in the pay scale of Rs.8000-13500 they were eligible of Grade pay of Rs.5400 and pay band of Rs.15600-39100, so the applicants started getting the pay accordingly w.e.f. February, 2010 and they continued to get till May, 2011. However, from June, 2011 there Grade pay was reduced from Rs.5400 to Rs.4400 in the pay band of Rs.9000-34800, so the Association of the Applicants made representation to the Respondent no.1 on 25.02.2012 that the applicant should be paid Grade pay of Rs.5400.

13. The Hakim Committee and Anomaly Committee report examined and compared the equivalent pay scale of 5th and 6th pay commission and submitted report on 20.12.2008. By G.R. dated 18.07.2007 the Government posted the BAMS i.e. DTS medical

officers in Primary Health Centre, as number of posts were vacant in this Department. Though as per the recommendations of Hakim Committee the pay scale of DTS medical officers was brought down to Rs.6500-10500 from Rs.8000-13500. They were given pay band of Rs.4400. However, subsequently, the State Government issued G.R. on 11.02.2013 by which the DTS medical officers were given Grade pay of Rs.4600 in pay band of Rs.9300-34800 as per 6th pay commission. The Hakim Committee was recommended by G.R. dated 27.02.2009 but the excess payment made to the officers was not recovered.

14. Again on the basis of the Anomaly report of Bakshi Committee by G.R. dated 11.02.2013 it was recommended that the District Technical Service Medical Officers were to be directly absorbed in Group-A cadre and if such direct absorption is legally maintainable then these District Technical Service Medical Officers are entitled to get the pay scale of Rs.15600-39100 with Grade pay of Rs.5400/-

15. By Notification dated 18.07.2013 the Public Health Department amended the Recruitment Rules Group-A Medical Officers by replacing the mode of appointment of District Technical Service Medical Officers which was substituted by the word 'absorption' in place of 'selection'. However, till today that Notification is not implemented. In the said Notification dated

18.07.2013 it is further stated that this DTS officers who satisfy the terms and conditions as provided in G.R. dated 28.05.2001 and who are subject to the provision of 1st proviso under Rule 5 of the Recruitment Rules dated 30.10.2000. However, the said Notification dated 18.07.2013 was not implemented till today and therefore DTS Medical Officers could not be absorbed in Group-A cadre. It is admitted by the Government that there is a long gap between 28.05.2001 to 18.07.2013 to give effect to the policy decision of absorbing DTS Medical Officers in Group-A. The Public Health Department issued G.R. dated 17.10.2014 absorbing the DTS Medical Officers in Group-B cadre with retrospective effect. In the G.R. dated 17.10.2014 the Respondent-State ignored the fact that the DTS Medical Officers were getting the pay scale earlier as per 6th Pay Commission wherein Pay Band Rs.15600-39100 with Grade pay of Rs.5400. The PHD by letter dated 15.11.2014 specified that the DTS Medical Officers though they are absorbed in Group-B they are eligible to get the Salary of Group-A. It is admitted fact by the Respondent-State that Notification dated 18.07.2013 provides for concrete source for granting Group-A (status) to District Technical services (DTS) Medical Officers.

16. In Recruitment Rules of 2000 the Public Health Department of the State of Maharashtra has framed the Recruitment Rules of the post of Medical Officers in Maharashtra Medical and Health Service, Group-A in the Directorate of Health Services. The

appointment to the post of Medical Officer in Maharashtra Medical and Health Services (MMHS) Group-A (Recruitment) Rules, 2000 wherein Rule 3 reads as follows :-

- “3. Appointment to a post of the Medical Officer in Maharashtra Medical and Health Services, Group-A, under the Directorate shall be made either –
- (a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding posts in Maharashtra Medical and Health Services, Group-C having not less than three years.
 - (b) by selection of a suitable person on the basis of seniority subject to fitness from amongst the persons holding posts in District Technical Services, Group-C (Health), having not less than three years in that service and possess the qualification prescribed in clauses (c)(ii).
 - (c) by nomination from amongst candidates, who –
 - (i) unless already in the service of Government, are more than thirty five years of age ; and
 - (ii) possess-
 - (a) the MBBS Degree of a Statutory University or any other qualification specified in the First or Second Schedule to the Indian Medical Council Act, 1956; or
 - (b) the Degree in Shuddha Ayurved as specified in Part (A1) of the Schedule to the Maharashtra Medical Practitioner Act, 1961, or BAMS Degree.

Provided that, preference may be given to candidates who possess post graduate degree in any branch of Medical Science of a Statutory University,

Provided further that, age limit may be relaxed by Government on the recommendation of the Commission in front of candidates having exceptional qualification, Provided further that, candidates possessing qualifications specified in sub-clause (b) above, shall be held eligible for appointment only to the posts reserved for graduates in Shuddha Ayurved as per the provision made in rule 5. (d) by transfer of a suitable officer from the General State Service Medical. Group-A, or any other service under the State Government, who possess the qualification specified in clause (c)(ii).

Thus, there are three methods available for appointment to the post of the Medical officer in MMHS, Group-A.

Firstly by promotion of suitable persons amongst persons holding the post in Maharashtra Medical and Health Services, Group-C with minimum 3 years' service and possesses the qualification prescribed in clause (c)(ii), (a) and (b)

(a) The MBBS degree not applicable to the present applicants.

(b) The degree in Shuddha Ayurved specified in Part (A1) of the Schedule of the Maharashtra Medical Practitioner Act, 1961 or BAMS Degree.

All the applicants hold BAMS Degree, hence they are qualified as per clause (c)(ii) to get promoted to the post of Medical Officer, Group-A.

Secondly, by selection amongst the persons who hold the post in DTS, Group-C (Health) having not less than 3 years' service and qualification prescribed in Clause (c)(ii). The Applicants are having the degree of BAMS.

Thirdly, by nomination – Not applicable.

17. Thus, it shows that there are two traits of Medical officers in the State of Maharashtra.

First trait : Under Maharashtra Medical and Health Services under Public Health Department

Second trait : The District Technical Service (Health).

In both the traits the Medical Officers having qualification MBBS or BAMS degree are entitled to and can be recruited in Group-A.

18. The Hon'ble High Court Bench Aurangabad while remanding the matter by order dated 18.10.2016 held that the Petitioners are absorbed pursuant to Government Resolution dated 17.10.2014 in Group-B. However, the said G.R. of 17.10.2014 and also relevant G.R. dated 02.07.2002 were not discussed in the order of the Tribunal, so also the Tribunal did not consider the Medical Officers in Maharashtra Medical and Health Services Group-A, (Recruitment) Rules 2000 which were amended on 13.07.2013. The Hon'ble High Court Bench Aurangabad expressed that the Rules are relevant hence required to be considered to decide whether the Petitioners can be taken in Group-A category. As per the order of the High Court, Bench Aurangabad it is necessary for the Tribunal to consider four documents - Government Resolutions:-

- (1) G.R. dated 02.07.2002, particularly clause 3(a).
- (2) G.R. dated 17.10.2014.
- (3) Maharashtra Medical and Health Services, Group-A, (Recruitment) Rules 2000.
- (4) The said Rules of 2000 amended on 13.07.2013.

19. As per the Recruitment Rules these Doctors having degree of Bachelors of Ayurveda Medical and Surgery (BAMS) from District Technical services (DTS), Group-C should complete three years of service for their entitlement to get selected as Medical Health Officers, Group-A. Thus, in the Recruitment Rules there is no post of District Technical Service, Group-B (Health). Thus, persons who are in Medical Officer of Group-C is a feeder cadre to enter into Group-A whenever they complete three years and they are selected. By Notification dated 18.07.2013, Public Health Department amended Rules and especially Clause (3) which is about feeder cadre. Addition was made after sub Rule (b) of Rule 3 as follows :-

“Provided that selection of the Medical Officers in the District Technical Service, Group-C possessing the qualifications mentioned in sub clause (b) of Clause (ii) of sub Rule (c) of Rule 3 shall be made by absorption subject to fitness and eligibility as per the terms and conditions mentioned in Government Resolution, Public Health Department, No. SANGHAT-1093/C.R.96/SEVA-6 dated the 28.05.2001 as applicable on the date of the commencement of the Maharashtra Medical and Health Services Group-A (Recruitment) (3rd amendment) Rules, 2013 and also subject to the provisions of the first proviso to Rule 5 of the principle rules.”

“[Proviso of Rule 5 of the Recruitment Rules of 2000 states that

5. Provided that total number of Medical Officers possessing the qualifications specified in sub clause (II) (b) of clause (c) of the rule 3 shall not exceed 33 percent of the total number of Medical Officers in Maharashtra Medical and Health Services, Group-A (Rs.8000-13500) at any given time.]”

20. Thus, as per the earlier Recruitment Rules by selection of DTS Group-C, Officers who can fall as per the availability of the 33% quota could have been recruited in Group-C. However, by G.R. dated 18.07.2013 the Government put the condition of absorption of the Medical Officers, Group-C subject to fitness and eligibility as per the terms and conditions mentioned in G.R. of 2001 subject to absorption.

21. Let us advert to G.R. dated 28.05.2001 to find out the conditions of absorption. As per clause 4 of the said G.R. for the DTS Medical Officer, there are four conditions which are required to be fulfilled for absorption :-

- (a) Medical Officer should be eligible for recruitment in Group-C.
- (b) He should have been appointed in regularized manner in Group-C.
- (c) The concerned Medical Officer, should have completed three years' service in Group-C.
- (d) Confidential Report in Group-C should be satisfactory.

Thus, by this G.R. of 28.05.2001, the Government has modified the Clause No.(3) of the Recruitment Rules. Thus, the procedure of absorption demands that the Medical Officer from DTS in order to acquire the status of Gazetted Officer he should be absorbed in Group-B. However, by way of amendment the Government put the conditions of absorption that they should be

first made the Gazetted Officer, Group-B and modified feeder cadre as per Rule 3(b)(c)(II)(b) of the Recruitment Rules. This made the situation complicated. The Government did not take decision in respect of the absorption from 2001 to 2013. They were absorbed by G.R. 2014 as Group-B. Thus from 2000 till today not a single Medical Officer from DTS was recruited by selection in Group-A, Public Health Medical Officer, Group-A. Thus, by way of absorption in 2014 now they are absorbed in Group-B and then as per quota, if found suitable, they will be selected and recruited in Group-A.

22. After going through the record and after hearing submissions of the Counsel of both the sides which are truly very good assistance to us, we found that a very short issue is left to be decided and which is to be decided on the basis of observations made and directions given by the Hon'ble High Court at Aurangabad Bench in Writ Petition No.2562, 2563 & 2564/2017, dated 16.04.2018. It invites analysis of Recruitment Rules of 2000 and the amended Rules of 2013 and also consideration of relevant G.Rs. In the beginning we summarize the admitted facts :-

(a) The Applicants were appointed in the regular posts having degree of BAMS in DTS as Medical Health Officer at different dates. They all were given the status of Gazetted Officer by G.R. dated 28.05.2001.

(b) They were required to be absorbed in Maharashtra Medical and Health Services as per G.R. dated 28.05.2001 and their appointments thereafter to be made through M.P.S.C. and therefore the erstwhile Medical Officers from DTS were to be absorbed if they could fulfill the four conditions.

- (i) Medical Officer should be eligible for recruitment in Group-C.
- (ii) He should have been appointed in regularized manner in Group-C.
- (iii) The concerned Medical Officer, should have completed three years' service in Group-C.
- (iv) Confidential Report in Group-C should be satisfactory.

23. Thus, there is no issue about criteria regarding (b), (c) and (d), but about the criterion (a),

(i) The criterion (a) refers that the person should fulfill the criteria of the Medical Officer of Group-B as per the revised Rules.

(ii) As per G.R. dated 29.07.1993 first time the State of Maharashtra introduced the categorization in Group-A, Group-B, Group-C and Group-D by following the rules of Central Government. Thereafter, the Rules of categorization of the post were revised by issuing the G.R. dated 02.07.2002. Thus in order to understand the eligibility under Clause 4 (a) of G.R. of 28.05.2001, one needs to refer to G.R. dated 02.07.2002. The posts in the State services were categorized as follows :-

Sr. No.	Description of the posts	Grouping
1	Pay scale not less than Rs.11500/-	Group-A
2	Pay scale Rs.9000-11500/-	Group-B
3	Pay scale Rs.4400-9000/-	Group-C
4	Pay scale upto Rs.4400/-	Group-D

Thus, the Medical officers who were drawing the Salary in the pay scale between Rs.9000-11500 are put in Group-B. In the said G.R. there is also clause 3(a) in G.R. dated 28.05.2001 stating that on the basis of pay scale or particular category no Government servant is entitled to get the status of Gazetted Officer unless there is an official pronouncement of bestowing the status of Gazetted Officers to that particular Group or a person though falling in that pay scale. Thus, a person may be drawing the salary in pay scale of more than Rs.11500/- which shows Group-A, however, he is not entitled to get the status of Gazetted Officer unless it is specifically given by order by the State.

(iii) The case of the Applicants that they all were given the status of Gazetted Officer by G.R. dated 28.05.2001 is the admitted fact.

(iv) As per 5th pay commission as on 01.01.1996 the applicants were given the pay scale of Rs.6500-10500. However, as per the G.R. dated 27.02.2006 the revised pay scale of Group-C officers was given between Rs.8000-13500. The 6th pay commission was introduced and pay band of applicants was fixed as Rs.15600-39100 with Grade pay of Rs.5400/- from 2009, it continued till May 2011.

(v) On 27.02.2009 Hakim Committee report and Anomaly Committee submitted the report. The Hakim Committee

pointed out that the applicants were not absorbed in Group-B and therefore their pay scale which is equivalent to Group-A as Rs.15400-39100 is to be reduced and they are to be put in Group-B first.

24. When we are referring to the Condition (a) mentioned in the G.R. dated 28.05.2001 which speaks of eligibility for recruitment in Group-A of Medical Officer of DTS of giving them the status of Gazetted Officer we have to refer to the Entry No.43(B) of G.R. dated 11.02.2013 which is reproduced as below :-

अ.क्र. (१)	संवर्गाचे नाव (२)	विद्यमान वेतनश्रेणी (रुपये) (३)	सुधारित वेतनसंरचना (रुपये) (४)		समितीच्या शिफारशीनुसार मंजूर केलेली सुधारित वेतनसंरचना (रुपये) (५)	
			वेतनबँड	ग्रेड वेतन	वेतनबँड	ग्रेड वेतन
७. सार्वजनिक आरोग्य विभाग						
आरोग्य सेवा संचालनालय						
४३	(अ) महाराष्ट्र वैद्यकीय व आरोग्य सेवा गट- अ (वैद्यकीय अधिकारी)	८०००-१३५००	९३००-३४८००	५४००	या संवर्गाबाबत शासन अधिसूचना, वि-ता विभाग क्र. वेपूर-१२०९/प्र.क्र. १५३ /सुधारणा-५/सेवा - ९ अन्वये निर्णय घेण्यात आला आहे.	
	(ब) महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट- अ (वैद्यकीय)/ अधिकारी / शासन निर्णय, वि-ता विभाग क्र.वेपूर-१२०९/प्र.क्र.४ /सेवा - ९, दि. २७ फेब्रुवारी, २००६ अन्वये रु. ८०००-१३५०० ही वेतनश्रेणी मंजूर केल्यामुळे जिल्हा परिषद आस्थापनेवरील जिल्हा तांत्रिक सेवा, गट-क (आरोग्य) मधून महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट-अ मध्ये थेट समावेश झालेले वैद्यकीय अधिकारी)				१५६००-३९१०० (महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट- अ मध्ये थेट समावेश विधीग्रह्य ठरत असेल व मूळ संवर्गात / विभागात प्रत्यापण होणार नसेल तर	५४००

(emphasis placed)

25. This Entry states about the recruitment of Medical Officers in DTS of Group-A, wherein the word used “अट” is translated *ad verbatim* as “direct”. Thus, the word “direct” cannot be ignored while interpreting this particular G.R. The word “direct” has connection with the Recruitment Rules of 2000. In the Recruitment Rules of 2000, Group-C as per clause 3(b)(ii) the Medical Officers of DTS after completing three years they can be selected directly to Group-A. In the original Rules of 2000 there is no such Clause for Group-B though the Government of Maharashtra has introduced the scheme of grouping of the Government servants by giving the break-up on the basis of their pay scales. Thus, Group-B was in existence and introduced as per G.R. of 1999 when the Recruitment Rules of 2000 were framed for recruitment of Group-A Medical Officers and same was further reiterated in G.R. of 02.07.2002. Thus the legislature at the time of framing Rules of 2000 took conscience decision not to put Group-C in Group-B as a feeder cadre for Group-A. The Medical Officers who were drawing the pay scale of Rs.9000-11500 were put in Group-B. The Applicants by G.R. dated 28.05.2001 were given the status of Gazetted Officer. They were given higher pay scale of Rs.8000-13500. Thus, their status was like Group-B Gazetted Officer. However, the Government did not take action to issue the necessary G.R. consistent with the Recruitment Rules of 2000. It appears that there was not only confusion, but bias

amongst the Authority and the Department that the BAMS Doctors cannot be treated equivalent to the Doctors holding the MBBS degree. Therefore, the Government did not act upon the erstwhile Recruitment Rules. It is to be noted that in view of the transfer of services of these Medical Officers of DTS from Rural Development Department to Public Health Department in 2001, writing of Confidential Reports was done by the Officers in PHD from 2006 onwards. However, the Government was adamant of not issuing the G.R. of putting them in Group-A. This inaction of the Government was completely chaotic and bias. This confusion and bias in the thinking process and further decision is rightly stated in the affidavit-in-reply, dated 08.12.2021 of Dr. Ms. Neelima Kerkatta, Principal Secretary, PHD, Mantralaya. Paragraphs 3(u), 3(v), 4(c) and 4(d),

3(u) It is submitted that very delayed implementation of policy decision of 28.05.2001, non-implementation of provisions of Recruitment Rules of 30.10.2000 and Notification of 18.07.2013, non-consideration of services transferred from Rural Development Department to Public Health Department, lack of coordination among various Government departments, giving retrospective effects to delay policy decisions were the main reasons to the current scenario.

3(v) Considering all the facts, the Public Health Department is of the view that it will be appropriate to give effect to notification dated 18.07.2013 with regard to still working DTS medical officers and not disturbed the pay scales already given vide Finance Department GR dated 27.02.2006 and 11.2.2013 (Sr. No. 43 B). However, there is opinion difference in General Administrative Department (GAD), therefore the matter was sent to Hon'ble CM for final decision. However CM instructed the Chief Secretary to hold joint meeting of GAD and Public Health department and to come to a conclusion. This meeting was held on 6.10.2021, however unanimous decision could not be reached.

4(c) It is submitted that while issuing GR dated 17.10.2014, department did not take into consideration the pay scale of DTS medical officers which was mentioned in the letter dated

21.04.2008 of Rural Development Department or the notification dated 18.7.2013

4(d) On the recommendation of Hakim Committee, 2008, Finance Department issued G.R. dated 27.02.2009 thereby downgrading pay scale of DTS medical officers from Rs.8000-13500 to Rs.6500-10500 in 5th pay commission and fixed their scale to Rs.9300-34800 plus grade pay of Rs.4400 in 6th pay commission. Consequently Rural Development Department also issued GR dated 20.05.2009. As service matters of DTS medical officers were decided to be handled by Public Health Department vide letter dated 21.04.2008, Public Health Department should have taken decision regarding pay scale of DTS medical officers in view of GR dated 27.02.2009. However, Public Health Department did not take any decision and DTS medical Officers continued to get Group-A pay scales. Therefore Hakim Committee GR dated 27.02.2009 was not applied to DTS Medical Officers whose services are handled by Public Health Department from 2008 and whose names appear in the list attached to GR dated 17.10.2014.

26. Thus, the entire record of the matter discloses that the entry of D.T.S Medical Officers by way of proviso to original Rule 3(b)(c)(ii)(b) of 2000 by amended Rules of 2013 in Group-B was introduced as feeder cadre to recruitment to Group-A. However, in the original Recruitment Rules, the feeder cadre of Group-A has remained as by selection from Group-C D.T.S Medical Officers after completing 3 years in Group-C. Thus, there is a confusion as to which is the feeder cadre for recruitment to Group-A, D.T.S Medical Officers. In the amendment dated 18.7.2013 there a reference to G.R dated 18.5.2001 which is necessarily to be read with Notification dated 30.11.2012, which introduced the provision of entry in Group-B of D.T.S Medical Officers as a condition precedent to feeder cadre for recruitment to Group-A. We have no doubt to hold that this is going to create anomaly, confusion and will generate litigation in future and therefore, the Respondent,

Public Health Department and General Administration Department need to look into the matter to simplify the rules and to maintain consistency.

27. In view of the above, following order is passed:-

- (a) The Original Applications are partly allowed.
- (b) All the Applicants who are District Technical Service Medical Officers, placed in Group-B by virtue of G.R dated 17.10.2014 with retrospective effect from 28.5.2001 are eligible and entitled to recruitment to Group-A from the date of the G.R dated 18.7.2013 when the Rules were amended. Thus, they are recruited in Group-A from 18.7.2013 with all consequential benefits.
- (c) The applicants are entitled to pay scale in the pay band of Rs.15600-39100 with Grade pay of Rs.5400, with effect from 18.7.2013.
- (d) The payments made, if any, earlier from 2006 in the pay band of Rs.15600-39100 with grade pay of Rs.5400, should not be recovered from the applicants.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Nair/prk