

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR**

ORIGINAL APPLICATION NO 485 OF 2014

DISTRICT : NAGPUR

Mrs Pushpa Devendra Sood,)
Occ : Service, R/o: 918-B,)
Thapar Marg, Clarke Town,)
Nagpur 440 004.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
General Administration Dept,)
Mantralaya, Mumbai 400 032.)
2. State of Maharashtra,)
Through Secretary,)
Finance Department,)
Mantralaya, Mumbai 400 032.)
3. State of Maharashtra,)
Through Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai.)
4. State of Maharashtra,)
Through Secretary,)

- Medical Education & Drugs)
Department, Mantralaya,)
C/o: GTH Compound,)
New Gokuldas Tejpal Hospital)
Building, 9th floor,)
Lokmanya Tilak Marg,)
Mumbai 400 001.)
5. Director,)
Directorate of Medical)
Education & Research,)
Dental College Building,)
4th floor, St. Georges' Hospital)
Campus, Near C.S.T,)
Mumbai 400 001.)
6. Dean,)
Indira Gandhi Government)
Medical College, Nagpur)...**Respondents**

Mrs P.D Sood Applicant in person.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)

Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 07.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Mrs P.D Sood Applicant in person and Shri P.N Warjurkar, learned Presenting Officer for the Respondents

2. The Applicant has sought the following reliefs in this Original Application:-

“Prayer: It is therefore prayed that this Hon’ble High Court may kindly be pleased to:

- (i) quash and set aside the entry of the name of DMER shown to be officer to be deemed as Head of the Department under UD & PHD for the MCSR purposes in the list at Annexure-II of MCS Rules, 1981 being in contravention of and in violation of MGB Rules;
- (ii) declare the entry of the name of DMER shown to be an officer to be deemed as Head of the Department under UD & PHD in the list at Annexure-II of MSC (GCS) Rules to be null and ab-initio void having no constitutional validity;
- (iii) grant any other relief deemed fit and appropriate under the present facts and circumstances of the case in the interest of justice.”

Though the words ‘ Hon’ble High Court’ have been used, we presume that the Applicant means this Tribunal as this Original Application is filed before the Tribunal.

3. The Applicant's claim is that name of Director, Medical Education and Research (DMER) is illegally included in the list of Heads of Department of Government of Maharashtra at Annexure-II of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

4. This Tribunal by order dated 8.3.2017, directed the Respondents no 1, 2 & 3 to file an affidavit to bring out the correct legal position in this regard. The Respondents no 1 & 3 have filed an affidavit on 1.6.2017. It is stated that Head of Department under various Departments of the State Government are declared under the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. These are statutory rules framed under proviso to Article 309 of the Constitution of India. It is further stated that Governor of Maharashtra in exercise of the powers conferred by clause (2) and (3) of Article 166 of the Constitution of India has made 'Maharashtra Government Rules of Business' which came into force on 1.7.1975. The business of the Government is transacted in the Departments specified in the First Schedule of the aforesaid Rules.

5. Initially the office of the Director of Medical Education and Research (DMER) was under the Administrative control of Urban Development and Public Health Department. By notification dated 24.8.1982, the

subject of Medical Education and Research was transferred to Medical Education and Drugs Department. Clause 3(1) of Article 166 of the Constitution provides that:-

“3(1) A case shall be deemed to belong to a department to which under the Schedule to the Rules, the subject matter thereof pertains or it mainly related.”

6. Learned Presenting Officer (P.O) contended that subject of Medical Education and Research is within the ambit of Medical Education and Drugs Department. The definition of ‘Heads of Departments’ is inclusive under Rule 9(22) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981. The Government is specifically empowered to declare other offices as Head of the Departments. Appendix-II of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 indicated the position of Heads of the Departments vis-a-vis the Departments as existed in the year 1981. Thereafter, there have been creation of new departments and reorganization of some departments. Director of Medical Education and Research is the Head of the Department under Medical Education and Drugs Department and this position has been clarified beyond any doubt by Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2017, notified on 18.4.2017, which clearly show that DMER is

Head of the Department under the Medical Education and Drugs.

7. We have carefully considered the arguments of the Applicant and learned Presenting Officer in this regard and also considered the pleadings in the Original Application, especially the affidavit of the Respondents no 1 & 3 dated 1.6.2017. It is clear that D.M.E.R is Head of the Department under the Medical Education & Drugs. The fact that this post was earlier listed Head of the Department under the Urban Development and Public Health Department will not be of any significance. We are not impressed by the grounds mentioned by the Applicant claiming that inclusive of this post in the list of Head of Departments is illegal and reject any such contentions.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 07.07.2017
Dictation taken by : A.K. Nair.