

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.175 OF 2015
WITH
MISC. APPLICATION NO.200 OF 2016

DISTRICT : KOLHAPUR

Dr. Dhananjay Tukaram Patil)
Age 52 years, residing at 2119,)
D Ward, Shukruwar Peth,)
Kolhapur - 416012.)... **Applicant**

Versus

1. State of Maharashtra,)
Through Additional Chief Secretary,)
Public Health Department, New)
Mantralaya, GT Hospital Compound,)
Colaba, Mumbai - 400 032.)
2. The Commissioner,)
ESIC, Maharashtra State,)
ESIC Bhavan, N.M. Joshi Marg,)
Lower Parel, Mumbai 40 012.)...**Respondents**

**Smt. Pavitra Manesh holding for Shri M.S. Topkar, Advocate
for Applicant.**

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 28.07.2016

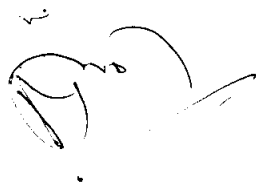


PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The issue in this Original Application (O.A.) is as to whether the technical breaks given to the Applicant during 3.4.1989 and 5.2.1993 need to be condoned and his notice of voluntary retirement under Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 need to be accepted. By the orders dated 30.08.2014 (Exh. 'A' page 16 of the Paper Book (P.B.) and 03.12.2014 (Exh. 'A-1' page 17 of P.B.), the Government has rejected the same sending the Applicant up before us by way of this O.A.

2. The Applicant was born on 10.10.1963 is a Doctor. He is MBBS, M.S. He took up the job of Medical Officer (M.O.) Class-II in Maharashtra Medical Insurance Service from 3.4.1989 vide the order of appointment dated 15.5.1989. He was initially appointed for 90 days and continued with technical breaks in between. The Applicant then brought O.A.No.392 of 1991 aggrieved by the breaks. In paragraph no.6.4 of the O.A. it is pleaded that, "This Hon'ble Tribunal directed the Respondent to continue the Applicant without break. The said order was implemented by the Respondent and the Applicant was continued continuously". In Para 4 of the reply of the Respondent, it is pleaded as follows:-



“With reference to para 6.4, I say that the Applicant was continued in service as per M.A.T. order dated 24.09.1991 till the M.P.S.C. selected candidate becomes available of appointed. As such continuation thereafter is as per court orders.”

3. It is clear that ever since 24.9.1991 the M.P.S.C. recommended candidate did not become available.

4. But then in 2000, the Applicant wanted to do his M.D. for which he sought permission. The permission was declined on the ground that he had not completed ten years continuous service. The Respondents were not prepared to accept the service rendered by the Applicant since 3.4.1989 which was considered temporary with breaks. The Applicant went before the Hon'ble High Court with **Writ Petition No.5876 of 1999 (Dr. Dhananjay Tukaram Patil Vs. State of Maharashtra and Ors.)**. Let us reproduce the entire order of the Hon'ble High Court dated 2nd February, 2000.

“P.C.
Rule.

2. The Petitioner is claiming Admission for Post Graduate Medical Course. The G.R. dated 21.3.1991 mainly requires two conditions to be fulfilled- (1) a candidate should pass M.P.S.C. and (2) he should have served in the State of Maharashtra continuously for not less than 10 years. There is no dispute that the Petitioner has passed M.P.S.C.



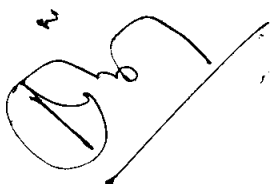
Examination. The only dispute raised is that he has not served continuously for 10 years.

3. The Petitioner was appointed as Medical Officer, Class-II, at ESIS Hospital, Solapur, temporarily on 3.9.1989. He has been continued with technical breaks. In fact, the Maharashtra Administrative Tribunal, New Bombay on 24th September, 1991 in Original Application No.392 of 1991 passed an order to continue the Petitioner till the M.P.S.C. selected candidates becomes available and appointed. Thereafter, the Petitioner is continuously in service.

4. Prima facie, in our opinion, the Petitioner should be treated in service continuously from 3.9.1989. Therefore he is in service for more than 10 years continuously.

5. The learned AGP states that at present only two posts of M.D. Pathology are available. The Learned Counsel for the Petitioner states that he is prepared to accept the same or any post which is vacant.

6. In view of the above, by way of interim order, we direct the Respondents to consider giving to the Petitioner post of M.D. Pathology or any other vacant post.



Parties to act on the copy of this order duly authenticated by the Sheristedar of this Court.”

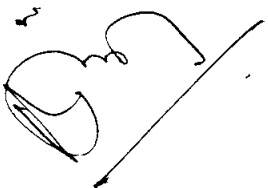
5. It is quite clear that the issue of continuous service despite “breaks” during 1989-1991 was clearly involved both in O.A.No.392 of 1991 and more particularly in the Writ Petition No.5876 of 1999. The Hon’ble High Court held as above. For facility a few lines from it may be quoted again.

“4. Prima facie, in our opinion, the Petitioner should be treated in service continuously from 3.9.1989. Therefore he is in service for more than 10 years continuously”.

6. In fact, till date nothing has happened in the career of the Applicant. Therefore by the mandate of the High Court he would be in service from 3.9.1989. In O.A.No.392 of 1991 directions against giving breaks were given already. Paragraph No.4 of the affidavit-in-reply has been quoted already in paragraph no.2 above. Therefore on 3.9.2009 the Applicant by the above judicial orders completed 20 years of regular service whatever either party did or said especially the Respondents, it would not be able to prevail over the mandate of the Hon’ble High Court and this Tribunal. In every aspect of the service conditions of the Applicant both he and the Respondents will quite simply bound by the said judicial fiat.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a flourish. Below the signature is a horizontal line with an arrowhead pointing to the left.

7. Therefore the notice of voluntary retirement (Exh. 'C'), dated 9.8.2010 was post 3.9.2009. The Respondent No.2 Commissioner ESIS vide his letter of 23rd November, 2010 (Exh. 'H' page 29 of the P.B.) warned the Applicant to report back because he had not completed 20 years of service. That we find was an erroneous stand. The judicial orders above referred had settled the matter and Respondents were obliged only to act in accordance therewith. Similarly the stand of the government Respondent No.1 vide Exh. 'L' dated 7.10.2013 trying to interpret the order of the Hon'ble High Court above referred to and its effect is completely erroneous. It was mentioned there that the Hon'ble High Court had not condoned the break. We presume and only presume that it was not deliberate distortion by the said Respondent. That is because if the services of the Applicant were held continuous from 3.9.1989 then it went without saying that the break had been condoned. The State was bound by the said direction of the Hon'ble High Court. If there are any other letters and correspondence taking the same view at Respondents end we need not even refer to them. They must fall in line and comply with the letter and spirit of the judicial orders above referred to. And, therefore, even the Respondents can not dispute that for pensionary benefits the service before the nomination through M.P.S.C. and in effect from 3.9.1989 will have to be counted as continuous service.



8. It is a little perplexing that such a simple legal position was lost on the Respondents and they ended up ignoring the order of the Hon'ble High Court.

9. By the first impugned order dated 30.08.2014 they wanted the Applicant to give a fresh notice of V.R. But then that would place the Applicant to a disadvantage and unnecessarily so because his earlier notice was of 9.8.2010 and going by the dictates of the first impugned order (dtd. 30.8.2014), it will be at least of a date later than 30.8.2014. In the second impugned communication of 03.12.2014 as well as in the first one it was mentioned that the notice of V.R. of 9.8.2010 was rejected. Now most pertinently we will have to, for the above discussion reject the rejection by the Respondents. Further there is apparently no express rejection of the same by the Respondents on record. In the second impugned letter it is mentioned that finance department had refused to condone the breaks. Now that nobody below the High Court could do. It is as simple as that.

10. It is therefore quite clear that both the impugned "orders" are not worth the papers they are typed on. They cry for being quashed and we shall readily oblige. The Respondents may as well note that pointless obstinacy might be pregnant with really serious consequences. They will have to work on the basis that the notice of G.R. dated 9.8.2010 was the effective one and they did not reject it within the time of 3

months. So they may now proceed further and finalize the case of the Applicant including pension etc.

11. Both the communications described as "orders" in the O.A. dated 30.08.2014 and 03.12.2014 impugned herein are quashed and set aside. The Respondents shall process the notice of voluntary retirement of the Applicant dated 09.08.2010 treating it as valid not having been rejected within the time above referred to. The Respondent shall finalize all aspects of Applicant's case including pension and post retiral benefits and pay to him within three months from today. The O.A. is allowed in these terms with no order as to costs. Misc. Application is disposed of in view hereof.

Sd/-

(R.B. Malik)
Member-J
28.07.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
28.07.2016

Mumbai

Date : 28.07.2016

Dictation taken by :

S.K. Wamanse.

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