

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 204 /2018 (S.B.)**

Dr. Bhimraj S/o Daulatrao Tayade,  
Aged about 69 years, Occ. Retired,  
R/o Plot No.44, Bhumiputra Colony, Old Bye-pass Road,  
Near Congress Nagar, Amravati,  
Tah. and Dist. Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Public Health Department, Mantralaya,  
Gokuldas Tejpal Hospital Complex,  
Mumbai-400 001.
- 2) The State of Maharashtra,  
through its Principal Secretary,  
Finance Department, Mantralaya, Mumbai-400 032.
- 3) Director of Health Services,  
Aryogya Bhavan, St. George's Hospital Premises,  
P.D. Mello Road, Mumbai-400 001.
- 4) Deputy Director of Health Services,  
Akola Circle, Akola.
- 5) District Health Officer,  
Zilla Parishad, Akola,  
Tq. and Dist. Akola.

**Respondents.**

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**S/Shri R.D. Wakode, S.N. Gaikwad, A.P. Bayaskar, Advs. for the applicant.**

**Shri A.P. Potnis, P.O. for respondent nos. 1 to 4.**

**None for respondent No.5.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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## JUDGMENT

**(Delivered on this 30<sup>th</sup> day of November,2018)**

Heard Shri R.D. Wakode, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for respondent nos. 1 to 4. None for respondent no.5.

2. The applicant in this O.A. is Medical Officer and he is claiming following main reliefs :-

*“(ii) Quash and set aside the impugned communication dated 16/06/2017 issued by the respondent no.5, placed at Annex-A-23 and further communication dated 15/03/2017 issued by respondent no.1, placed at Annex-A-22, in the interest of justice.*

*(iii) Further direct the respondent no.2 to grant approval to the proposal of respondent no.1 to commute the absence of the applicant from 07/05/1989 to 15/03/1999 as extraordinary leave on medical grounds and accordingly process the pension case of the applicant as early as possible and release the pension of the applicant along with arrears from 01/01/2007 with interest @ 18% per annum in the interest of justice.*

*(iv) Further direct the respondents to release the gratuity, GIS and other retirement benefits of the applicant immediately, in the interest of justice.”*

3. From the facts on record, it seems that the applicant was appointed as Medical Officer by respondent no.1 w.e.f. 05/10/1977.

The relevant order of appointment is dated 07/08/1978 at P.B. page no.25. He was continuously in service almost for about 12 years, i.e., from 05/10/1977 to 06/05/1989.

4. During the service period the applicant suffered from severe health ailment which was diagnosed as T.B. Fistula and Irritable Bowel Syndrome. Because of said health problems, the applicant's health deteriorated and he was unable to perform duty. He therefore submitted an application for medical leave on 16/05/1989. He has undergone medical treatment from various Doctors at various places such as at Amravati, Nagpur and Mumbai and was finally admitted in the Saint George Hospital, Mumbai for surgery on 20/01/1991. He was operated on 26/01/1991 for Fisherectomy. He was discharged on 04/02/1991 from the Hospital.

5. Thereafter, the applicant approached the respondents since he was able to perform his duty and submitted application to allow him to resume duty on 06/05/1991. Thereafter, he repeatedly filed number of applications for allowing him to join duty such as on 10/11/1991, 20/03/1992, 10/10/1995, 02/01/1996 and 11/04/1997, but no action was taken.

6. Surprisingly, on 10/07/1998 the respondent no.1 communicated to the applicant and he was directed to appear before

the Medical Board. Accordingly, the applicant appeared and the Medical Board certified that the applicant was fit for joining duty. Accordingly, the applicant was allowed to join duty vide communication dated 08/03/1999 and was posted on the establishment of District Health Officer, Zilla Parishad, Gadchiroli. He was post in the Primary Health Unit, Yenapur, Tq. Charmorshi, Dist. Gadchiroli vide order dated 15/03/1999.

7. On 03/03/2004 the applicant requested the respondent no.1 that his absence from 07/05/1989 to 15/03/1999 due to medical illness be treated as extra ordinary leave. The respondent no.5 sent the proposal to respondent no.4 with positive recommendation on 31/03/2004. In the meantime, the applicant was also promoted as District Child Development Project Officer at Akola considering his seniority and service vide order dated 26/08/2004. However, vide order dated 07/06/2006 the respondent no.1 treated the applicant's absence for the period from 07/05/1989 to 15/03/1999 as unauthorised absence and as such interruption in service and the past service of the applicant was also forfeited as per the Rule 47 (1) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Pension Rules").

8. Being aggrieved by the communication dated 07/06/2006 the applicant filed representation on 05/09/2006 under Rule 47 (2) of

the Pension Rules and explained the fact that the circumstances were beyond his control for not joining duty and requested for commutation of his leave as extra ordinary leave. The applicant got retired honourably on superannuation on completing age of 58 years on 31/12/2006. The applicant was however neither granted pension nor any pensionary benefits and the representation was kept pending.

9. On 08/08/2012 the respondent no.1 sought report from respondent no.3 on the report of the applicant. The respondent no.3 submitted positive report vide communication dated 29/10/2013 and recommended the applicant's claim. However, vide impugned communication dated 16/06/2017 (Annex-A-23) the respondent no.5 communicated to the applicant that his representation was rejected. According to the applicant, he had served with the respondents for a period more than 19 years with complete honesty and integrity. The applicant is now aged about 69 years and till today he did not get any retiral benefits and therefore he was constrained to file this O.A.

10. The respondent no.4 has resisted the claim. It is stated that the applicant himself is a Doctor and has knowledge of medical schemes and he could be aware of provisions of rules. He should have submitted all necessary medical certificates along with the leave application. It is stated that the applicant did not demand any leave and remained absent unauthorisedly. In short, according to the

respondents, the applicant remained unauthorisedly absent from 06/05/1989 and the absence was purposefully. It is stated that the applicant was transferred from Zilla Parishad, Amravati to Zilla Parishad, Yavatmal and was relieved from Amravati on 06/05/1989, but instead of joining his place of transfer, remained absent unauthorisedly and therefore he cannot claim sympathetic consideration.

11. I have perused the record and heard the learned counsel for respective parties. From the facts on record it seems that there is no dispute that the applicant was appointed as Medical Officer vide order dated 07/08/1978 with retrospective effect i.e. from 05/10/1977 and he continued to work till 06/05/1989. On 16/05/1989 the applicant moved an application whereby he sought medical leave. The copy of the said application is at P.B. page no. 30 (typed copy page no.30A) and it was along with medical certificate. Thereafter, the medical leave continued till 04/02/1991. The applicant has also placed on record the document to show that the applicant was finally operated on 26/01/1991 at Saint George Hospital, Mumbai. The applicant has undergone operation on Fisherectomy (T.B. Fistula) and he was discharged from the Hospital on 04/02/1991. It is material to note that no decision was taken on the leave application filed by the applicant and thereafter the applicant was sent before the Medical Board and

was declared fit. On 06/05/1991 the applicant has filed application and requested that he may be allowed to join. Time and again he requested that he may be transferred at any Hospital at Amravati and considering his medical problem he may be allowed to join at Amravati. Number of reminders were also sent by the applicant for allowing him to join from 06/05/1991 onwards, but no action was taken against him on his representation. It seems that even no action was taken to initiate departmental inquiry against the applicant for alleged unauthorised absence. On the contrary on 10/07/1998 vide communication at P.B. page no.45 the applicant was directed to appear before the Medical Board so as to verify as to whether he is medically fit or not. Thereafter, the applicant appeared before the Medical Board and fitness certificate was issued by the Medical Board and thereafter order was issued allowing the applicant to join as per letter dated 08/03/1999. The applicant was posted at Yenapur Primary Health Centre, Konsari, Tq. Chamorshi. The order in this regard is at P.B. page no.48. It is dated 16/03/1999. The applicant accordingly joined his duty on 16/03/1999 and admittedly till his date of superannuation i.e. 31/12/2006 the applicant served continuously. Not only that during this period he was promoted as Child Development Officer on 26/08/2004.

12. From the aforesaid facts, it will be thus crystal that even though the applicant applied for medical leave, immediately after he was examined and found fit for joining duty, his application was not at all considered from 06/05/1991 to 10/07/1998 when on that date i.e. on 10/07/1998 the applicant was directed to approach the Medical Board. There was absolutely no action taken against the applicant for not joining duty or so called unauthorised absence either during this period or even thereafter till the applicant got retired on superannuation. After getting the fitness certificate from the Medical Board as directed by the respondent authorities, the applicant was allowed to join. However, vide impugned communication dated 17/6/2017 at Annex-A-23 at P.B. page no.104 the applicant's claim for extra ordinary leave on medical ground was rejected. The impugned communication in this regard is as under :-

^ mi jkDr I mfHkz i = delad 2 P; k vuqlaxkus vki .kkd dGfo.; kr ; rs dh] vki yk fnukad 7@5@1989 rs fnukad 15@03@199 i; rpk vulf/kdr xjgtjhh dkyko/kh 'kk u Kki u fnukad 7@6@2006 uq kj I srhy [kM I et.; kr vkyk gkrk- rFkfi] vki ysvktkj kpsdkj.k i kgrk vki yh e-uk-l s ¼j t½ fu; e 1981 e/khy fu; e 47 ¼2½ vUo; sI ok[kM dsyjh j tk o9kdh; dkj.kkLro vl k/kkj.k j tk Eg.kuu eatj d#u rl p 'kqnh i = d fuxter dj.; kckcr 'kkI ukl fourh dj.; kr vkyh gkrh-

I nj i dj.kh foRr foHkxkus mDr xjgtjhhpk dkyko/kh vulf/kdr Bjowu I srhy [kM dj.; kps vkrsk jnn d#u I nj dkyko/kh fo'ks'k ckc Eg.kuu eatj dj.; kP; k i Lrkokl ekU; rk nsk; s ukgh] vl s vfHki k; fnysvl Y; kpsl mfHkz 'kkI u i =kUo; sdGfoysvl Y; kpsek- mi I pkyd] vkjkk; I ok eM[G] vdkysk; kauh; k dk; kzy; kl I mfHkz i = dz2 vUo; sdGfoysvkg\*\*



13. From the aforesaid communication, it seems that the applicant's claim was recommended, but it was the Finance Department which took objection to clear the applicant's case as a special case. Except this no reasons are given for rejection.

14. The learned counsel for the applicant has invited my attention to one communication i.e. at Annex-A-21 at P.B. page nos.92 and 93. In the said communication the Competent Authority has recommended to the Government the applicant's claim with following observations :-

^ MKW rk; Ms; kauk T.B. Fistula & Irritable Bowel Syndrome ; k vktkjkusR; kph i drrh [kkykoyh R; k njE; ku gekkykchups i ek.k 7 VDds gkrs I k/kkj .kr% Qj dkk; k 'kjhj kps dehrdeh gekkykchups i ek.k 10 rs 14 VDds vko'; d vkg MKW rk; Ms; kauk I s/ tWEZ #X.kky; ] epbz; fks vkarj #X.k Eg.kuu Hkjr rh dj.; kr vkys gkrs MKW rk; Ms; kauh i drrh I q/kj .kk >kY; kuarj fnukad 6@5@1991 yk i nLFkki uk feG.kdjhrk fourh vtZ I knj dsyk gkrk- R; kuarj i nLFkki usdjhrk Lej.ki =gh fnyh vkg- rFkfi ] R; kuk i nLFkki usouk 8 o"kkjgkoykxysvI Y; kpsl gl pkyd] vkjkk; I ok] epbz; kauh R; kpsi =kr uep dsysvkg

mijkdR oLrqlFkrh i grk] MKW rk; Mj gs egkjk"V<sup>a</sup> ykdI ok vk; ks ijLdr menokj vl uu R; kph fnukad 24@09@1985 vl k vkg R; kph vukf/kdr jts whph I ok 5 o"kkj s'kk deh >kysyh vkg R; keGs 'kkl u fu.kz' fnukad 2@6@2003 e/khy ijf'k"V&, d e/khy Lrkk 1 ph i q'rk gkr ul Y; kus I nj vV f'kFky dj.ksvko'; d vkg MKW rk; Ms; kpk R; kb; k fu; =kckgjh vktkj vl Y; kus MKW rk; Ms ; kb; k fnukad 7@5@1989 rs 15@3@1999 ; k dkyko/khph jtk ekuorP; k n"Vhusfopkj d#u fo'ks'k ckc Eg.kuu vl k/kkj .k jtk %o9kdh; dkj.kkLro%eatj dj.; kl eku; rk ns; kph foRr foHkkxkl i q'p fourh dj.; kr ; koh\*\*

15. From the aforesaid communication, it is clear that the applicant was suffering a severe health ailment and it was not within

his ambit to join duty and the competent authorities have already recommended the applicant's claim favourably and therefore the Finance Department ought to have considered the peculiar circumstances.

16. From the impugned communication dated 16/06/2017 it is not known as to what is the exact objection of the Finance Department and therefore communication is vague in nature. As per the provisions of the Rule 47 (2) of the Pension Rules, the Appointing Authority may, by order, commute (retrospectively) the periods of absence without leave as extra ordinary leave and there is no reason as to why this provision has not been complied in applicant's case.

17. The learned P.O. invited my attention to Rule 63 of the MCS (Leave) Rules, 1981 and submitted that as per this Rule extra ordinary leave is granted for a limited period as per Rule 63 (2). The said Rule reads as under :-

**“(63) Extraordinary leave** – (1) *Extraordinary leave may be granted to a Government servant in special circumstances –*

*(a) when no other leave is admissible,*

*(b) when other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.*

*(2) Unless Government in view of the exceptional circumstances of the case otherwise determines, no government servant who is not in*

*permanent employ shall be granted extraordinary leave on any one occasion in excess of the following limits –*

*(a) three months.*

*(b) six months, where the government servant has completed three years continuous service on the date of expiry of leave of the kind due and admissible under these rules, including three months extraordinary leave under clause (a), and his request for such leave is supported by a medical certificate as required by these rules,*

*(c) twelve months, in the case of a government servant who has completed five years continuous service on the date of expiry of leave due and admissible under the rules including extraordinary leave under (a) and (b) of sub rule (2) above, if the extraordinary leave is required on account of illness of the government servant as certified by a Civil Surgeon or Superintendent of Government Hospital, as the case may be,*

*(d) twelve months, where the government servant who has completed one year's continuous service is undergoing treatment for cancer, or for mental illness, in an institution recognised for the treatment of such disease or under a Civil Surgeon or a Specialist in such disease,*

*(e) eighteen months, where the government servant who has completed one year's continuous service is undergoing treatment for –*

*(i) pulmonary tuberculosis or pleurisy of tubercular origin, in a recognised sanatorium.”*

18. Perusal of the aforesaid Rule clearly shows that the government in view of the exceptional circumstances can grant extra

ordinary leave to the government servant in special circumstances when no other leave is admissible or when other leave is admissible but government servant has to apply in writing for grant of extraordinary leave. Sub clause 1 of rule 63 is not subject to rule 63 (2) and therefore rule 63 (1) r/w rule 47 (2) of the MCS (Pension) Rules, 1982 gives the government unlimited power to grant leave in exceptional cases.

19. The case of the applicant is definitely exceptional case, he was suffering from a severe health ailment which was beyond his control and therefore applied for the leave. Admittedly, the Department has not taken any action for a long period. Even the Department did not allow him to join after he was declared fit for a long period. Therefore, there was no fault on the part of the applicant and it is the inaction on the part of the Department which forced him to remain out of service. Had he been allowed to join immediately, he would have been in service. In any case, there is no fault on the part of the applicant so as to remain absent. The absence of the applicant has been treated as unauthorised leave without giving any opportunity to the applicant to explain his absence and therefore treating the applicant's absence as unauthorised itself is illegal.

20. The learned P.O. has also invited my attention to Rule 40 of the Maharashtra Civil Services (Leave) Rules, 1981 (in short "Leave

Rules”) which is a provision for grant of leave on medical grounds to gazetted government servants. The said provision clearly states that where leave of any kind (together with extension of leave, if any) is asked for on medical grounds, the competent authority may, if he considers it necessary to have a medical opinion, follow the procedure as provided under Rule 40 and sub rule (a) and (b) of the Leave Rules. It is admitted fact that the applicant was sent before the Medical Board and he was declared fit for joining. It is also admitted fact that the applicant had suffered a disease which was beyond his control and was grave in nature and therefore it was a special case there should have been no problem in accepting the applicant’s prayer for medical leave and allowing him to join immediately on submission of fitness certificate.

21. For the first time the applicant has received the communication that his absence was treated as unauthorised on 07/06/2006. The applicant immediately submitted representation to cancel that order. Accordingly, he was sent to the Medical Board to submit the fitness certificate and his case was also recommended to the Government, except the Finance Department everybody accepted his recommendation. In fact the Finance Department does not come into picture at all since the competent authority is the Government, who has to take decision as regard absence of the applicant. Without

giving any show cause notice and opportunity to the applicant, his absence cannot be treated as unauthorised as the applicant did not get any opportunity to explain the circumstances why he remained absent. His representation has not been decided for about 11 years and all of a sudden the Finance Department rejected the recommendation. All these facts have caused great prejudice to the applicant.

22. I am satisfied that the applicant was in continuous service from 05/10/1977 to 06/05/1989 and thereafter from 16/03/1999 to till he got retired on superannuation on 31/12/2006. Thus he has served for almost 19 years and he was suffering due to disease which was beyond control of everybody. Therefore, his case should have been considered sympathetically as a special case for regularisation of the absence period.

23. The learned counsel for the applicant has placed reliance the Judgment in Writ Petition No. 1774/2013 by the Hon'ble High Court of Judicature of Bombay in case of **Ansari Zafer Ahmed A. Rahim Vs. State of Maharashtra and Ors.**, delivered on 19<sup>th</sup> April,2018, wherein in almost similar circumstance the services rendered by the petitioner was considered sympathetically and the absence was condoned for the purposes of pensionary benefits. In the present case also the applicant has performed continuous service as

Medical Officer from 05/10/1977 to 06/05/1989 and thereafter from 16/03/1999 to 31/12/2006 and the applicant was allowed to retire on superannuation honourably. It is admitted fact that the applicant applied for medical leave and he was required to undergo medical treatment for a severe health problem which was beyond control of everybody and finally the applicant was fortunate enough to get recovered from that ailment. Not only that he has also joined after medical fitness test and continued to work till his retirement on superannuation and therefore the respondents should have considered the applicant's case as special case for condonation of break in service. Hence, the following order :-

### **ORDER**

- (i) The communications dated 16/06/2017 issued by respondent no.5 at Annex-A-23 and further communication dated 15/03/2017 issued by respondent no.1 at Annex-A-22 are quashed and set aside.
- (ii) The respondent no.2 is directed to grant approval to the proposal of respondent no.1 to commute the absence of applicant from 07/05/1989 to 15/03/1999 as extraordinary leave on medical ground or / leave without pay or / leave as may be admissible under rules by condoning the absence of the applicant for the purposes of pensionary

benefits. Such order shall be passed within 8 weeks from the date of this order.

(iii) After condoning the absence as aforesaid, the respondents are directed to prepare and submit the pension papers of the applicant to the Competent Authority for approval and to grant all admissible Pension, Gratuity, GIS etc. and other pensionary benefits to the applicant. Such pension and pensionary benefits shall be granted to the applicant within further period of three months i.e. within three months from passing of order condoning the absence. It is needless to say that in case the aforesaid orders are not complied within stipulated period, the applicant will be entitled to file representation claiming interest on the pension and pensionary benefits from the date of his retirement on superannuation till the amount is actually paid him by the respondents. No order as to costs.

**Dated** :- 30/11/2018.

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