

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

O.A. 372/2019 WITH O.A.887/2018

01. ORIGINAL APPLICATION NO. 372 OF 2019

DISTRICT:- AURANGABAD

Dr. Sanjay s/o Vyankateshrao Deshpande,
Age : 54 years, Occu. Service (as Asstt.
Director [Malaria], R/o: Flat No. 7,
Chetan Plaza, Near Roplekar Hospital,
Dargah Road, Aurangabad.

APPLICANT.

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
M.S., Mantralaya,
Mumbai-32.
- 2) The Director of Health Services,
M.S., 1st Floor, Arogya Bhavan,
St. George's Hospital Compound,
Near C.S.T. Station, Mumbai-01.
- 3) The Deputy Director of Health
Services, Aurangabad,
Mahavir Chowk, Near Baba
Petrol Pump, Rlwy. Stn. Road,
Aurangabad-01.

.. RESPONDENTS.

W I T H

02. ORIGINAL APPLICATION NO. 887 OF 2018

DISTRICT:- BEED.

Dr. Sumant s/o Nagnathrao Wagh,
Age : 47 years, Occu. Service as
Medical Officer, presently working as
Medical Superintendent Class-I
Rural Hospital, Pathri, Taluka Pathri,
District Parbhani.
R/o.C/o Sankalpa Maternity and
General Hospital, Near HDFC Bank,
Sambhaji Chowk, Gadhi Road,
Majalgaon, Taluka Majalgaon,
District Beed.

.. APPLICANT.

V E R S U S

- 1] The State of Maharashtra
Through the Principal Secretary,
Public Health Department,
Mantralaya, Mumbai.
- 2] The Director of Public Health Department,
Arogya Bhavan, St. George's Hospital
Compound, Mumbai.
- 3] The Deputy Director of Health
Services, Aurangabad Region,
Aurangabad.
- 4] The Civil Surgeon, Parbhani,
District Parbhani.

.. RESPONDENTS.

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant in O.A. No.
372/2019.

: Shri Shamsunder B. Patil, learned
counsel for the applicant in O.A. No.
887/2018.

: S/Shri D.R. Patil & S.K. Shirse, learned
Presenting Officers for the respective
respondents in respective matters.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 23.03.2023

COMMON ORDER

Heard S/Shri Avinash S. Deshmukh & Shri Shamsunder
B. Patil, learned counsel for the respective applicants in
respective matters and S/Shri D.R. Patil & S.K. Shirse, learned
Presenting Officers for the respective respondents in respective
matters.

2. Since in both these applications the identical issue is raised and prayers in both these applications are identical I have heard these matters together and deem it appropriate to decide both these applications by this common order.

3. In both these applications the applicants have prayed for conferment of benefits of Assured Career Progression Scheme w.e.f. their initial date of appointment on ad hoc / temporary basis. The representations made by these applicants in that regard have been rejected by the respondents. The applicants have, therefore, approached this Tribunal.

4. Factual matrix in both these applications is not in dispute. The applicant in O.A. No. 372/2019 entered into the Government service in the year 1989 as ad hoc Medical Officer. His first appointment was as a bonded candidate for four months and thereafter he continued on the said post with technical breaks. Every time the appointment used to be made for four months. Vide Government Resolution dated 10th April, 2016, the Government has condoned the technical breaks in the service period of this applicant. In the year 1995 and more particularly on 30th August, 1995 the applicant came to be selected through Maharashtra Public Service Commission and accordingly was appointed as Medical Officer.

5. Insofar as O.A. No. 887/2018 is concerned, the present applicant was initially appointed for two years as a bonded candidate and was thereafter continued with technical break. In the present matter, only one break was there and same was condoned by the Government on 18.2.2006.

6. It is the case of both these applicants that though they were entitled for the benefits of Assured Career Progression Scheme from the date of their initial appointment, the said request has been wrongly rejected by the respondents. The applicants have filed the present Original Applications challenging the said decision.

7. Learned counsel appearing for the parties submitted that the issue, which has been raised in the present O.A. is no more res integra and has attained the finality after the Hon'ble Supreme Court has dismissed the Special Leave Petition against the judgment and order dated 6.2.2012 in W.P. No. 9962/2010 delivered by the Hon'ble Bombay High Court. Learned counsel therefore, have prayed for allowing both the applications.

8. The respondents have resisted the contentions raised in the OAs and the prayers made therein. In both the matters, affidavits in rely have been filed on behalf of the respondents. It is contended that the G.R. dated 19.1.2013 would not apply to

the facts of the present case. According to the respondents, only regular services are taken into account and the cases where technical break is not more than 24 hours, will be considered for promotion etc. It is further contended that according to Clause 4 of the G.R. dated 2.3.2019 applicants are not entitled for the benefits of the Assured Career Progression Scheme from the date of their initial appointment. The respondents have, therefore, prayed for dismissal of the present Original Applications.

9. I have duly considered the submissions advanced by the learned counsel appearing for the parties and the learned Presenting Officers appearing for the respective respondents in respective matters. As has been submitted by the learned counsel for the applicants the issue raised in the present matters is no more res integra. This Tribunal in the case of **Smt. Meena A. Kuwalekar** had directed the State Government to grant benefits under Time Bound Promotion Scheme and/or Assured Career Progression Scheme by taking into consideration her services from the date of her initial appointment. Alike **Smt. Meena Kuwalekar**, certain other Government employees had also filed the OAs with the same prayer. The decisions delivered by this Tribunal in the case of **Smt. Meena Kuwalekar** and connected

other were challenged by the State Government before the Hon'ble Bombay High Court. Hon'ble Bombay High Court decided W.P. No.9051/2013 filed by State of Maharashtra against Smt. Meena A. Kuwalekar with connected other writ petitions on 28.4.2016. As observed in paragraph 4 of the said judgment, the main issue involved in the aforesaid batch of Writ Petitions before the Hon'ble High Court was, "*whether the period of 12 years or 24 years service, prescribed as pre-requisite for availing benefits under Time Bound Promotion Scheme and/or Assured Career Progression Scheme is to be reckoned from the date of the initial appointment of the Government employees or from the date from which their services were treated as regularized*". The Hon'ble High Court has confirmed the view taken by the Maharashtra Administrative Tribunal and dismissed the Writ Petitions.

10. While delivering the judgment in the case of **Smt. Meena Kuwalekar** with connected other matters, Hon'ble Bombay High Court has relied upon its earlier judgments delivered in W.P. No. 9962/2010 with connected Writ Petitions. Writ Petition No. 9962/2010 was filed in the matter of **Kum. Nanda C. Chavan** and was dismissed on 6.2.2012. Though the S.L.Ps were filed by the State against the said decision, vide order dated 28.9.2012, the

Hon'ble Apex Court has dismissed the same. Thus, the decisions given in the case of **Smt. Nanda C. Chavan and Smt. Meena Kuwalekar** have attained the finality. In view of the aforesaid judgments, the request of the present applicants deserves to be accepted.

11. The respondents have again raised the same objection, which has been turned down by the Hon'ble Bombay High Court in the case of **Smt. Meena Kuwalekar** and prior to that in the case of **Nanda C. Chavan**. In the circumstances, there is no substance in the objection so raised on behalf of the respondent authorities. In view of the law laid down in the case of **Smt. Meena Kuwalekar** with connected other OAs, both applicants are held entitled for Time Bound Promotion Scheme and/or Assured Career Progression Scheme benefits from the date of their initial appointment. In the result, the following order is passed.

ORDER

- (i) Communications dated 19.10.2018 and 29.12.2018 impugned in O.A. No. 372/2019 and the communications / orders dated 8.10.2013 and 26.9.2016 impugned in O.A. No. 887/2018, are quashed and set aside.
- (ii) While extending the benefits under Time Bound Promotion Scheme and/or Assured Career Progression Scheme, the period of service of the applicants shall be

reckoned from the date of their initial appointment in the Government.

(iii) Both the original applications are allowed in the aforesaid terms.

(iv) There shall be no order as to costs.

VICE CHAIRMAN

O.A.NO.372/19 & O.A.NO.887-18 (SB)-2022-HDD-ACPS