

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 487/2018 (D.B.)**

Dr. Rajkumar S/o Balkrushna Meshram,
aged 59 years, Occ. Service,
R/o 58, Girija Vivekanand Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.
- 2) The Director of Medical Education and Research,
having its office at Govt. Dental College and
Hospital Building, Saint George Hospital,
Mumbai.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.M.Ghogre, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 23rd July, 2020.

Date of Pronouncement of Judgment : 3rd August, 2020.

JUDGMENT

Per : Vice Chairman.

(Delivered on this 3rd day of August, 2020)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. It is submitted by the learned counsel for the applicant that the applicant entered the Government service as a Lecturer in the Department of Microbiology in the Government Medical College and Hospital on 24/4/1993. The applicant was selected and recommended by the MPSC. At present the applicant is serving as Assistant Professor.

3. The applicant was transferred vide order dated 31/5/2010 to Dr. Vaisham Payam Memorial Govt. Medical College, Solapur and for the purpose to join at Solapur the applicant was relieved from Nagpur Government College on 1/6/2010. Due to some personal domestic problems, applicant could not join at Solapur. The applicant submitted leave application. The applicant was transferred back Nagpur on 29/5/2013 (reply para (a) page no.23) and he joined at Government Medical College and Hospital, Nagpur. The respondents calculated period of absence of the applicant from 1/6/2010 to 19/12/2011, 567 days as unauthorised absence from Medical College, Solapur. The respondents remained silent for 6 years and now they have issued show cause notice to the applicant as to why disciplinary action should not be taken for the misconduct. The applicant filed this O.A. in this Tribunal on 29/6/2018 and challenged this action.

However, just before filing of the O.A. Inquiry Officer was appointed vide letter dated 27/4/2018 (A-2, P-27). In the reply para 12 the respondents have mentioned that the applicant joined at Solapur on 20/12/2011 and merely worked there just for three months availing earned leave and medical leave and again remained absent from 8/6/2012 till his transfer again to GMC, Nagpur vide order dated 29/5/2013.

4. The contentions raised in para 12 of the reply are contradictory since the respondents have admitted that applicant was absent from 8/6/2012, however they have calculated in the charge sheet dated 20/7/2017 from 1/6/2010 to 19/12/2011. They have also admitted that the applicant joined at Medical College, Solapur on 20/12/2011. If at all the respondents considered the period from 1/6/2010 to 19/12/2011 they should have taken action in subsequent years. The action has been started vide order dated 20/7/2017 and almost after a year the Inquiry Officer has been appointed on 27/7/2018. Both these action on the part of the respondents are very much delayed action and law laid down by the Hon'ble Apex Court in case of departmental inquiry.

*“The Hon'ble Apex Court in case of **Prem Nath Bali Vs. Registrar, High Court of Delhi & Ano., AIR 2016 SCC,101.** In Civil Appeal No.958/2010 decided on 16/12/2015. It is laid down in para-33 of the Judgment specific direction was given by the Hon'ble Apex Court that*

every employer (whether State or Private) shall make sincere endeavour to conclude the departmental proceedings once initiated against the delinquent employee within a reasonable time by giving priority and it should be within a period of six months. It is further laid down that if it is not possible for the employer to conclude the inquiry due to unavoidable reasons then it shall be concluded within a period of notmore than one year”.

5. The present O.A. is squarely covered by above Judgment of Hon'ble Apex Court. The inordinate delay on the part of the respondents cannot be justified in view of above judgement of Hon'ble Apex Court. In this background, Government letters dated 20/7/2017 starting D.E. for absence of 567 days (1/6/2010 to 19/12/2011) and subsequent event of appointing the Inquiry Officer 27/4/2018 are bad in law and in the interest of justice and equity. These orders are required to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed in terms of prayer clause (1) and (2).
- (ii) The order dated 20/7/2017 (A-1) and order dated 27/4/2018 (A-2) are quashed and set aside.
- (iii) The respondents are at liberty to sanction leave for the period of absence for 567 days of the applicant as per the balance leave in the

account of the applicant as per the existing rules and regulations within four months from the date of this order.

(iv) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 03 /08/2020.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 03 /08/2020

Uploaded on : 03/08/2020...