

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.549/2016.**

**(S.B.)**

Dr. Damodhar Kashiramji Gedam,  
Aged about 63 years,  
Occ.Retired,  
R/o Flat No.101, Sundaram Apartment,  
Galli No.5, Vishwakarma Nagar,  
Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Additional Chief Secretary,  
Department of Public Health,  
G.T. Hospital Campus,  
Mantralaya Fort, Mumbai-32.
2. The Director of Public Health,  
Govt. of Maharashtra, Arogya Bhavan,  
P.D. Mello Road, St. Georges Hospital Compound,  
CST, Mumbai-01.

**Respondents.**

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Shri N.D. Thombre,, Ld. Advocate for the applicant.  
Shri H.K. Pande, Ld. P.O. for the respondents.

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**Coram:- Shri J.D. Kulkarni,**  
**Vice-Chairman (Judicial)**

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**JUDGMENT**

(Delivered on this 2<sup>nd</sup> day of May 2018.)

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

2. The applicant was appointed as Medical Officer and joined his duty as such on 31.10.1981. Subsequently, he was promoted as Civil Surgeon. Lastly, the applicant has worked in the Rural Hospital, Parseoni as Medical Superintendent in the cadre of Civil Surgeon.

3. While working as Medical Superintendent in Rural Hospital, Parseoni, one complaint was filed against the applicant and the applicant was placed under suspension by respondent No.1 vide order dated 21.2.2011. Subsequently, his headquarters was changed to Chandrapur and during the pendency of departmental enquiry, the applicant had retired on superannuation on 21.6.2011.

4. In the departmental enquiry, the applicant was charged as under:-

**“दोषारोप क्र.१:-** डॉ. डी. के. गेडाम, वैद्यकीय अधीक्षक (गट-अ), वर्ग-१, ग्रामीण रुग्णालय, पारसिवनी, जि. नागपूर या पदावर कार्यरत असतांना त्यांनी पोलीस स्टेशन, पारसिवनी, जि. नागपूर यांचे पत्र क्र. १७२९/९ दि. २४.११.२००९ नुसार पोलीस स्टेशन, पारसिवनी येथून दि. १९.१०.२००९ रोजी २१.४५ वाजता फिर्यादीने एन. पी. सी. अरुण गुंडर, ब. क्र. १०३५, पोलीस स्टेशन, पारसिवनी अप. क्र. ७५/०९ ३२४, ३४ भा.द. वि. मधील आरोपींना मुलाहिजा करण्याकरिता ग्रामीण

रुग्णालय, पारसिवनी येथे नेले असता अपचारी यांनी आरोपींची वैद्यकीय तपासणी न करता फिर्यादीस अर्वाच्च शब्दांचा वापर करून मुलाहिजा फॉर्म फाइन फेकून दिले व सरकारी कामात अडथळा केला. यावर डॉ. गेडाम यांचे विरुद्ध पोलीस स्टेशन, पारसिवनी, जि. नागपूर येथे अपराध क्र. ३०३०/१० कलम २९४, ५०६, १८६, ४२७ भादवि प्रमाणे गुन्हा दाखल आहे. अशाप्रकारे शासकीय कर्मचाऱ्यास अशोभनीय वर्तन करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३ च्या (तीन) चे उल्लंघन केले.

**दोषारोप क्र.२:-** पूर्वोक्त कालावधीमध्ये व पूर्वोक्त कार्यालयामध्ये काम करीन असताना उक्त डॉ. डी. के. गेडाम, वैद्यकीय अधीक्षक (गट-अ), वर्ग-१, ग्रामीण रुग्णालय, पारसिवनी, जि. नागपूर यांनी मुख्यालयात न राहणे, कोणत्याही प्रकारची पूर्व परवानगी तसेच रजा मंजूर करून न घेता रजेवर जाणे, तसेच रजेवर जाण्यापूर्वी प्रशासकीय कार्यभार न सोपविता कर्तव्यावर असल्याचे भासवून रोकडवही व इत्यादींवर स्वाक्षरी करणे इ. गैरवर्तणूक केलेली आहे. डॉ. गेडाम हे आहरण व संवितरण अधिकारी असून त्यांनी ग्रामीण रुग्णालय परिसरातील शासकीय निवासस्थानात वास्तव्यास असूनही अनुज्ञेय नसताना दरमहा घरभाडे भत्त्याची रक्कम, नियमित वेतनातून अनधिकृतरीत्या उचल करून अधिकाराचा दुरुपयोग केलेला आहे. अशाप्रकारे डॉ. गेडाम यांनी आतापर्यंत रु. ७९,०५९/- एवढ्या शासकीय रकमेची अनधिकृतरीत्या उचल करून राजपत्रीत अधिकारी म्हणून अशोभनीय वर्तन केलेले आहे. डॉ. गेडाम यांचे लोकप्रतिनिधी, रुग्ण व रुग्णांचे नातेवाईक तसेच शासकीय कर्मचारी यांचेशी असहकार्य करून गैरवर्तणूक करणे अशाप्रकारे त्यांनी कर्तव्यपरायंता व सचोटी न बाळगता शासकीय कर्मचाऱ्यास अशोभनीय वर्तन करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३ चे उल्लंघन केलेले आहे."

5. In the departmental enquiry, the Enquiry Report was submitted to the respondent No.1 on 11.1.2013 and the Enquiry Officer found that charge No.1 was not proved and charge No.2 was partially proved.

6. The respondent No.1 acted upon the Enquiry Report and passed the impugned order on 6.6.2015, whereby it was decided to deduct 18% per month from the pension of the applicant for a period of three years. The said impugned order (Annexure A-9) is at page Nos. 78 to 81 (both inclusive).

7. Being aggrieved by the aforesaid order, the applicant preferred an appeal before the Hon'ble Governor of Maharashtra. The Hon'ble Governor of Maharashtra delegated the powers of hearing of appeal to the Hon'ble Minister of State, Department of Industries, Energy, Labour and Environment. The appeal filed by the applicant was, however, dismissed vide order dated 12.5.2016, a copy of which is filed at Annexure A-12, page Nos. 93 to 95 (both inclusive) and the order of punishment in departmental enquiry passed by the Government was confirmed. Being aggrieved by the said decision, the applicant has preferred this O.A.

8. The applicant has claimed that the order dated 6.6.2015 issued by respondent No.1 i.e. the Additional Chief Secretary, Department of Public Health, Mantralaya, Mumbai (Annexure A-9), directing deduction of 18% pension of the applicant

for a period of three years, so also the order passed by the Hon'ble Minister of State on 12.5.2016 on behalf of the Hon'ble Governor of Maharashtra (Annexure A-12), be quashed and set aside.

9. The respondent Nos. 1 and 2 tried to justify the order passed by both the authorities. The respondents submitted that the second charge against the applicant was also serious in nature. The applicant used to remain absent from duty without prior permission and without getting the leave sanctioned and he was not even handing over the charge of his duty as well, but used to put the signatures on cash book etc. so as to show that he was on duty. He has taken undue advantage of his position and has received the amount from the Treasury worth Rs.79,059/- without residing in the Govt. quarter and such a conduct on the part of the applicant is in violation of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

10. The learned counsel for the applicant submits that the Enquiry Report submitted by the Enquiry Officer reveals that the charge No.1 framed against the applicant has been held disproved, whereas charge No.2 is also not fully proved. But it is stated that it is partially proved. The learned counsel for the applicant submits

that the competent authority has accepted the Enquiry Report and, therefore, fact remains that the applicant has been exonerated from charge No.1 and also partly from charge No.2. It is stated that the findings given by the Enquiry Officer that the applicant used to proceed on medical leave without obtaining prior sanction, are perverse, because no person can expect about his illness and, therefore, in case of medical leave, leave is to be sanctioned only after joining the duty on submitting fitness certificate. No one can seek advance permission from proceeding on medical leave and, therefore, findings are perverse.

11. I have perused the Enquiry Report. Legible copy of the Enquiry Report is placed on record by the respondents and the same is at page Nos. 122 to 144 (both inclusive). Since only two charges were framed against the applicant, charge No.1 has been held not proved, as there is no need to discuss about charge No.1. The applicant has already been exonerated from charge No.1. In such circumstances, it is necessary to see as to what are the findings on charge No.2 and whether the same are perverse to the facts on record.

12. As regards charge No.2 imputation of charge against the applicant are as under:-

**“Charge No. 2:-**

- (१) अपचारी हे मुख्यालयात हजर राहत होते किवा कसे,
- (२) ग्रामीण रुग्णालय, पारसिवनी येथे वैद्यकीय अधिकाऱ्यासाठी अधिकृत असे नेमून दिलेले (allotted) शासकीय निवासस्थान आहेत किवा कसे.
- (३) शासकीय निवासस्थानामध्ये अनधिकृतपणे राहून आहारण व संवितरण अधिकारी या पदाचा दुरुपयोग करून स्वतःचे स्वाक्षरीने घरभाडे भत्त्याची रक्कम रुपये ७९,०५९/- ची उचल करणे किवा कसे,
- (४) शासकीय निवासस्थानात राहत असतानाही पदाचा दुरुपयोग करून स्वतःचे स्वाक्षरीने घरभाडे भत्त्याची रक्कम दरमहा वेतनातून अवैध उचल करणे किवा कसे,
- (५) अपचारी यांनी राजा कालावधीत आहारण व संवितरण अधिकारी म्हणून सहाय्य केल्या आहेत किवा कसे,
- (६) अपचारी गैरहजर राहत असल्याने रुग्ण सेवा खंडित होऊन ग्रामीण व गरजू आदिवासी जनतेला आरोग्य सुविधा पुरविण्यामध्ये अडचण निर्माण होऊन रुग्णालयीन व्यवस्थेवर त्याचा विपरीत परिणाम झाला किवा कसे,
- (७) अपचारी पूर्वपरवानगी न घेता रजेवर जात होते किवा कसे,
- (८) अपचारी हे रजेवर जात असताना कार्यभार हस्तांतरणाचा दाखला (सी.टी.सी.) तयार करित होते किवा कसे,
- (९) अपचारी हे रजेवरून परत आल्यानंतर कार्यभार किवा कार्यभार हस्तांतरणाचा दाखला किवा कार्यभार हस्तांतरणाचा सुधारित आदेश करित होते किवा कसे.”

13. These charges are discussed by the Enquiry Officer and from the discussion, it seems that the Enquiry Officer

came to the conclusion that the department has failed to prove that the applicant was getting house rent allowance, though he was residing in the Govt. quarter. Relevant findings in this regard are as under:-

“ग्रामीण रुग्णालय, पारशिवनी येथे वैद्यकीय अधिकांसाठी अधिकृत असे नेमून दिलेले (allotted) शासकीय निवासस्थान नसल्याने व ग्रामीण रुग्णालय, पारशिवनी येथे वैद्यकीय अधिकांकां यांचे पद हे आहरण व संवितरण अधिकारी असल्याने त्यांनी त्यांच्या स्वःताच्या सहीने घरभाडे भत्त्याची रक्कम रुपये ७९,०५९/- ची उचल केलेली आहे. यामध्ये त्यांनी त्यांच्या पदाचा दुरुपयोग / गैरवापर केलेला आहे असे दिसून येत नाही. त्यामुळे शासकीय निवासस्थानात राहत असतानाही पदाचा दुरुपयोग करून स्वःताच्या स्वाक्षरीने घरभाडे भत्त्याची रक्कम दरमहा वेतनातून अवैध उचल केली, ते मुख्यालयी गैरहजर राहत असत तसेच शासकीय निवासस्थानात राहत असतानाही स्वःताच्या स्वाक्षरीने घरभाडे भत्त्याची रक्कम दरमहा वेतनातून अवैध उचल केली, हे त्यांच्यावर लावण्यात आलेले आरोप सिद्ध होत नाहित.”

14. As regards leave and handing over the charge is concerned, the Enquiry Officer came to the conclusion that no irregularity was found that there is no evidence to show that because of the so-called absence of the applicant, work was being hampered in any manner. Only adverse inference drawn by the Enquiry Officer is as regards medical leave obtained by the applicant without prior permission and the said findings are as under:-



“वरील विवेचनावरून अपचारी डॉ. गेडाम यांची वेळोवेळी घेतलेली राजा नंतर जरी मंजूर व नियमित झालेली असली तरी डॉ. गेडाम हे रजेवर जाणेपूर्वी कोणत्याही प्रकारची पूर्व परवानगी न घेता आस्थापना लिपिकाकडे वैद्यकीय कारणास्तव रजेचा अर्ज देवून रजेवर जात होते. रजेवर जाणेपूर्वी पूर्व परवानगी घेवून जात नव्हते तसेच, रजेवर जात असताना कार्यभार हस्तांतरणाचा ते आदेश काढत असले तरी ते कार्यभार हस्तांतरण करण्यापूर्वीच राजा उपभोगत होते. तसेच रजेवरून परत आल्यानंतर कार्यभार हस्तांतरणाचे सुधारित आदेश न काढताच किंवा तत्कालीन जिल्हा शल्य चिकित्सक यांची मंजूरी न घेता ते रोख नोंदवहीवर स्वाक्षरी करित होते, ही बाब समोर आलेली असून दोषारोप बाब क्र. २ मधील पूर्वपरवानगी न घेता रजेवर जाणे, कार्याभार इतर अधिकाऱ्यांकडे हस्तांतरित न करणे, राजा कालावधीत आहरण व संवितरण अधिकारी म्हणून रोख वहीमध्ये सहाय्य करणे हे आरोप सिद्ध होतात. मात्र याबाबत कोणत्याही प्रकारचे अधिक अनियमितता किंवा गैरव्यवहार घडल्याची बाब समोर आलेली नाही.”

15. The learned counsel for the applicant has invited my attention to the communications dated 27.11.2010, 13.4.2011 and 13.7.2011 at page Nos. 96, 97 and 98 respectively, from which it seems that the medical leave has been sanctioned as sought by the applicant. The period of the said medical leave sanctioned is between 4.8.2010 to 30.8.2011, 16.11.2010 to 13.12.2010 and 20.12.2010 to 31.12.2010 respectively. Since the leave applied was medical leave, observation of the Enquiry Officer that the applicant should have obtained prior sanction for medical leave, is not legal and proper.

16. From the facts discussed in foregoing paras, it will be thus crystal clear that almost all the findings given by the Enquiry Officer are in favour of the applicant, except that the applicant has not obtained prior sanction before proceeding on medical leave. Such findings are definitely perverse and in any case, it would warrant such a harsh punishment of deduction of pension upto 18%.

17. As regards the order of punishment, it is material to note that there is absolutely no reason as to why the competent authority came to the conclusion that 18% of pension shall only be deducted and that too for three years. The order passed by respondent No.1 on 6.6.2015 at Annexure A-9 does not state anything as to what was the reason for deducting only 18% amount from the pension. The competent authority does not seem to have properly appreciated the Enquiry Report. The Appellate authority has also not applied its mind to the order passed by respondent No.1, so also documents filed on record.

18. In view of the discussion in foregoing paras, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. is allowed in terms of prayer clause (1).
- (ii) The impugned order dated 6.6.2015 passed by respondent No.1 (Annexure A-9) and the order dated 12.5.2016 passed on behalf of the Hon'ble Governor of Maharashtra (Annexure A-12) stand quashed and set aside.
- (iii) The applicant will be entitled to refund the amount of pension, if recovered as per these impugned orders.
- (iv) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)  
2.5.2018.