

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 629 OF 2017 (S.B.)

Dr. Hanif Sheikh S/o Abdul Hafiz,
Aged 42 years, Occupation – Service,
R/o Arvi Road, Pipari Meghe, Near
Daulatsingh Vidyalaya, Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th Floor, B-Wing, New Mantralaya,
Mumbai-01.
- 2) Mission Director National Rural,
Health Mission Office of the
State Health Society Government,
Of Maharashtra 2nd Floor, Aroyagya
Bhavan, Saint Georges Hospital,
Premises Fort, Mumbai-01.
- 3) Civil Surgeon,
General Hospital, Wardha.

Respondents

Shri S.P.Palshikar, the Id. Adv. for the applicant.

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

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

JUDGMENT

(Delivered on this 08th day of January, 2018)

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

2. The applicant Dr. Hanif Sheikh S/o Abdul Hafiz in this original application is a bachelor of Unani Medicine Surgery (BUMS). He applied for the post of Medical Officer (Unani) in view of the advertisement dated 16/12/2016. He was called for personal interview and was selected by the committee. The respondent no. 3 appointed the applicant on the post of Medical Officer (Unani) vide order dated 04/07/2017 for a period of three months.

3. It is stated that vide another advertisement dated 04/08/2017 issued by respondent no. 3; the respondent no. 3 appointed other candidates on the similar post for a period of eleven months. The applicant also should have been appointed for a period of eleven months; but he was given a posting for three months only and, therefore, the applicant in the O.A. claimed direction to respondent no. 2 to issue him appointment order for eleven months from 04/07/2017.

4. Subsequently, the O.A. was amended whereby the applicant has placed on record the appointment order in respect of other candidates, showing that they were appointed for eleven months and it was stated that the respondents have committed mischief in applicant's

appointments. It is further stated that the respondents also issued advertisement in March, 2017 for the similar post but no committee was available and, therefore, the post remained vacant and the applicant ought to have been continued.

5. The respondent no. 3, Civil Surgeon, Wardha has filed affidavit-in-reply and stated that the applicant was appointed for a temporary period of three months. He is not duly qualified, as he is only Graduate and does not possess Master Degree. As per the subsequent advertisement, the applicant did not apply and, therefore, he has no right to claim appointment or continuation of appointment, since he has not participated in the recruitment process at all. It is stated that the applicant has accepted the only appointment of three months and did not protest nor challenged the said order of appointment. His period of appointment is already over. Since the applicant is not meeting the eligibility criteria, he is not entitled to get extension. Since the applicant has not participated in the recruitment process vide subsequent advertisement, he has no right to claim continuation.

6. The Id. counsel for the applicant Shri S.P.Palshikar has invited my attention to the guidelines for appointment and re-appointment of staff in the hospital. These guidelines are issued by Mission Director, National Rural Health Mission. The copy of the said guidelines / letter dated 14/11/2008 is on record at P.B.Pg. No. 23-26

(both inclusive). As per guidelines 'D' on page no. 26, it is mentioned as under:-

D. Re-appointment of contractual Staff:-

All the contractual staffs are appointed for 11 months period. These staffs need to be re-appointed after their contract is complete.

Reappointment of contractual staff will be done by head of the institute as per guidelines given below:-

1. The contractual staff will request the head of institute in writing for reappointment.
2. Controlling officer (MO/ Specialist) will initiate performance report of contractual staff and submit to head of institute along with application.
3. If controlling officer has recommended the reappointment of staff and head of the institute is of same opinion, then reappointment is given.
4. If head of institute has difference of opinion, then he/she will write the adverse opinion with reasons and discontinue the services of person.

Procedure for reappointment should be started one month before the last date of contract and the person should get re-appointment letter one week before last date of the completion of contract.

The Civil Surgeon should inform the Executive Committee about discontinuation of staff if any in his/her district during next meeting.

7. The Id. counsel for the applicant submits that the respondent authority had not followed these guidelines and as per these guidelines a right has been accrued in favour of the applicant for getting appointment for eleven months.

8. The Id. P.O. however, submits that the aforesaid guidelines may not be applicable to the case of the applicant as the applicant has responded to the advertisement dated 16/12/2016 (Annexure-A-1) and that these guidelines are not mandatory. He further submits that the said

guidelines are for the, re-appointment of contractual staff and not for their appointment.

9. In the advertisement(Annexure-A-1) it has been stated thus:-

0kjhy i nkp fu; 0rh fg fu0G dæ-kVh Lo: i kph vl w 31 ekp/2017 ; k dkyko/Ah
dfjrk vl y rl p l nj dkyko/Ah gk i nk; k vko'; drud kj o menokj; k dkekoj
ok<fo.; kr fdok deh dj.; kr ; bly-

This condition in the advertisement clearly shows that the appointment will be as per the requirement of the respondent authorities.

10. The applicant was appointed vide order dated 04/07/2017 (Annexure-A-2) at P.B. Pg. No. 21. In the said appointment order, it is clearly stated that the applicant was appointed on contract basis on a specified contract amount (eku/Au) for a period of three months only. It was clearly stated in the said order that on completion of the period of three months, his services will come to an end automatically and that in case the Central Government does not give sanction to the proposal for the post, the services can be terminated at any time without any intimation. The applicant had accepted the said terms and conditions and for that purpose he was required to sign a contract document on a stamp of Rs. 100/-. Having accepted the said terms and conditions, the applicant cannot say that he shall be appointed for eleven months.

11. The Id. Counsel for the applicant has placed on record some appointment orders in respect of other candidates, from which it seems

that the other candidates under similar circumstances have been appointed for eleven months. However, that itself will not give any cause of action or right to the applicant to get appointed for eleven months. The applicant has not challenged his initial order of appointment for three months and on the contrary accepted the said appointment.

12. So far as the subsequent advertisements are concerned, it is stated that the applicant has not participated in the recruitment process vide subsequent advertisements for eleven months and this seems to be an admitted fact and, therefore, the applicant cannot claim appointment on the basis of subsequent advertisements.

13. On a conspectus of discussion in foregoing paras, it will be clear that, though the applicant was appointed for three months only vide order dated 04/07/2017, he did not challenge the said order for three months. On the contrary, he had accepted the terms and conditions in the order. The period of three months has already lapsed. Not only that even the period of eleven months from the date of order dated 04/07/2017 has also lapsed. The applicant did not participate in the recruitment process vide subsequent advertisements and, therefore, in such circumstances, the applicant has miserably failed to prove that he is having any right to claim appointment for eleven months. I, therefore, do not find any merits in the O.A., hence the following order:-

ORDER

O.A. stands dismissed with no order as to costs.

Dated :-08/01/2018

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

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