

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 635/2017

Sunita D/o Murlldhar Zanwar (Bhutada),
Aged about 41 years, Occ. Service,
R/o A-1/1,7-B, Nirmal Nagar,
Umred Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Medical Education and Drugs Department,
G.T. Hospital Building, 9th Floor, B-Wing, New
Mantralaya, Mumbai-32.
- 2) Director of Medical Education and
Research Government Dental College
and Hospital Building,
4th floor, Sent Georges Hospital Campus Fort,
Mumbai-01.
- 3) Dean,
Indira Gandhi Government Medical College,
Central Avenue, Nagpur.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.

Shri M.I. Khan, P.O. for the respondents.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Passed on this 13th day of December,2018)

Heard Shri N.T. Thombre, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The appointment order was issued on 24/11/2015 and the applicant was posted on the establishment of respondent no.3 as Assistant Professor. At the relevant time the applicant was in service of the Health Department. It is submission of the applicant that she was not relieved by her Controlling Authority and therefore she could not resume her duty with the respondent no.3 within stipulated time mentioned in her appointment order. It is grievance of the applicant that when she was relieved, she immediately went to join the post, but she was not permitted to join putting the reason that the period to join the post came to end. Thereafter, the applicant made persuasion and ultimately she was granted permission by respondent no.1 vide order dated 10th June,2016 to join as Assistant Professor in Radiology with the respondent no.3 and it was also directed that she shall be deemed to be joined on 24/11/2015. It is submission of the applicant that the Authority rejected her request to count the period of previous service i.e. from 22/04/2016 to 16/06/2016 as a compulsory waiting period. In these circumstances, it is submitted that the order dated 29/05/2017 issued by respondent no.1 be quashed and the period from 22/04/2016 to 16/06/2016 be considered as compulsory waiting period and salary to that period be paid to her.

3. It is contended by the learned P.O. that request of the applicant is rejected by respondent no.1 and it is held that the period from 22/04/2016 to 16/06/2016 cannot be considered as compulsory waiting period and as no duty was discharged by the applicant, therefore, the applicant is not entitled for the wages for this period.

4. There is no dispute about the fact when the applicant was appointed as Assistant Professor on the establishment of respondent no.3 the applicant was in service in the other department of the Government when Controlling Authority of the applicant was aware that it was essential for him to relieve the applicant in time so as she could join the new posting within a period specified in the order. It is pertinent to note that there was no fault on the part of the applicant but as she was not relieved in time by her then Controlling Officer, she could not join the post in time. When applicant went to respondent no.3 to join her post she was told that the period mentioned in the appointment order was expired and ultimately the applicant persuaded the respondent no.1 who permitted the applicant to join the post. These circumstances are sufficient to accept submission of the applicant that though she was willing and ready to join the establishment of respondent no.3 in the stipulated time, but as she was not relieved by the other department of the Government,

therefore, she could not join her duty and therefore she was not responsible.

5. In view of the above situation it is necessary to take sympathetic on the basis of the law laid down in case **State of Bihar & Ors. Vs. Krupa Nand Singh & Ano. (2014)14 SCC,375**. In this case it is held that 'no work no pay' is the rule and 'no work, yet pay' is the exception. The compulsory waiting period is one such exception to this rule to qualify the employee who is not guilty to join the duty in time. In view of this legal principle laid down by the Hon'ble Apex Court, in my opinion as the applicant was not relieved by the department of the Government to resume the new posting on the establishment of respondent no.3, she was not liable for the delay caused. On the contrary her past employer was under obligation to inform the Government, which were the difficulties for which he was unable to relieve the applicant and he should have himself requested the Government to extend the time, but it was not done. Thus it seems that there was no coordination between the two departments of the Government and by putting finger on the term in the order, the respondent no.3 did not permit the applicant to resume the duty when she came to the establishment after her relieving. It seems that the respondent no.1 did not examine and circumstances in this case in a proper manner, therefore, interference is required.

6. I therefore accept that it is necessary to quash the order dated 29/05/2017 issued by the respondent no.1, the period from 22/04/2016 to 16/06/2016 be treated as compulsory waiting period during which the applicant could not work though she was willing and the applicant is entitled to get salary and allowances for this period. Hence, the following order :-

ORDER

The O.A. stands allowed in terms of Prayer Clause nos. (i) and (ii). The respondents to comply the order within four months. No order as to costs.

Dated :- 13/12/2018.

*dnk.

(A.D. Karanjkar)
Member (J).