

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.794/2017.

(S.B.)

Dr. Ashish s/o Ramesh Rao Dudhe,
Aged about 30 years,
Occ- Nil,
Presently R/o Nandgaon Khandeshwar,
Tehsil- Nandgaon Khandeshwar,
Distt. Amravati.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
10th floor, Sankul Building,
Mantralaya, Mumbai-400 001.
- 2) The Director of Health Services,
8th floor, Arogya Bhavan,
St. Georges Hospital Compound,
D'Mello Road, Mumbai-01.
- 3) The Dy. Director of Health Services,
Akola Mandal, Akola,
New Radhakisan Plot, Akola.
- 4) The District Civil Surgeon,
General Hospital, Amravati.
- 5) The Chief Executive Officer,
Zilla Parishad, Amravati.
- 6) The District Health Officer,
Zilla Parishad, Amravati.

Respondents

Shri K.N. Dadhe, the learned counsel for the applicant.
Shri M.I. Khan, the learned P.O. for the respondents 1 to 5.
Shri P.A. Kadu, learned counsel for R.6.

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

ORAL ORDER

(Passed on this 21st day of January 2019.)

Heard Shri K.N. Dadhe, the Ld. counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents 1 to 5. Shri P.A. Kadu, learned counsel for R.6.

2. The Ld. counsel for the applicant has filed additional rejoinder on behalf of the applicant to the reply affidavit filed by respondent Nos. 3, 5 and 6. It is taken on record and copies thereof are supplied to the other sides.

3. The applicant has challenged the impugned order issued by respondent No.5 i.e. the Chief Executive Officer, Zilla Parishad, Amravati, whereby the applicant was directed to take instructions from respondent No.2 i.e. the Director of Health Services, Mumbai and was relieved from the post of Medical Officer. From the facts of the case, it seems that the respondent No.6, vide order dated

25.7.2016 transferred the applicant immediately to Rural Hospital at Dhamangaon Railway, since there were number of complaints against him. In view of this, the respondent No.6 issued an order on 27.7.2016 and relieved the applicant so as to join at Rural Hospital at Dhamangaon Railway. Thereafter on 12.8.2016, the respondent No.4 i.e. District Civil Surgeon, General Hospital, Amravati directed the applicant to join at Rural Hospital, Nandgaon Khandeshwar and it was mentioned in the order that it was issued as per the direction of Dy. Director of Health Services, Akola. The applicant accordingly joined there. But, there are number of complaints against the applicant. Thereafter vide order dated 6.9.2016, the Superintendent, Rural Hospital, Nandgaon Khandeshwar relieved the applicant. The Superintendent, Rural Hospital, Nandgaon Khandeshwar comes under the respondent No.3. The applicant was directed to see the respondent No.3 also. Accordingly vide order dated 8.9.2016, the respondent No.3 directed the respondent No.5 Chief Executive Officer, Zilla Parishad, Amravati to post the applicant as per the convenience of the administration, where Medical Officers were required. Accordingly, the respondent No.5 Chief Executive Officer, Zilla Parishad, Amravati directed the applicant vide order dated 26.9.2016 to join at Primary Health Centre, Shirala. This order was

served on the applicant on 27.9.2016. Its reminder was given on 17.10.2016 by the Chief Executive Officer, Zilla Parishad, Amravati. It was specifically mentioned in the reminder that if the applicant does not join at Shirala, *ex parte* order may be issued for his relieving, and since the applicant did not join at Shirala, the impugned order dated 9.11.2016 came to be passed. This order has been challenged in this O.A. on the ground that, the Chief Executive Officer, Zilla Parishad, Amravati is not competent authority to relieve the applicant.

4. This Tribunal vide order dated 19.9.2018 was pleased to direct the respondent No.3 as well as respondent Nos. 5 and 6 to file a short affidavit making the following points clear:-

(i) Whether they have an authority to transfer the applicant who is a Medical Officer, Class-I ? If yes, they shall have filed documentary evidence for such authorization.

(ii) The respondent Nos. 3, 5 and 6 shall also state as to why salary of the applicant for the relevant period shall not be recovered from them either individually or jointly and severally.

5. In view thereof, the respondent No.3 has filed an affidavit at page Nos. 140 to 142 (both inclusive). It is unfortunate that the respondent No.3 nowhere admits that it has no authority to transfer the applicant, though it tendered unconditional apology.

However, fact remains that the Government is the only authority to transfer the applicant, being Class-I employee.

6. The respondent Nos. 5 and 6 have filed their affidavit at page No.133 to 137 (both inclusive). From the said affidavit, it is clear that even the respondent Nos. 5 and 6 have not admitted about their mistake. It is, however, stated at bar that the respondent Nos. 5 and 6 have no authority to transfer the applicant or to relieve him *ex parte* without direction from the Government. From the affidavit, it seems that there were number of complaints against the applicant at the place of his service and, therefore, it was impossible for the authorities to continue him at the station. Even accepting this fact, fact remains that the respondent Nos. 3, 5 and 6 have no authority to take *ex parte* decision against the applicant. If at all there are complaints against the applicant, it was the duty of the respondent Nos. 5 and 6 to refer these complains to the Government through Deputy Director of Health Services, Akola and the Government would have taken necessary action. Fact, however, remains that the applicant did not join at the place where he was posted nor he has challenged the impugned orders of transfer and he has challenged only the order of reliving him from the post so as to approach the Director of Health Services, Mumbai (R.2).

7. From the correspondence placed on record at page No.30, the learned counsel for the applicant submits that the applicant approached the Director of Health Services, Mumbai and requested that he may be posted under Zilla Parishad, Amravati at P.H.C. Anjangaon Bari or P.H.C., Sakhargaon, Tehsil Nandgaon Khandeshwar, District Amravati. However, till today no action is taken on the said letter dated 12.1.2017.

8. The learned P.O. submits that the Deputy Director of Health Services, Akola has not taken any action on the letter dated 12.1.2017 and only moved the proposal to the Government for transfer of the applicant. However, he submits that since the applicant was a probationer, proposal to remove him from service, since he has not satisfactorily completed the probation period, is moved. That is the different subject and not the subject matter of this O.A. and, therefore, there is no reason to make comments on it. Keeping open that point, the Tribunal can see the fact that the impugned order dated 9.11.2016 (A-10) issued by C.E.O., Z.P., Amravati, relieving the applicant *ex parte* is not legal and proper. However, it is an admitted fact that the applicant, though was directed to join at P.H.C., Shirala, did not join there and only challenged the order of relieving. Therefore, whether rightly or

wrongly, it was incumbent on the applicant to join at Shirala, may be under protest and then should have challenged the said order. Now, considering the fact that the respondent No.3 had asked the applicant to approach the Director of Health Services, Mumbai vide impugned order and admittedly since the applicant has approached the Director of Health Services, Mumbai and has filed an application as per Annexure A-12 (Page 30) dated 12.1.2017, it was necessary for the respondent No.2 to take action and to make necessary proposal to the Government. The respondents will be at liberty to take action so far as applicant's non-completion of probation period etc. is concerned. But it must pass the order regarding posting of the applicant. In view thereof, application can be disposed of with following directions:-

ORDER

- (i) The respondent No.2 is directed to take action as regards posting of the applicant in view of letter dated 9.11.2016 issued by respondent No.3 and in view of application of the applicant dated 12.1.2017 (Annexure A-12) or as per the administrative convenience, as early as possible and in any case with a period of three weeks from the date of this

order and on receiving such proposal, the respondent No.1 shall pass necessary order within a further period of two weeks from the date of receipt of proposal.

- (ii) No order as to costs.

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

Dt. 21.1.2019.

pdg.