

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 876 of 2019 (S.B.)

Dr. Kailash S/o Vasram Rathod,
Aged about 49 years, Occ. Service,
R/o Pusad, Dist. Yavatmal.

Applicant.

Versus

- 1) The Principal Secretary,
Public Health Department,
G.T. Hospital Campus, 10th floor,
Mantralaya Building, Mumbai-400 032.
- 2) The Director,
Department of Public Health Maharashtra State,
"Ayogya Bhawan" 5th floor, St. George Hospital Compound,
P.D. Demello Road, Mumbai-01.
- 3) The Deputy Director of Health Services,
Health Department, Akola Circle, Akola.

Respondents.

S/Shri P.C. & Y.P. Marpakwar, A.R. Kelele, Dhruv Karnik, Advs.
for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 15th July,2022.

Date of Pronouncement of Judgment : 2nd August,2022

JUDGMENT

(Delivered on this 2nd day of August,2022)

Heard Shri V.P. Marpakar, learned counsel for the
applicants and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed as a Medical Officer on temporary basis on 20/6/2001. He was posted to work at Rural Hospital, Pusad. The applicant appeared for the examination conducted by the Maharashtra Public Service Commission (MPSC). The applicant passed the said examination and he was at Sr.No.332 in the merit list. All other candidates were given posting as a Medical Officer excluding the applicant. The applicant sought information under the Right to Information Act. Thereafter, he came to know that the persons who stood lower in the merit list of the successful candidates have been posted on 3/4/2002. The applicant was given posting in the month of June,2006 at Kutir Hospital, Umarched, Dist. Yavatmal.

3. It is submitted that the applicant was already working since 20/06/2001, therefore, he should have been granted continuity of service w.e.f. 20/06/2001 for all purposes including the pay fixation, arrears of salary etc.

4. While working at Kutir Hospital, Umarched, Dist. Yavatmal, then the Minister of State visited the Hospital on 25/08/2006. During the meeting, the Minister got furious without any reason. On 15/09/2006, the applicant was served with a suspension order. He

was placed under suspension pending departmental inquiry. During the period of suspension, the applicant was not paid the subsistence allowance. The applicant filed the O.A. before this Tribunal. Thereafter he was paid the subsistence allowance. In the meantime, the applicant was served with a charge sheet dated 06/02/2007. Two charges were framed against the applicant.

5. The respondents have revoked the suspension of the applicant, but till date his probation period is not decided, therefore, prayed the following reliefs -

“(i) Issue an appropriate writ, order or direction requiring the respondents grant the benefits and privileges of permanent employee to applicant w.e.f. 3/4/2002 i.e. the date from which other candidates selected through MPSC were granted postings and his pay be fixed accordingly in the appropriate pay scale.

(ii) His probation period be treated from 20/06/2001 and be granted confirmation accordingly and the pay, pay scales, seniority and other benefits be extended to the applicant with arrears from the date of completion of probation period i.e. from 20/06/2003.

(iii) The period of compulsory waiting i.e. from 31/05/2010 till 23/08/2013 be treated as duty period for all purposes and the salary and other emoluments for the said period be released and his suspension period be treated as duty period;

(iv) The respondents be directed that the pay of the applicant be re-fixed and the arrears arising out of proper fixation be paid to the applicant alongwith the interest ;

(v) grant any other or further relief including costs as may be deemed fits in the circumstances of the case”.

6. The respondents have filed reply. It is submitted that the applicant was appointed as a Medical Officer as per the order dated 20/06/2001. His appointment was purely on temporary basis for a specific duration. Thereafter, no such appointment order was issued to the applicant. In the year 2006, the respondents have issued appointment order as he passed the MPSC examination. The applicant was suspended because of his misbehaviour as not joining the posting at Dharni, Dist. Amravati. The applicant was paid subsistence allowance etc. As per the order dated 31/5/2010, the suspension of applicant was revoked and he was posted at Sub District Hospital, Pusad as per order dated 23/08/2013. It is submitted that the departmental inquiry was conducted against the applicant. The Inquiry Officer submitted the report. The applicant is exonerated for the Charge no.1. One yearly increment was stopped as a punishment.

7. It is submitted that the applicant never worked continuously from 2001, therefore, he cannot claim continuity of service from 2001. The applicant is appointed in the year 2006 after passing the examination conducted by the MPSC. The applicant joined his posting at Umarkhed on 22/06/2006. The probation period

of the applicant is extended. The applicant has not filed the O.A. for not giving him posting earlier to other Medical Officers within time. There is a delay of about 19 years. It is submitted that the O.A. is without any merit and liable to be dismissed.

8. Heard Shri V.P. Marpakwar, learned counsel for the applicant. He has pointed out appointment order of applicant dated 20/06/2001 (Annex-A-1,P-18). As per his submission, the applicant is in continuous service from the date of his first appointment order. During the course of argument, the applicant was directed to file any documents to show his continuous service from 2001. The applicant has filed some Pay Rolls from June,2001 to October, 2002.

9. The learned P.O. has produced the original Service Book of the applicant. From the perusal of the Service Book of applicant, the first entry of his service is recorded on 20/06/2006. His posting was shown at Umarkhed, Dist. Yavatmal.

10. The documents filed by the applicant show that he was in service from 20/06/2001 till October,2002. The applicant has not produced any documents to show that he was in continuous service from 2001 till the issuance of order after passing the MPSC examination, i.e., order dated 20/06/2006. From the perusal of order dated 20/06/2001 clearly shows that, he was appointed for a fixed

period of four months. No other orders are pointed out, but the pay rolls filed by the applicant show that he was in service till October, 2002. Thereafter nothing is on record to show his service as a Medical Officer was continued.

11. There is no dispute that the applicant was appointed as a Medical Officer after passing the MPSC examination as per the order dated 20/6/2006. There is no dispute that the first appointment of applicant was on 20/6/2001. The contents of order show that it was for a fixed period of four months. The applicant has not produced any documents to show that he was in continuous service from 2001 till 20/06/2006. The documents produced by the applicant show that at the most he was in continuous service till October, 2002. But thereafter nothing is produced by the applicant to show that he was in continuous service after October, 2002. The regular appointment order was issued by the respondents on 20/6/2006. There is a gap of four years from October, 2002 to June, 2006. The applicant has not shown any document as to how he is in continuous service from 2001, therefore, he cannot claim continuity in service from 2001.

12. As per the submission of learned counsel for applicant Shri V.P. Marpakwar, the applicant is kept on probation since 2006, till date it is not decided. The probation period cannot be extended for years together. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to decide the probation period of applicant within a period of three months from the date of receipt of this order.
- (iii) No order as to costs.

Dated :- 02/08/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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 Vice Chairman.

Judgment signed on : 02/08/2022.

Uploaded on : 02/08/2022.