

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 94 / 2016 (S.B.)

Dr. Avinash S/o Baliram Zare,
Aged about 41 years, Occupation – Service,
R/o Civil Hospital at Washim,
Tah. & Dist. Washim.

Applicant.

Versus

- 1) The State of Maharashtra, through its Secretary,
Department of Health,
Mantralaya, Mumbai-32.
- 2) Director of Health Services,
Arogya Sewa Sanchanalaya,
Arogya Bhawan, St. Gorges,
Hospital Area, Mumbai.
- 3) Deputy Director,
Health Services, Nagpur,
Division Nagpur,
Matakacheri, Nagpur.

Respondents

None for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 07th day of January, 2019)

None for the applicant. Heard Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant Dr. Avinash Baliram Zare was appointed as Medical Officer vide order dated 09/04/2001. He was initially appointed temporarily for 29 days. On 27/06/2001, the respondent no. 2 issued second appointment order which was for a period of 04 months and accordingly, the applicant joined at Primary Health Centre at Pentitaka, Tah. Sironcha, Dist. Gadchiroli and after 02 months he was transferred to Primary Health Centre Adapalli, Tah. Mulchera, Dist. Gadchiroli. The applicant earlier filed O.A. 658/2001 before this Tribunal and prayed that he be allowed to be continued to serve with the respondents. Vide order dated 29/10/2001 this Tribunal directed the respondents not to replace the applicant with any other adhoc candidate and, therefore, the applicant continued in the service.

3. The applicant was subsequently selected through M.P.S.C. on the post of Medical Officer on 22/01/2009 and after completion of 06 months service; he was transferred to Rural Hospital at Dhanora, Dist. Gadchiroli. He also obtained higher education i.e. Diploma in Anesthesia. Thereafter, he was transferred to Civil Hospital at Washim on 29/04/2014. The applicant worked from 09/04/2001 to 28/04/2014 in

naxalite affected area. However, he was not given benefit of regularization of his service for the period from 09/04/2001 till 22/01/2009. It was necessary for the respondents to give benefit of early increment, benefit of pension scheme and benefit of G.P.F. scheme to the applicant from 09/04/2001. Since, his grievances are not satisfied, the applicant has preferred this O.A.. The applicant has prayed that respondent nos. 1 to 3 be directed to grant him benefit of regularization and continuity of service from his first date of appointment i.e. 09/04/2001 till 22/01/2009 alongwith the arrears of salary and service benefits too.

4. The respondents denied the applicant's claim. According to the respondents, the applicant's earlier service was temporary for a specific period and he was not at all entitled to regularization. It is stated that the Finance Department of State of Maharashtra has issued circular dated 03/11/2008 and thereby guidelines have been issued as regards regularization of services of adhoc employees. As per said circular, the employee were appointed purely on adhoc posts and without consultation of recruitment agency i.e. M.P.S.C. or Selection Board will not be entitled for regularization.

5. It is further stated that vide G.R. dated 31/10/2005, Defined Contribution Pension Scheme (D.C.P.S.) has been introduced and that scheme is applicable to the employee who is appointed on or before

01/12/2005. Since, the applicant was appointed on 22/01/2009 on recommendation of M.P.S.C., he is not entitled to old pension scheme as well as G.P.F. scheme.

6. I have perused the first order of appointment of the applicant which is at Annexure-A-1 dated 09/04/2001. From the said order, it seems that the Director, Medical Services, Mumbai has appointed the applicant purely on temporary basis for a period of 29 days. The condition "B" in the said order is self explanatory and reads as under at P.B., Pg. No. 9:-

"R; kph r hph I ok fu0oG r kRi jR; k Lo: i kph 29 fnoI kI kBh fdok gnj i n fu; fer oSj dh; vf/Adkjh ; kR; k useuphP; k fnukdki ; rpk dkyko/ah deh vl y rki ; r fu; Qrh vl w'Ady- R; kph r hph I ok fu0oG r kRi jR; k Lo: i kph vl u R; kuk@fryk dSgkh I puk u nrk dkekoj deh dj.; kr ; bly fdok 29 fnoI i wAgkrkp rsdk; EDr gkrhy-"

7. Thereafter, the applicant was appointed again temporary for 04 months vide order dated 27/06/2001 and it was clearly stated in para nos. 2 & 3 of the said order that his services will be temporary in nature and he will not be entitled to claim regularization. The condition given at P.B., Pg. Nos. 10 & 11 at Sr. Nos. 2, 3, 14 & 15 reads as under:-

"2- R; kph r kRi j rh fu; Qrh >kY; keGSR; kuk egkj"V" oSj dh; o vkjK; I ok xV&v e/Any dk; e Lo: i kpk fu; Qrhpk gDd vl .Aj ukgh- dk; e Lo: i hP; k fu; QrhI kBh egkj"V"

ykdl ok vk; ksk) kjsT; koGh in kph t kghjkr ; bly- R; koGh R; kauh vk; kskcdMs vtZ dY; k
i kghtj vkf.A brj menokjkcjkcj i fj {Ak fnyh i kghtso fuoM 0; ko; kl i kfgts

3- R; kph I ok rRi jR; k Lo: i kph vl u R; kauh dsgkgh I puk u nrk dkeko: u deh
dj.; kr ; bly-

14- vki .A inLFaki uB; k fBdk.Ah gtj >KY; kcjkcj : twvgoky I oZ I ad/Arkuk I knj
djkok-

15- R; kph vLFAkbZfu; Dhr dG gtj >kyY; k fnukdki kl u-----
Dkyko/Ahdjrk vl Y; keGsgk dkyko/Ah i wZgkrkp I nj fu; Dhr vki ksvki I a qVkr ; bly-

R; kurj rsvki ksvki dk; DDr >kysvl sl et.; kr ; bly o R; kurj dke dY; kl R; kauh R; k
dkyko/Ahpsoru o HARrsfeG.Akj ukghr o R; kl rsLor tokcnkj jkgrhy- vki .Akd ; k 'Akl u
I opsi n0; Drrj vH; kl dæ i dsAkl kBh 'Akl ukposj dh; f'A{A.A o vksA/Ah n0; foHkx ea-ky;]
eçbz 'Akl u fu.Az dz, uvkl h&3050@l hvkj&307@95of' A{A.A&8] fnukd 28-02-96 e/; s
fofgr dY; k vVh o 'Arhpk ykHA vuks ukgh-

8. It seems that, in the meantime, the applicant has filed O.A. No. 658/2001 before this Tribunal and in the said O.A., the applicant was allowed to continue till the post is filled in by regular employee through M.P.S.C.. Admittedly, he was not regularized. There is nothing on record that to show as to on what basis the applicant is claiming regularization. Admittedly, till the applicant was appointed by Competent Board/ M.P.S.C., he was appointed on temporary basis for a particular period and was having no right to claim regularization. Having accepted this condition of temporary appointment, the applicant again claimed

regularization merely because he has been duly selected subsequently by M.P.S.C. for regular appointment. The Id. Counsel for the applicant has placed reliance on the Judgment in O.A. Nos. 530, 531/2015 delivered by this Tribunal at Aurangabad Bench on 22/09/2016 and Judgment in O.A. No. 37/2004 delivered by this Tribunal at Aurangabad Bench on 29/06/2004. The case of the present applicant is not analogous with the facts of those cases and, therefore, citations are not applicable to the present set of facts. I, therefore, do not find any merit in the O.A.. Hence, the order:-

ORDER

1. O.A. is dismissed.
2. No order as to costs.

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

Dated:- 07/01/2019.

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