

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD.**

**COMMON ORDER IN ORIGINAL APPLICATION NOS. 673**  
**OF 2013 WITH 69 OF 2014**

**1. ORIGINAL APPLICATION NO. 673 OF 2013**

**DIST.: NANDED**

**Shri (Dr.) Dhondba S/o Pandoji Bhurke,**  
Age: 35 Years, Occu: Lecturer  
In Department of Medicine in  
Government Medical College Nanded,  
R/o. Ganganiwas, Plot No. 7,  
Govt. Medical College Campus,  
Nanded.

--

**APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,**  
(Through the Presenting Officer,  
MAT Aurangabad)
2. **The Secretary,**  
Medical Education and Drugs Department,  
Mantralaya, Mumbai.
3. **The Director,**  
Medical Education and Research,  
Mumbai.
4. **The Dean,**  
Government Medical College Nanded,  
Dist. Nanded.
5. **The Dean,**  
Government Medical College, Aurangabad.

--

**RESPONDENTS**

**W I T H****2. ORIGINAL APPLICATION NO. 69 OF 2014****DIST.: DHULE**

**Smt. (Dr.) Ashwinin D/o Vijaykumar Takalkar,**  
Age: 35 Years, Occu: Curator,  
Under Anatomy Department,  
Shri Bhausahab Hire Medical College, Dhule,  
Dist. Dhule.

--

**APPLICANT****VERSUS**

1. **The State of Maharashtra,**  
(Copy served on C.P.O.  
M.A.T. Bench Mumbai)
2. **Secretary,**  
Medical Education and Drugs Department,  
Mantralaya, Mumbai-32.
3. **The Director of Medical Education and Research,**  
IV th Floor, St. Georges Hospital Campus,  
Near C.S.T. Mumbai.
4. **The Dean,**  
Shri Bhausahab Hire Govt. Medical College,  
Dhule.

--

**RESPONDENTS**

-----

**APPEARANCE** : Shri M.R. Kulkarni, learned Advocate for  
the Applicant in O.A. No. 673/2013.

: Shri J.S. Deshmukh, learned Advocate for  
the Applicant in O.A. No. 69/2014.

: Shri D.R. Patil, Learned Presenting Officer  
for the Respondents in both the O.As.

-----

-----  
**CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)**  
**AND**

**HON'BLE SHRI B.P. PATIL, MEMBER (J)**

**DATE : 04.08.2017.**  
-----

**C O M M O N O R D E R**

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

1. Heard Shri M.R. Kulkarni, learned Advocate for the Applicant in O.A. No. 673/2013, Shri J.S. Deshmukh, learned Advocate for the Applicant in O.A. No. 69/2014 and Shri D.R. Patil, Learned Presenting Officer for the Respondents in both the O.As.

2. These Original Applications are being disposed of by a common order as the issues to be decided are identical.

3. In O.A. No. 673/2013, the Applicant was appointed as Lecturer in Medicine in Government Medical College, Nanded, by order dated 25.04.2005 for 120 days. The Applicant filed O.A. No. 514/2005 before this Tribunal seeking continuation of his services till a regularly selected candidate was posted. By order dated 22.8.2005, this Tribunal directed that the Applicant be continued in service

till a regularly selected candidate from M.P.S.C. was appointed. The Applicant could not be replaced by a fresh or junior ad-hoc appointee. The Applicant continued in service till 26.5.2008 with technical breaks between tenures of 120/364 days. The Applicant was selected by Maharashtra Public Service Commission (M.P.S.C) and appointed as Lecturer by order dated 3.5.2008. He joined on 27.5.2008 and successfully completed probation on 26.05.2010. The Applicant is claiming that he is entitled to get the technical breaks in service condoned in terms of Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant is also seeking that his service from 26.04.2005 be treated as qualifying service under Rule 30 and 33 of the Maharashtra Civil Services (Pension) Rules, 1982. He is relying on various judgments of this Tribunal and Hon'ble High Court.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that this Tribunal has ordered condonation of breaks in service on equity and not under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982.

As the Applicant was not selected in 2005 by following due procedure, his appointment was not regular. Condonation of breaks in service under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982 is for temporary/ad-hoc service, provided the appointment was made on regular basis after following due procedure. As such, the Applicant is not eligible for condonation of breaks in service under Maharashtra Civil Services (Pension) Rules, 1982, but on the ground of equity. As regards treating the service before regular appointment through M.P.S.C., as qualifying service, learned P.O. argued that such a course of action is not permissible under Rule 30 or 33 of the Maharashtra Civil Services (Pension) Rules, 1982. Temporary service of a regular appointed Government servant can only be counted as qualifying service.

5. We find that these issues were examined by this Tribunal in a group of O.As. No. 510/2013 etc. By judgment dated 10.12.2014, this Tribunal held that:-

***“If a person is selected on a regular basis in accordance with the Recruitment Rules, his***

***earlier ad-hoc services in the same post can be counted for limited purpose of annual increments and the earned leave. The technical breaks can be condoned in such cases.”***

6. This judgment was upheld by Aurangabad Bench of Hon'ble High Court by judgment dated 23.03.2016 in W.P. No. 11611 of 2015. In O.A. Nos. 568 & 569 of 2013 Mumbai Bench of this Tribunal has examined this issue in great detail. It was held that those who were appointed on ad-hoc basis without following statutory rules, are not eligible to count ad-hoc service as qualifying service under Rule 30 and 33 of the Maharashtra Civil Services (Pension) Rules, 1982.

7. The prayer of the Applicant for condonation of technical breaks in service is granted on the basis of equity. The service before regular appointed through M.P.S.C., however, cannot be counted as qualifying service.

8. In O.A. No. 69/2014, the Applicant was appointed as Curator for 120 days from 25.11.2003. He filed O.A. No. 70/2004 before this Tribunal and by order dated 19.3.2004,

this Tribunal directed that the Applicant may continue in service till a candidate selected by M.P.S.C. was appointed. The Applicant could not be replaced by a fresh or junior ad-hoc candidate. The Applicant was selected by M.P.S.C. for the post of Curator and by order dated 9.2.2010, she was given regular appointed. The Applicant is seeking condonation of technical breaks in service from 23.11.2003 to 24.2.2010 and annual increments.

9. We have already held that in such circumstances, technical breaks are condoned on the basis of equity and not under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982. The Applicant is also eligible to get increment also in terms of relevant G.R. issued by the Government for grant of increments to even ad-hoc employees. However, on regular selection through M.P.S.C., the Applicant's previous ad-hoc service can be as counted for any purpose. It cannot be counted as qualifying service for any purpose. In short, during the ad-hoc service, the Applicant would be eligible to earn annual increments, and condonation of technical

breaks in service. However, on regular selection, her pay will be fixed as per rules and not counting ad-hoc service.

10. These Original Applications are allowed to the extent that the Applicants are eligible for condonation of technical breaks in ad-hoc service and for annual increments. However, the ad-hoc service will not be counted as qualifying service for any purpose. There will be no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN (A)**

Kpb/DB OA No 673/2013 with 069/002014 RA 2017