

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.1080 of 2023

Dr. Avikumar S/o Manohar Madavi,
Aged: 30 years, Occu. Medical Officer, Group-A,
R/o. Maroti Ward No. 2, Hinganghat, Dist. Wardha-442301.

Applicant.

Versus

1] State of Maharashtra,
Through the Secretary, Ministry of Health,
Mantralaya, Mumbai-32.

2] Director,
Directorate of Health Services,
Arogya Bhawan, St. George's Hospital Compound,
P D'Mello Road, Mumbai- 01.

3] Deputy Director, Health Services,
Nagpur Division, Nagpur- 440022.

4] Chief Executive Officer,
Zilla Parishad, Wardha, Dist. Wardha.

Respondents.

S/Shri R.S. Khobragade, S.R. Khobragade, Advs. for applicant.
Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 3.
Shri N.M. Kolhe, Advocate for respondent no.4.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 18th March,2024.

Date of Pronouncement of Judgment : 21st March,2024.

JUDGMENT

(Delivered on this 21st day of March,2024)

Heard Shri R.S. Khobragade, learned counsel for the
applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 3
and Shri N.M. Kolhe, learned counsel for respondent no.4.

2. Case of the applicant is as follows –

The applicant is Medical Officer, Group-A. He was working at Public Health Center (P.H.C.), Pohana since 05/09/2021. He found work of some staff members highly unsatisfactory and issued them Memos (Annex-A-3 collectively). These employees saw to it that complaints were filed against the applicant on 13/05/2022 and 13/06/2022. Copies of these complaints were not supplied to the applicant. He was served with a show cause notice dated 21/06/2022 to which he gave a reply (Annex-A-4). On 24/03/2023 he had made a complaint (Annex-A-5) to Sarpanch / Village Development Officer about inadequate facilities / amenities provided to Health Workers. On 10/07/2023 respondent no.4 passed the impugned order placing him under suspension. Respondent no.4 had no authority to do so. He is neither the Appointing Authority nor the Disciplinary Authority of the applicant. The impugned order being void *ab initio* deserves to be quashed and set aside.

3. Stand of the respondents is as follows –

On 10/06/2022 complaint was received against the applicant that he used to abuse women employees in inebriated state. Therefore, by order dated 23/06/2022 he was transferred to P.H.C., Sindhi (Railway). On 21/06/2022 respondent no.4 formed a Committee to enquire into the complaint against the applicant. Inquiry

was conducted and report dated 06/07/2022 (Annex-R-1) was submitted. On 31/03/2023 employees attached to P.H.C., Sindhi (Railway) made a complaint of rude behaviour with the staff and patients, against the applicant. This complaint was enquired into and report of inquiry dated 18/05/2023 was received (complaint and report of inquiry are collectively marked Annex-R-2). Hence, by order dated 10/07/2023 respondent no.4 placed the applicant under suspension. By letter dated 18/07/2023 ex-post-facto-sanction was sought and it was accorded by order dated 22/02/2024 (at Page no.67). For these reasons the O.A. lacks merit and it is liable to be dismissed.

4. The applicant has impugned the order of suspension on the legal ground that respondent no.4 was not vested with powers to pass it. It was submitted by Shri R.S. Khobragade learned counsel for the applicant that respondent no.4 was neither the Appointing Authority nor the Disciplinary Authority of the applicant. This particular assertion of the applicant is not disputed by the respondents. The issue whether Medical Officer, Group-A appointed by the Director of Health Services, and attached to P.H.C. could be suspended by Chief Executive Officer of concerned Zilla Parishad had come up for consideration before Aurangabad Bench of this Tribunal in O.A.No.404/2016 and by Judgment dated 08/09/2017 it was held –

“(22) The applicant was appointed by respondent No. 2, Director Health Services. The respondent No. 2 is the appointing, controlling and disciplinary authority of the applicant. The respondent Nos. 1 to 3 i.e. the State Government used to pay salary to the applicant. He is the employee of the State Government. There is nothing on record to show that the respondent No. 2 i.e. the Director of Health Services, Public Health Department, Government of Maharashtra, by special or general order delegated the powers of the appointing authority to the respondent No. 4. Therefore, respondent No. 4 cannot be said to be disciplinary authority of the applicant, who is Medical Officer. The Government Resolution dated 28th March, 2012 provides that in case there are complaints against the Medical Officer working in the Primary Health Center then the Chief Executive Officer, Zilla Parishad, has to make preliminary enquiry and to submit his report and send proposal to the Government along with his opinion/ recommendation to the Government, if he finds substance in the complaint. It also provides that if the complaint is of a serious nature and it was necessary to keep away the concerned officer from discharging duties, then he has to place the Medical Officer at Headquarter of the Zilla Parishad and obtain necessary orders from the Government regarding his further posting within 7 days. It has been specifically mentioned in the G.R. that the Chief Executive Officer has no power to withdraw his charge without getting approval of the appointing authority. The provision of the said G.R. is material and, therefore, I reproduce the same as under.

“४. प्राथमिक आरोग्य केंद्रातील वैद्यकीय अधिकारी ते जिल्हा आरोग्य अधिकारी यामधील कोणत्याही वैद्यकीय अधिका-यासंबंधात जिल्हा प्रशासनाच्या काही तक्रारी असतील तर, त्या संदर्भातील तक्रारीबाबत मुख्य कार्यकारी अधिकारी, जिल्हा परिषद यांनी प्राथमिक चौकशी करावी व त्यात तथ्य आढळल्यास आपल्या अभिप्रायासह प्रस्ताव त्वरीत शासनास सादर करावा. त्याचबरोबर तक्रारीचे स्वरूप गंभीर असल्यास व कर्तव्यापासून दूर ठेवण्याचे गरजेचे असल्यास शासनाकडून त्याबाबत योग्य ती कार्यवाही

होईपर्यंत जिल्हा परिषदेच्या मुख्यालयास संबंधित वैद्यकीय अधिका-याची पदस्थापना ठेवण्यात यावी व शासनाकडून पुढील पदस्थापनेबाबत सात दिवसात आदेश घ्यावेत. त्यावर योग्य ती कार्यवाही आरोग्य विभागामार्फत तत्परतेने करण्यात येईल. मुख्य कार्यकारी अधिकारी, जिल्हा परिषद यांनी व्यक्तीशः याबाबत दक्षता घ्यावी."

23. In the said Government Resolution it has been specifically mentioned that the Government Medical Officers are employees / servants of the State Government and they have been posted at Primary Health Center to render their services. It shows that the respondent No. 2 is appointing and disciplinary authority of the applicant. Therefore, the Chief Executive Officer i.e. respondent No.4 has no authority to exercise the powers of appointing and disciplinary authority for those Medical Officers posted at Primary Health Centers. Therefore, the respondent No. 4 has no power to suspend the applicant in view of the provisions of M.C.S. (D&A) Rules, 1979.

24. The said issue has been considered by this Tribunal in O.A. Nos. 60, 635 & 661 all of 2014 and it has been held that the Chief Executive Officer, Zilla Parishad, is not empowered to issue the suspension order of the Medical Officer working at Primary Health Center. It has been specifically held in those decisions by this Tribunal that if there are complaints against the Medical Officer, the Chief Executive Officer may make preliminary enquiry and if he finds some substance he may make proposal to the State Government along with his opinion to the Government in view of the Government Resolution dated 28th March, 2012. It has been observed in the said decision that if the complaint is of a serious nature and it was necessary to keep away the concerned officer from discharging duties, then he has to place the Medical Officer at Headquarter of the Zilla Parishad and obtain necessary orders from the Government regarding his further posting within 7 days. The said decision delivered by this Tribunal has been upheld by the Hon'ble High Court Bench at Aurangabad in W.P. Nos. 5237,

5242 & 5248 all of 2015 decided on 2nd March, 2016. Therefore, I am bound by the said decisions.”

5. This being the factual and legal position, the impugned order dated 10/07/2023 (Annex-A-1) cannot be sustained. It is accordingly quashed and set aside. The applicant shall be reinstated forthwith and paid consequential benefits within one month from today. No order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 21/03/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 21/03/2024.