

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No. 257/2018 (D.B.)

Manish S/o Bhanudas Tikhe,
 Aged about 41 years,
 R/o Raniamravati, Tq. Babhulgaon,
 District Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
 through its Department of Public Health, Mantralaya, Mumbai.
- 2) Assistant Director of Health Services,
 (Filaria & Malaria), Akola.
- 3) District Malaria Officer, Wardha.
- 4) District Malaria Officer, Washim.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 949/2017
WITH CIVIL APPLICATION NO. 38/2018 (D.B.)

Manoj S/o Dattatraya Umratkar,
 Aged about 36 years,
 R/o Mangladevi, Tahsil Ner, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
 through its Department of Public Health, Mantralaya, Mumbai.
- 2) Assistant Director of Health Services,
 (Filaria & Malaria), Akola.
- 3) District Malaria Officer, Wardha.
- 4) District Malaria Officer, Washim.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 950/2017
WITH CIVIL APPLICATION NO. 39/2018 (D.B.)

Duryodhan S/o Bapurao Khadse,
 Aged about 42 years,
 R/o Dhamangaon Railway, Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
 through its Department of Public Health, Mantralaya, Mumbai.
- 2) Assistant Director of Health Services,
 (Filaria & Malaria), Akola.
- 3) District Malaria Officer, Wardha.
- 4) District Malaria Officer, Washim.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 913/2018 (D.B.)

Sunil S/o Abaraoji Sirsat,
 Aged about 33 years, Occ. Service,
 R/o Undri, Post Undri,
 Tq. Chikhli, Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
 through its Secretary, Department of Health, Mantralaya, Mumbai.
- 2) District Malaria Officer, Amravati.
- 3) Assistant Director, Health Services,
 (Malaria), Akola.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 914/2018 (D.B.)

Pankaj Narayanrao Jawanjil,
Aged about 37 years, Occ. Service,
R/o Tapdiya Nagar, Akola.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary, Department of Health, Mantralaya, Mumbai.
- 2) District Malaria Officer, Amravati.
- 3) Assistant Director, Health Services,
(Malaria), Akola.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.**

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Dated :- 21/01/2021.

COMMON JUDGMENT**Per : Anand Karanjkar : Member (J).**

In all O.As., common questions of facts and law are involved, therefore, they are heard together and being decided by this common order—

2. The facts are that the advertisement dated 21/01/2016 was issued by the respondent no.3 for filling the posts of Multipurpose Health Workers. In the advertisement, it was mentioned that 50% posts were reserved for the candidates holding 90 days work

experience as Spraying Worker. It is contention of all the applicants that as they had prior experience and the educational qualification, therefore, they submitted applications for the posts of Multipurpose Health Worker. It is submitted that all the applicants passed the written examination and their names were shown in the merit/select list.

3. The applicants were called upon to produce original documents for verification, they were also called for the counselling. Thereafter, vide letter dated 13/11/2017 it was informed by the respondent no.3 to the applicants that their experience certificates were verified by the office of respondent no.4 and it was noticed that there was deficiency in the experience certificate, therefore, it was held that the applicants were not qualified as Multipurpose Health Workers. The applicants are also challenging order dt/20-3-2020 passed by the respondent no.4 thereby cancelling experience certificates of the applicants. This decisions of the respondents are challenged by the applicants in the O.As.

4. The respondent no.4 has filed reply at Page no.30 of the P.B., the respondent no.3 has filed reply at Page no.42 of the P.B. Additional affidavit was filed by the applicants and by filing reply at Page no.62 , the respondent no.2 challenged the allegations made in the additional affidavit. Again one affidavit was filed by the respondent

no.2 which at Page no.101. After reading the reply submitted by the respondent nos. 2,3, & 4, it seems that according to them earlier the applicants were appointed as Seasonal Workers and it was necessary for the District Malaria Officer to seek prior permission and after receiving the grant to issue appointment orders to the Seasonal Workers. It is contended that as per the guidelines issued by the Joint Director of Health Services, Pune dated 6/7/2013, the scrutiny of the documents was made and it was found that the applicants were appointed as Seasonal Workers by the District Malaria Officer without seeking prior sanction from the higher authority though grants were not available, therefore, experience certificates of all the applicants were cancelled. The respondents have placed reliance on the letter written by the Joint Director of Health Services, Malaria and Fileria, Pune dated 17/7/2004 and letter dated 16/2/2001 written by the Joint Director of Health Services, Malaria and Fileria, Pune. Thus, it seems that the contention of the respondents is that the District Malaria Officer illegally issued the experience certificates therefore, appointments of the applicants were not legal and therefore even if it is held that the work was done by the applicants, it cannot be taken into considerations as previous experience as per the advertisement. It is submitted by the respondents that there is no substance in the original applications and applications are liable to be dismissed.

5. The learned counsel for the applicants has placed reliance on Judgments in case of **Ambhore Vinod Dutta Vs. State of Maharashtra & Ors.**, Writ Petition No. 1625/2016, decided on 3/3/2017 and W.P. No.57/96/2017. We have gone through both Judgments. The Writ Petition was filed by the Petitioner Ambhore for giving him appointment on the post of Health Worker, Zilla Parishad, Beed. In that case also the issue was raised that it was necessary for the Petitioner to show that he had 90 days work experience as per the advertisement. The Petitioner produced the Certificate issued by the Zilla Parishad, Washim to show that he had experience of 90 days and he was temporarily appointed by the Zilla Parishad. It was contended by the respondents in that Writ Petition that the appointment of the Petitioner was temporary and it was illegal and in that circumstances, the Hon'ble Bombay High Court held that the respondent no.3 in the Writ Petition was not entitled to raise contention that as the Petitioner was appointed by issuing appointment order and he was expected to work as temporary worker on daily wages. Ultimately, the Hon'ble Bombay High Court allowed the Writ Petition. Relying upon this Judgment, the learned counsel for the applicants submitted that this ratio is squarely applicable as all the applicants were appointed by the District Malaria Officer who was competent to engage them on work as Seasonal Workers. It is

submitted that the names of the applicants were included in the seniority list as directed by the Department and they were provided work by the respondent no.4, therefore, now it is not open to the respondents to cancel the experience certificate.

6. The respondents have challenged the original applications mainly on the ground that guidelines were issued by the Jt. Director on 6th of July 2013 and the Dist. Malaria Officer was bound to follow the guidelines while issuing appointment orders and issuing experience certificates. It is also contended that the applicants did not comply the norms in guidelines, therefore, the concerned authority rightly rejected the experience certificates. So far as this submission is concerned, we would like to point out that the same issue was raised before Hon'ble High Court in W.P. No.5796/2017, **Anand v/s the State of Maharashtra**, decided on 28th August, 2019.

7. The learned P.O. submitted that there were specific directions to the District Malaria Officer not to engage the Seasonal Workers without approval from the Joint Director of Health Services, Pune and without receiving the grants for the salary. It is submitted that as appointments were illegal, there were no grants and therefore salary of the applicants was not paid.

8. Now material question is merely because the Joint Director of Health Services, Pune refused to pay the salary to the applicants whether it will be sufficient for not treating their duties as a period, for the prescribed experience. In this regard, we would like to point out that the respondents have placed reliance on the guidelines dated 16/2/2001, Annex-R-1. The Clause no.4 of this advertisement is as under –

^ ftYg; krhy fgorki fueiyu dk; Zlekpsgakleh Lo#i kps dke fopkjr ?kmu tkuokjh]2001 P; k tsBrk I phi \$kk tkLr depk&; kph vko'; drk Hkl r vl Y; kl ; k dk; kzy; kph i phi joku xh ?kmu ufou Qokj.kh depk&; kph ue.kud dj.; kph i fdz; k djkoh- gh ue.kud uohu Qokj.kh depkjh ?kr vl rkuk I /kr foHkxkrhy ftYgk I ok ; kst uk dk; kzy; @ I ekt dY; k.k vf/kdkjh@ vknokl h i dYi dk; kzy;] ; kR; kdMu I okHkrh fu; ekuq kj 'k\$kf.kd vgrk i k= vl y\$; k mesokjkph ; knh i ktr d#u ?; koh- ; k mesokjkR; k ekyk [krh ?kmu fuoM ; knh r; kj djkoh o ; k fuoM ; knhl ; k dk; kzy; kph eku; rk ?krY; kuar j R; kpk tsBrk I phr I ekosk d#u R; kauk vko'; drud kjp ue.kud Akoh**

9. After reading this Clause no.4, it seems that this guideline was issued for not appointing any Seasonal Worker whose name is not included in the seniority list. In Clause no.2 there was specific direction to give appointment to the Seasonal Workers as per their seniority and any person who is not in the seniority list, shall not be appointed. It is pertinent to note that in this letter, it is nowhere mentioned that even for appointing a Seasonal Worker whose name is in the seniority list prior sanction of the Joint Director of Health Services was essential.

10. We have also perused the letter dated 17/7/2004 written by the Joint Director of Health Services. The last three lines of the letter are as under –

*^ R; kuq kj vki .kld I qpr dj.; kr ; srsdhlj t\$Brk ; lnh ckgjhy , dlgh menokjkl ; k dk; kzy; kps
i joluxhf'kok; gaxkeh {ts= depljyh %vkj-Vh-odj}½ Eg.kp u0; kusue.kud nonu; s***

11. After reading this sentence, it seems that it was direction not to engage a Seasonal Worker whose name is not included in the seniority list. In this matter there is no dispute about the fact that names of all the applicants were in the seniority list and they have performed actual work. It is not contention of the respondents that the applicants did not perform the work, therefore, the experience certificates were illegal.

12. In this background, it is submission of the applicants that authority was conferred on the District Malaria Officer to engage the Seasonal Workers and accordingly the applicants were engaged as Seasonal Workers. It is also contended that during the relevant period as grants were not available, therefore, salary of the applicants was not paid, the applicants are not demanding their salary, it is only their requests as they have performed the actual work, therefore, it be treated as experience as per the advertisement. It is also submitted that it is common experience that the higher Government Officers issue oral directions to their sub ordinate officers to get the work

discharged and after completion of the work, the Government issues the grant and thereafter payment used to be made. Similarly, the Seasonal Worker who was appointed in past has right to believe that the same authority is again engaging him on the work as per the law. In view of this, even if, it is held that prior sanction of the Joint Director of Health Services was essential and the grants were essential, this cannot defeat the claim of the applicants.

13. In order to decide the controversy and to examine the merits in the submissions canvassed on behalf of the applicants, it is necessary first to consider the guidelines which were issued by the Joint Director of Health Services in letter dated 6/7/2013 which are as under –

1- gaxkeh Qokj.kh deþkjh ; kR; k tsBrk I phe/; sdeþk&; kpsuko vl .ksvko'; d vkg

2- tsBrkl phrhy T; k gaxkeh Qokj.kh deþkjh ; kph ; k dk; kÿ; kdMq eatj dj.; kr vkys; k euq; cGK; k vf/ku jkgu gaxkeh dkekdjrk fu; Þrh dj.; kr vkysyh vkg v'kk deþk&; kps fu; Þrhpsvks kph Nk; kãdr ir I k{kãdr dsysyh vl koh-

3- fu; Þrh vks kkrhy dkyko/khuþ kj gaxkeh Qokj.kh deþkjh ; kps eG gtjhi =dkph I k{kãdr dsysyh Nk; kãdr ir vl koh-

4- gtjhi =dkrhy dkyko/khpp dks'kkxkjkr I knj dsysysns dkph I k{kãdr dsysyh ir vl koh-

5- jksfk uknoghrrhy uknhph I k{kãdr dsysyh ir vl koh-

6- gtjhi =dkrhy dkyko/khpp oru ?krys; k orui Vkrh Nk; kãdr ir I k{kãdr vl koh-

7- vkjkk; I od ¼i q½ ; k inkr; k I dk Hkjrth fu; ekæ/; suem dsysyh 'ks'kf.kd vgrk] vutþko] o; rI p 50 VDds vkjfk.kkph vV ykxw vl ysys in ; k I oZ vVh o 'krhZ I æð/kr deþkjh i qkZ djhr vl Y; kph [kk=h djkoh**-

14. After reading the guidelines, it seems that so far as the applicants are concerned, the guideline no.2 is very material. As per the guideline no.2, it was necessary for the Appointing Authority to certify that the Spray Worker was appointed on a post which was approved as per the norms set by the Department. Similarly, it was necessary to verify, certified copy of muster roll and the bill submitted to the Treasury. The crux of the matter is that as per the guidelines, the material condition was that the Spray Worker should have been appointed on a approved/sanctioned post. In the present case, the applicants were unable to show that they were appointed on a approved/sanctioned post. Admittedly, the respective Malaria Officers did not seek prior approval of their Higher Authorities for giving appointments to the applicants as Seasonal Workers.

15. The applicants have placed reliance on two Judgments. In Writ Petition No. 1625/2016 the fact was that the Petitioner in that matter was appointed as a temporary employee in Zilla Parishad, Washim and contention was raised by the Zilla Parishad that the Petitioner was appointed on temporary post, therefore, his experience of service on that post could not be considered. This contention was rejected by the Hon'ble High Court.

16. We have also gone through the Judgment in Writ Petition No.5796/2017. In this Writ Petition, the Hon'ble Bombay High Court

had occasion to consider the same communication dated 6/7/2013 (the guidelines). In that case the material fact was that it was contention of the respondents that the Petitioner was not fulfilling the criteria of past experience as relevant documents as per the communication dated 6/7/2013 were not produced. In Para-6 of the Judgement, the Hon'ble High Court observed that there was communication issued by the District Malaria Officer, Jalna dated 27/6/2016 and dated 21/7/2016 which was disclosing to treat Photostat copies of MTR-19 register for the compliance of the guidelines in communication dated 6/7/2013. In view of this matter, the Hon'ble Bombay High Court was pleased to give relief to the Petitioners. It is pertinent to note that the Hon'ble Bombay High Court in that Writ Petition nowhere recorded finding that the communication dated 6/7/2013 was not binding or it was erroneous. In Para-7 the Hon'ble Bombay High Court held that the Zilla Parishad, Jalna was not in position to issue documents as per the Clause No.4 of the communication dated 6/7/2013 and it was out of reach and control of the Petitioner. In the present case admittedly there is no certificate issued by the Malaria Officer to the effect that the applicants were appointed on approved post. On the contrary on perusal of the experience certificate, it seems that there is specific note on the certificates, as under.

^ fVi & ek-l gl pkyd vjkk; I ok ¼fg g o tytU; ½] i qks; kpdMµ euq; cG ¼vuµku½ mi yC/k ul rluuk rRdkyhu ftYgk fgorki vf/kdkjh] olf'ke ; kauh fouki jokuxhusvks'k fnysvI µ euq; cG ¼vuµku½ mi yC/k ul Y; keGSR; kpsoru o HRrs vnk dj.; kr vkysukgh- v-dz1 vlf.k v-dz5 ps oru >kysvks**

17. After reading this note, it is crystal clear that the appointment orders were issued by the then Malaria Officer without seeking approval of the competent authority, consequently salary for such period was not paid. The Jt. Director had issued the guidelines to be followed while verification of the experience certificates of the candidates. The respondent no.4 verified the experience certificates as per the guidelines issued by the Jt. Director dt/6-7-2013 and held that the experience certificates were not valid. In the O.A. the applicants have not challenged the guidelines dt/6-7-2013 laid down by the Jt. Director, therefore, it is not possible to hold that rejection of the experience certificates by the respondents was erroneous. In view of these material facts, we are of the view that no relief can be granted to the Petitioners. Hence, the following order-

ORDER

All the O.As. and all concerned C.As. stand dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 21/01/2021.

*dnk..

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 V.C. and Member (J).

Judgment signed on : 21/01/2021.

Uploaded on : 21/01/2021.

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