

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABA**

**O.A. NO. 38/2015 WITH O.A. NO. 660/2015 WITH O.A.
NO. 677/2015 WITH O.A.NO. 679/2015 WITH O.A. NO.
680/2015 WITH O.A.NO. 681/2015**

1. ORIGINAL APPLICATION NO. 38 OF 2015

DISTRICT: JALNA

Dr. Kashinath s/o Narayanrao Swami,
Age : 39 Years, Occupation : Medical Officer,
R/o Jyoti Ride 91, Gut No. 82, Near Rohidas
Colony, Satara Parisar, Aurangabad.

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APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Though its Principal Secretary,
Public Health Department,
Mumbai-32.
- 2) **The Joint Director of Health Services,**
3rd Floor, Saint George's Hospital,
Dental College Building, Near C.S.T.,
Mumbai.
- 3) **The Deputy Director of Health Services,**
Aurangabad Circle, Aurangabad.
- 4) **The Chief Executive Officer,**
Jalna Zilla Parishad, Jalna,
Taluka & District Jalna.
- 5) **The District Health Officer,**
Jalna Zilla Parishad, Jalna,
Taluka & District Jalna.

.. RESPONDENTS

WITH

2. ORIGINAL APPLICATION NO. 660 OF 2015

DISTRICT: AHMEDNAGAR

Dr. Satish S/o Dashrath Londhe,

Age : 35 Years, Occupation : Medical Officer (Group-A),
Presently working at P.H.C. Guha, Tq. Rahuri,
District Ahmednagar.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Though Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) **The Director of Health Services,**
“Arogya-Bhavan”, Vth Floor, St. George’s Hospital
Campus, Near C.S.T., Mumbai.
- 3) **The Deputy Director of Health Services,**
Nasik Circle, Nasik.
- 4) **The Chief Executive Officer,**
Zilla Parishad, Ahmednagar.

.. **RESPONDENTS**

WITH

3. ORIGINAL APPLICATION NO. 677 OF 2015

DISTRICT: AHMEDNAGAR

Dr. Appasaheb S/o Sitaram Dhus,

Age : 35 Years, Occupation : Medical Officer (Group-A),
Presently working at P.H.C. Guha, Tq. Rahuri,
District Ahmednagar.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Though Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) **The Director of Health Services,**
“Arogya-Bhavan”, Vth Floor, St. George’s Hospital
Campus, Near C.S.T., Mumbai.
- 3) **The Deputy Director of Health Services,**
Nasik Circle, Nasik.
- 4) **The Chief Executive Officer,**
Zilla Parishad, Ahmednagar.

.. RESPONDENTS

WITH

4. ORIGINAL APPLICATION NO. 679 OF 2015

DISTRICT: AHMEDNAGAR

Dr. Annasaheb S/o Biru Masal,

Age : 47 Years, Occupation : Medical Officer (Group-A),
Presently working at P.H.C. Deolali-Pravara,
Tq. Rahuri, District Ahmednagar.

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APPLICANT

VERSUS

- 1) **The State of Maharashtra,**
Though Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) **The Director of Health Services,**
“Arogya-Bhavan”, Vth Floor, St. George’s Hospital
Campus, Near C.S.T., Mumbai.
- 3) **The Deputy Director of Health Services,**
Nasik Circle, Nasik.

- 4) **The Chief Executive Officer,**
Zilla Parishad, Ahmednagar. .. **RESPONDENTS**
WITH

5. ORIGINAL APPLICATION NO. 680 OF 2015

DISTRICT: AHMEDNAGAR

Dr. Sunita D/o Laxmanrao Tayde,

Age : 37 Years, Occupation : Medical Officer (Group-A),
Presently working at P.H.C. Borgaon Nandur,
Tq. Rahuri, District Ahmednagar.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Though Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) **The Director of Health Services,**
“Arogya-Bhavan”, Vth Floor, St. George’s Hospital
Campus, Near C.S.T., Mumbai.
- 3) **The Deputy Director of Health Services,**
Nasik Circle, Nasik.
- 4) **The Chief Executive Officer,**
Zilla Parishad, Ahmednagar.

.. **RESPONDENTS**

WITH

6. ORIGINAL APPLICATION NO. 681 OF 2015

DISTRICT: AHMEDNAGAR

Dr. Ganesh S/o Bhanudas Aadhbhai,

Age : 37 Years, Occupation : Medical Officer (Group-A),
Presently working at P.H.C. Taklimiya,
Tq. Rahuri, District Ahmednagar.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Though Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) **The Director of Health Services,**
“Arogya-Bhavan”, Vth Floor, St. George’s Hospital
Campus, Near C.S.T., Mumbai.
- 3) **The Deputy Director of Health Services,**
Nasik Circle, Nasik.
- 4) **The Chief Executive Officer,**
Zilla Parishad, Ahmednagar.

.. RESPONDENTS

APPEARANCE : Shri J.S. Deshmukh – learned Advocate for
the applicants in O.A. Nos. 660, 677, 679,
680 & 681 all of 2015

: Shri A.D. Gadekar – learned Advocate for
the applicant in O.A. No. 38/2015.

: S/Shri I.S. Thorat, N.U. Yadav, V.R.
Bhumkar, Mrs. Deepali S. Deshpande,
Smt. Resha S. Deshmukh & Mrs. Priya R.
Bharaswadkar, learned Presenting Officers
for the Respondent Nos. 1 to 3 in the
respective O.As..

: Shri S.S. Wagh, learned Advocate holding
for Shri S.T. Shelke, learned Advocate for
the respondent no. 4 in O.A. Nos. 660, 677,
679, 680 & 681 all of 2015

: Shri K.G. Salunke, learned Advocate for
Respondent Nos. 4 & 5 in O.A. No.
38 of 2015.

CORAM : HON’BLE SHRI B.P. PATIL, MEMBER (J).

DATE : 22ND JUNE, 2017.

COMMON ORAL ORDER

1. Heard Shri J.S. Deshmukh, learned Advocate for the Applicants in Nos. O.A. Nos. 660, 677, 679, 680 & 681 all of 2015, Shri A.D. Gadekar – learned Advocate for the applicant in O.A. No. 38/2015 and S/Shri I.S. Thorat, N.U. Yadav, V.R. Bhumkar, Smt. Deepali S. Deshpande, Smt. Resha S. Deshmukh & Smt. Priya R. Bharaswadkar, Learned Presenting Officers for the Respondent Nos. 1 to 3 in the respective O.As., Shri S.S. Wagh, learned Advocate holding for Shri S.T. Shelke, learned Advocate for the respondent no. 4 in O.A. Nos. 660, 677, 679, 680 & 681 all of 2015 and Shri K.G. Salunke, learned Advocate for respondent Nos. 4 & 5 in O.A. No. 38 of 2015.

2. These cases were heard together and are being disposed of by a common order as the facts and issues involved in the cases are similar and identical.

3. It is the contention of the applicants that they have been completed M.B.B.S. course and they have been appointed as Medical Officer in view of the order passed by

the Deputy Director of Health Services, Aurangabad on different dates on ad hoc basis. They were appointed on pay scale and not in fixed or consolidated pay. Thereafter, they have been continued in the service from time to time as per the orders of the respondents. They have discharged their duties as Medical Officers from the date of appointment. On 02.02.2009 Public Health Department issued a Notification and thereby absorbed the services of the Medical Officers appointed on ad hoc basis, those who have completed their continuous three years' service till 31.12.2007. Accordingly, the applicants were appointed on the permanent post as Medical Officer in the pay scale of Rs. 8000-13500. Accordingly, they have been posted at different places. Since then they are rendering the services to the Government. They are receiving salary as per 6th Pay Commission since their absorption. It is their contention that they were given pay scale as per the 6th Pay Commission from the year 2009 onwards, though 6th Pay Commission is made applicable from the year 2006. It is their contention that the respondent authorities have not given the arrears of salary as per the 6th Pay Commission to them for the period from 2006

to 2009, as they worked as Medical Officer as ad hoc basis, though the Government had accepted 6th Pay Commission's recommendations. It is their contention that the representations were made to the respondents with the request to pay arrears of the salary, as per 6th Pay Commission for the period from 2006-2009, but the respondents had not given response to their representations. Therefore, they approached this Tribunal by filing present Original Applications.

4. Respondents have filed their affidavit in reply and contended that the applicants were appointed as Medical Officers initially on ad hoc basis for certain period. Thereafter, by giving technical break they were given fresh appointments from time to time. They continued in service till the year 2009. They have admitted the fact that the Public Health Department issued Notification dated 02.02.2009 and decided that the Medical Officers, who have completed three years continuous service shall make permanent as Medical Officer, Group 'A'. Accordingly, the applicants were made permanent in the service from the year

2009. Thereafter, they were paid salary as per the recommendations of the 6th Pay Commission. They admitted the fact that 6th Pay Commissioner was made applicable to the Government employees w.e.f. 01.01.2006, but they have disputed the fact that the applicants are entitled to get salary as per the recommendations of the 6th Pay Commission for the period from the year 2006 to 2009. It is their contention that in view of the Notification dated 02.02.2009 rules have been framed viz. "Medical Officer in the Maharashtra Medical and Health Services Group-A (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra (Special) Rules, 2009". It is their contention that in view of Clause (vii) of Rule 4, service rendered by the ad-hoc Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme. According to the respondents, in view of the said rule the applicants are not eligible to claim the salary for the period from 2006 to 2009 as per the recommendations of the 6th Pay Commission, and therefore, they urged to dismiss the present Original Applications.

5. Learned Advocates for the applicants have submitted that the recommendation of 6th Pay Commission made applicable to the Government employees' w.e.f. 1.1.2006. They have submitted that the applicants were serving as a Medical Officer on ad-hoc basis prior to the year 2009 and they were in service on the date of recommendations of the 6th Pay Commission i.e. on 1.1.2006. Therefore, they are entitled to get salary for the period from 2006 to 2009, as per the recommendation of 6th Pay Commission. They have submitted that the respondents have not paid salary to them for that period as per the recommendations of 6th Pay Commission. Therefore, they prayed to allow the present Original Applications.

6. Learned Presenting Officers have submitted that the respondents have framed rules and published it in the Notification dated 02.02.2009 viz. "Medical Officer in the Maharashtra Medical and Health Services Group-A (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra (Special) Rules, 2009", and thereby decided that the Medical Officers, who have completed three years

continuous service to be made permanent as Medical Officer, Group 'A'. He has submitted that the Rule 4 (vii) to the said Rules provided that the service rendered by the ad hoc Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme. Therefore, the applicants are not entitled to get salary as per the 6th Pay Commission for the services rendered by them prior to their absorption, and therefore, he prayed to dismiss the present Original Applications.

7. They have further submitted that Division Bench of Principal Seat of this Tribunal at Mumbai, in O.A. No. 413/2012 With O.A. No. 146/2014 decided the similar issue involved in the cases of Assistant Professors working in the Government Medical College. He has submitted that facts and issues involved in those cases are similar & identical to the facts in the present cases. The Division Bench of this Tribunal has already held that in view of the Government Resolution, the employees were absorbed as per the rules are

not entitled to get benefit of 6th Pay Commission prior to their absorption. He has placed on record the copy of the order passed in O.A. No. 413/2012 dated 22.01.2015. He has submitted that the applicants are not entitled to get the salary as claimed by them. Therefore, he prayed to dismiss the present Original Applications.

8. On going through the documents placed on record, it reveal that the applicants were appointed on different dates as Medical Officers for certain period initially on ad-hoc basis. Thereafter their services were continued but with a technical break. They were in service up to the year 2009 on ad-hoc basis. In the year 2009 the respondents framed the rules viz. "Medical Officer in the Maharashtra Medical and Health Services Group-A (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra (Special) Rules, 2009" and thereby absorbed the Medical Officers, who were working on ad hoc basis in the Maharashtra Health Services of the Government of Maharashtra and those who have completed their continuous three years' service till 31.12.2009. The rules have been notified on 02.02.2009.

Accordingly, all these applicants have been absorbed in the Maharashtra Education Health Services as Medical Officer in the pay scale since the year 2009. Since their absorption they are getting salary as per the recommendations of 6th Pay Commission. Rule 4 (vii) of the said rules is material and important while considering the present Original Applications. Therefore, it is reproduced as follows: -

“4. Notwithstanding anything contained in the Maharashtra Medical and Health Services Group A (Recruitment) Rules, 2000,-

vii) The service rendered by the ad-hoc Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme.”

9. On-going through the said rule, it is crystal clear that it is specifically provided that the service rendered by the ad hoc employees prior to the date of absorption shall not be considered for pay and other benefits. The applicants were aware about the said rule and accordingly they have opted

for the absorption. Therefore, they cannot claim salary for the service rendered by them prior to the date of absorption as per the recommendations of the 6th Pay Commission. Therefore, they are not entitled for relief.

10. It is the contention of the respondents that Division Bench of Principal Seat of this Tribunal at Mumbai, has dealt with the similar issue in O.A. No. 413/2012 along with O.A. No. 146/2014 and held that Medical Officers, who rendered the services prior to their date of absorption are not entitled to get salary for the earlier period as per the recommendations of the 6th Pay Commission. I have gone through the said decision. The said decision is squarely applicable in these cases. On that ground also the applicants are not entitled for the relief as claimed by them in the present Original Applications.

11. So far as applicants in O.A. Nos. 677/2015 and 660/2015 are concerned, they were appointed on ad hoc basis initially. Thereafter, they are nominated and appointed on the recommendations of the Maharashtra Public Service Commission (M.P.S.C.) and since then they are discharging

their duties. The aforesaid Government Resolution is not attracted and applicable in those cases. Therefore, they are not entitled to get salary for the period prior to 2009 as they were not permanent in the service. Moreover, their present appointments have made on the recommendation of MPSC. It means their present appointment is fresh appointment with fresh terms and conditions. Therefore, they are not entitled to get salary as claimed by them.

12. In view of the above, in my opinion there is no merit in the present Original Applications. Consequently, the present Original Applications deserve to be dismissed. Hence, O.A. Nos. 38, 660, 677, 679, 680 & 681 all of 2015 are dismissed with no order as to costs.

**(B.P. PATIL)
MEMBER (J)**

O.A. Nos. 38, 660, 677, 679, 680 & 681 all of 2015-**hdd**