

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.102 OF 2016

DISTRICT : THANE

Dr. Tarachand A. Jadhav.)
Age about 46 Yrs., Medical Officer)
(Health), Primary Health Centre,)
Dolkhamb, Taluka Shahapur,)
District Thane and having residential)
address at Vardavan Garden, Flat No.104,)
'B' Building, Shramik Nagar (Kedar Nagar))
District : Nashik.)...**Applicant**

Versus

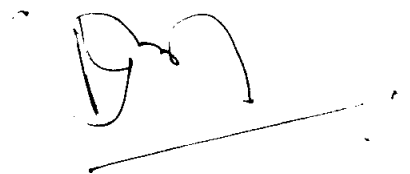
1. The Government of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)
2. Director of Health Services.)
M.S, having his office at St. Georges)
Hospital Compound, Fort,)
Mumbai 400 001.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 21.08.2017



JUDGMENT

1. This Original Application (OA) is brought by a Medical Officer and he seeks relief against the move not to regularize him and seeks relief in that direction.
2. Be it noted right at the outset that, this very Applicant was the 8th Applicant in **OA 275/2010 (Dr. Balaji B. Birajdar and 7 Ors. Vs. Government of Maharashtra and one another)**. The Division Bench of the then Hon'ble Chairman decided that OA on 19.6.2013. All the 8 Applicants including the present one were exactly similarly placed. They held the degree in B.A.M.S. and it was observed clearly in Para 8 of that particular order, a copy of which is at Exh. 'E' (Page 23 of the Paper Book (PB)) that they had completed three years in Maharashtra Medical and Health Services Group 'B'. They were not disqualified for appointment under the Maharashtra Medical and Health Services, Group 'A' (Recruitment) Rules, 2000. It was held that, all the Applicants clearly fulfilled the requirement of absorption in the Rules notified on 2/2/2009. The said Rules, it was held, nowhere mentioned that a person actually working in Group 'A' post would only be absorbed. The averments of the present Respondents to the contrary were found to be contrary to



the position obtainable by the Rules. It was further held that, there was absolutely no basis for denying absorption of the Applicant as per 2.2.2009 Rules and in view thereof, the OA was made absolute in terms of prayer clause 15(a). The said Para 15(a) reads as follows :

“15(a) This Hon’ble Tribunal be pleased to hold and declare that the inaction on the part of the Respondents in not considering the cases of the present Petitioners for absorption in accordance with Rules of 2009, as illegal and bad in law with directions to the Respondents to consider the cases of the present Petitioners for absorption as Medical Officers in Public Health Department in accordance with the rules dated 2.2.2009 with consequential benefits.”

3. The said order of the Tribunal finally deciding that particular OA has now become conclusive and binding. I am, however, informed at the Bar that the present Respondents have filed a Review Application being RA 4 of 2017 with MA 73/2017 which is for condonation of delay. That RA is still pending. Very obviously, there is no impediment by way of any stay order, etc., and therefore, there is no reason for me not to proceed further into this OA. Granting all latitude to the Respondents, even if that RA was decided for them, they will not be remediless and beyond that, I do not think, it is necessary for me to say anything more. Mrs. Gaikwad, the learned Presenting



Officer (PO) tried her very best to salvage the case of the Respondents by pointing out some recitals from the Affidavit-in-reply in the earlier OA and also tried to point out from the record of this OA that the Applicant has not completed the tenure of three years, etc. It is, however, very clear that nothing survives now for the Respondents to urge once the Judgment in the earlier OA dated 19.6.2013 holds the field. As a matter of fact, all that can be said is that the Applicant should not have been driven to this OA. I would, therefore, conclude by holding that a case for relief is made out by the Applicant and the relief will be exactly in the nature OA 275/2010 was decided. The prayer Clause whereof is already reproduced above. This OA stands decided in the same terms. Compliance within four weeks from today. The order at Exh. 'G' at Page 35 is consequently quashed and set aside. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik) 21.8.17
VICE-CHAIRMAN
21.08.2017

Mumbai

Date : 21.08.2017

Dictation taken by :

S.K. Wamanse.