

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.1047, 1048 of 1049 of 2021

DISTRICT : MUMBAI
SUB : Annual Increment

ORIGINAL APPLICATION NO.1047 OF 2021

Dr. Ramatirth V. Chougule,)
Age : 38 Yrs., Occ : Medical Officer G-A,)
Presently working At Sub-District Hospital,))
Islampur, Dist. Sangli.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Public Health Dept.)
10th floor, G. T. Hospital Building, New)
Mantralaya, Mumbai 1.)
2. The Commissioner Health Services &))
Director (N.H.M.) 3rd floor, Arogya Bhavan,))
St. Georges Hospital Campus, Mumbai 1.)
3. The Deputy Director of Health)
Services Pune Circle, 3rd floor, New Admn.)
Building,Sasoon Road, Pune 411001.)
4. The District Civil Surgeon, District)
Civil Hospital, Sangli, Dist. Sangli.)....**Respondents**

With

ORIGINAL APPLICATION NO.1048 OF 2021

Dr. Nazneen Ibrahim Shaikh)
Age : 41 Yrs., Occ : Medical Officer G-A,)
Presently working At J. J. Post Mortem -)
Centre, Byculla, Dist. Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Public Health Dept.)
10th floor, G. T. Hospital Building, New)

- Mantralaya, Mumbai 1.)
2. The Commissioner Health Services & Director (N.H.M.) 3rd floor, Arogya Bhavan, St. Georges Hospital Campus, Mumbai 1.)
3. The Deputy Director of Health Services Pune Circle, 3rd floor, New Admn. Building, Sasoon Road, Pune 411001.)
4. The Police Surgeon, J. J. Post Mortem Centre, Byculla, Mumbai – 8.).....**Respondents**

With

ORIGINAL APPLICATION NO.1049 OF 2021

Dr. Amit N. Chavan,)
Age : 40 Yrs., Occ : Medical Officer G-A,)
Presently working At J. J. Post Moretem -)
Centre, Byculla, Dist. Mumbai.)

Versus

1. The State of Maharashtra, through Principal Secretary, Public Health Dept. 10th floor, G. T. Hospital Building, New Mantralaya, Mumbai 1.)
2. The Commissioner Health Services & Director (N.H.M.) 3rd floor, Arogya Bhavan, St. Georges Hospital Campus, Mumbai 1.)
3. The Deputy Director of Health Services Pune Circle, 3rd floor, New Admn. Building, Sasoon Road, Pune 411001.)
4. The Police Surgeon, J. J. Post Mortem Centre, Byculla, Mumbai – 8.).....**Respondents**

Mr. J. S. Deshmukh, Advocate for Applicants.

Smt. Kranti Gaikwad, Presenting Officers for Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 14.11.2022

JUDGMENT

1. All these Original Applications are filed by the Medical Officers Group-A for counting their previous ad-hoc service for increments and earned leave by condoning technical break. The Applicants were initially appointed as Medical Officers on ad-hoc basis and later they were appointed through MPSC vide order dated 04.07.2012 and 16.09.2012 as a regular Medical Officers. They made representations for counting their ad-hoc on the basis of the decision rendered by the Tribunal Aurangabad Bench on 17.07.2015 in O.A.No.678/2014. The Aurangabad Bench by common judgment dated 17.07.2015 decided the bunch of O.A.Nos.676, 677, 678 & 679/2014 along with O.A.No.69, 70, 71 & 72/2015 and allowed the Original Applications having found that the Applicants therein were similarly situated persons governed by the decision rendered by the Tribunal earlier in O.A.No.515/2013 decided on 10.12.2014. Later, this Tribunal Bench Mumbai also allowed O.A.Nos.167, 168, 169, 170 & 171/2020 with O.A.Nos.782, 783, 784 & 785 of 2020 on 07.10.2021.

2. Heard Shri J. S. Deshmukh, learned Counsel for the Applicants and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

3. Learned Counsel for the Applicants has pointed that the decision rendered by M.A.T. Aurangabad Bench dated 17.07.2015 has been upheld by the Hon'ble High Court in W.P.No.772/2016 decided with W.P.No.798/2016 and 800/2016 on 23.11.2017. He has further pointed out that the decision rendered by this Tribunal Bench Mumbai in O.A.Nos.167/2020 decided with bunch of O.A.s on 07.10.2021 has also attained finality since it is not challenged before the higher forum. He, therefore, submits that the Applicants being similarly situated persons are entitled to the same benefits rendered in above decisions.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer made feeble attempt inter-alia contending that initially appointment of the Applicants were purely on ad-hoc basis, and therefore, not entitled for counting their initial service for grant of increments and earned leave. Learned P.O. however fairly concedes that the judgment delivered by the Tribunal as well as confirmed by the Hon'ble High Court as referred to above giving similar benefits of increment and earned leave are not challenged before the Hon'ble Supreme Court and are being implemented.

5. Learned P.O. however in reference to the decision of the Hon'ble Supreme Court in **(2003) AIR (SCW) 1132 (Dr.(Mrs.) Chanchal Goyal V/s State of Rajasthan)** sought to contend that Applicant is not entitled to the relief claimed. The perusal of the judgment reveals that it was pertaining to termination from service and appointment was on purely temporary basis of six months or till the candidate selected by Rajasthan Public Service Commission is available whichever is earlier. Later, on 01.10.1988, the appellants services were terminated on the ground that candidates selected by Service Commission was available. Thus, it was a case of termination which was held legal. As such, the facts are totally distinguishable and the decision in **Chanchal Goyal's** case, is of little assistance to the Respondents.

6. Learned P.O. further sought to make reference to the decision rendered by Hon'ble High Court in **W.P. No.4969/2011 (State of Maharashtra & Ors. V/s Dr. Jyotsna Potpate 7 Anr.)**, decided on 07.04.2017. The perusal of the judgment reveals that O.A. was filed before the M.A.T. Bench Nagpur which was allowed by granting increment on completion of one year of service and continued to grant same till the Applicant continued in service. The Hon'ble High Court observed that regular employee only would be entitled to increment and other benefits which they are entitled to and set aside the order passed

by the Tribunal. In that case, there was no appointment from MKCL or MPSC. Whereas in present case, after initial ad-hoc service with technical break, the Applicants were appointed by MKCL. Therefore, the decision in **Dr. Jyotsna S. Potpite's** case is of little assistance to the Respondents.

7. Indeed, it appears that another judgement of the Hon'ble High Court Bench Nagpur (coordinate Bench) in **W.P.No.3484/2005 (State Of Maharashtra V/s Sangita Phatale)** decided with bunch of W.P.s on 27.11.2008 holding the field was not brought to the notice of Hon'ble High Court while deciding W.P. of **Dr. Jyotsna Potpite**. Be that as it may, in **Sangita Phatale's** case, the Applicants were Lecturer in Government Medical College and served on ad-hoc basis for about 10 years. They filed O.A. for condonation of technical break and to grant earned leave. The O.A. was opposed on the ground that they are not regular employees. The Tribunal allowed the O.A. and the judgment was confirmed by the Hon'ble High Court in W.P. No.3484/2005 on 27.11.2008. Notably, the said judgment was upheld by the Hon'ble Supreme Court and SLP was dismissed as seen from order dated 02.02.2011.

8. Suffice to say, entitlement of earned leave and increment during the ad-hoc service is no more res-integra in view of the various decisions referred to above and the Respondents ought to have applied the same principle to the present Applicants on the ground of parity.

9. As regard parity, the Hon'ble Supreme Court in **2015 (1) SCC 347 in State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava** has laid down the said principle as under:-

“ Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all

similarly situated persons should be treated similarly. Therefore,, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

10. In fact the Government of Maharashtra had also issued Circular dated 28.02.2017 informing all the departments to apply the principle of parity to the similarly situated persons in view of the decision of the Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case.

11. Unfortunately, despite consistent decisions and issuance of Circular dated 28.02.2017, the Respondents neglected and ignored the claim of the Applicants to which they are entitled since the issue is now no more *res-integra* in the light of various decisions rendered to above.

12. In view of above, the Applicants claim to condone the technical break and to treat their previous services spent on ad-hoc basis is required to be considered for grant of increments and for earned leave and for no other purposes.

13. For the aforesaid reasons, all these Original Applications are disposed of with directions to the Respondents that ad-hoc services of the Applicants be counted and considered for grant of increments and earned leave with condonation of technical break in service and for no other purposes. Directions be complied with within three months from today.

14. No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 14.11.2022
Dictation taken by : VSM