

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 106 of 2016

Sanjay S/o Janardhan Bhonde,
Aged about 50 years,
Occupation : Service,
R/o Dhawal Layout, Katol,
Distt. Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th floor, B- Wing, New Mantralaya,
Mumbai-1.
- 2) Director of Public Health,
Government of Maharashtra,
Sent Georges Hospital Compound,
CST, Mumbai-01.
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Shri V.A. Kulkarni, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 1st day of August,2017)

Heard Shri N.D. Thombre, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents. The O.A. is heard finally with consent of Id. counsel for parties at the admission stage.

2. The applicant was appointed as a Peon by respondent no.3 on compassionate basis vide order dated 28/12/1993, initially for a period of 11 months and thereafter continued vide order dated 15/2/1995. The applicant suffered mental illness and hence he could not join duty. Even a notice was published in a News papers that in case he did not join duty, he will be terminated. Accordingly, the respondent no.3 issued order on 5/3/2003 terminating the applicant.

3. After getting knowledge about the termination and after recovering from illness the applicant filed representation on 17/12/2014 and requested that he may be taken in service. The respondent no.1 vide letter dated 18/3/2013 directed the respondent no.2 to submit proposal on the representation filed by the applicant, but nothing was done. On the information received under the RTI Act, the applicant came to know that his proposal was not submitted on his representation and therefore the applicant has filed this O.A. The applicant has claimed that the respondent nos. 2&3 be directed to submit a detailed proposal as regards his reinstatement and regularizing his absence period to respondent no.1, in view of the

letter dated 18/3/2013 and decision shall be taken on such proposal by the respondent no.1 within six weeks.

4. The reply-affidavit is filed by respondent no.3 from which it seems that the applicant did not join duty and was continuously absent from 29/10/1996. Numbers of letters were issued to the applicant as such on 30/12/1996, 16/05/1997, 9/12/1997, 20/08/1999 and 29/08/2001 and the applicant was asked to join immediately. However, the applicant did not join for about five years from 1996-2001 even the notice regarding his absence was published in "Lokmat" at Nagpur on 14/02/2003 and in news paper "Samachar" at Chandrapur on 18/02/2003, but the applicant did not appear to join services and ultimately he was terminated vide order dated 5/3/2003. The said termination is not challenged. From the documents on record so also from the pleadings it seems that the applicant has based his claimed on the basis of one communication issued by respondent no.1 to respondent no.2 dated 18/3/2013. In the said letter respondent no.1 intimated the respondent no.2 to submit their say on the representation filed by the applicant as per rules. It is, however, material to note that the said direction does not give any right to the applicant to claim reinstatement in the service. The applicant has been terminated in view of the order dated 5/3/2003. The said order is at P.B. page nos. 19 & 20 (both inclusive). The

applicant remained absent for a prolonged period and did not join services in spite of repeated notices and in spite publication of notices in news papers and therefore he was terminated. The applicant has not challenged his termination. The applicant has been terminated on 5/3/2003 and this O.A. is filed in the year 2016, i.e., on 12/2/2016 even in this O.A. the applicant has not challenged his termination. He is merely claiming a direction to respondent nos. 2 and 3 to submit detailed proposal for his reinstatement and regularization of his absence period. There is nothing on the record to show as to how the applicant is entitled to reinstatement without his termination being quashed and set aside.

5. In the reply-affidavit the respondent no.3 has stated in para-6 that a detailed proposal was submitted to the applicant and it was also intimated to the applicant vide letter dated 2/7/2013 by respondent no.2 that proposal of regularizing unauthorized absence cannot be submitted since the applicant has been terminated. The applicant did not take any action against his termination dated 5/3/2003 till 2016. The learned P.O. has placed reliance on the Judgment reported in (2014) 6 SCC 460 in case of **State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors.** In the said case the termination for unauthorised absence was challenged after 13 years from the date termination and by filing the suit on the ground that

repeated representations were made. It was held that the period of limitation commences from the date on which cause of action arises for the first time and simply by making representations in absence of any statutory provision / appeal, the period of limitation would not get extended. In fact said Judgment may not be helpful to the respondents or even to the applicant. The fact remains that the applicant did not challenge his termination order dated 5/3/2003 and therefore there is no question of sending any proposal for his reinstatement as claimed by the applicant.

6. For the reasons stated in the aforesaid paras, I do not find any merits in the O.A. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.