

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.184 OF 2017**

**DISTRICT : NASHIK**

Dr. Kantilal Shankar Jagtap. )  
Age : 55 Yrs, Working as Medical Officer, )  
Class-II, Group-A, Having Office at Civil )  
Hospital, Nashik and Residing at Flat )  
No.8, Mahalaxmi Darshan CHS., )  
Vijaynagar-2, Dindori Road, Nashik-4. )...**Applicant**

**Versus**

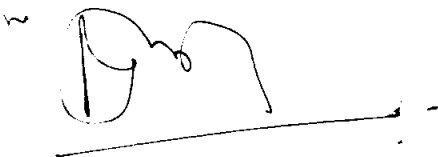
The State of Maharashtra. )  
Through Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai - 400 032. )...**Respondent**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondent.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 02.08.2017**



## JUDGMENT

1. This Original Application (OA) is brought by a Class I Medical Officer and it basically relates to a period from 6.9.2015 to 2.6.2016 which the Applicant spent without any posting and although he later on got the choice posting but the dispute remains with regard to the treating of the said period. The request of the Applicant for treating the same as "compulsory waiting period" came to be rejected by the impugned order dated 4.1.2017.

2. The sum and substance of the case of the Applicant is that, after a prolonged stint in Tribal Area which was 8 years at a stretch and if the earlier period was taken into account, it was about 20 years, he sought choice posting either at super-speciality Hospital, Nashik or Rural Hospital Girhare in Nashik. He, however, was in last year's general transfers, transferred to Nampur in Taluka Satana, District Nashik on administrative grounds. The Applicant made a representation which is at Page 25 of the Paper Book (PB)) (Exh. 'D') wherein he had submitted to the Government that, his wife was suffering from serious renal problem. She had already undergone one Kidney Transplantation at Pune and she was required to frequently take medical advice. He was required to look



after his wife's medical condition, and therefore, he wanted to be transferred at one of the two places above mentioned. In the Affidavit-in-reply read as it is, the fact of the health condition of the Applicant cannot be taken to have been disputed.

3. The Applicant then brought OA 288/2016 which fact and the orders therein made to which a brief reference will be presently made is again not very seriously disputed. A reference could be had to Para 10 of the Affidavit-in-reply filed by Mrs. Varsha M. Bharose, Deputy Secretary in the Office of Public Health Department. The fact of the said OA having been filed is clearly admitted. At Page 28 of the PB, there is a copy of an order dated 23.3.2016 made by the Hon'ble Chairman in that OA and in Para 7 thereof, 4 points were specifically set out for the Respondents to answer in their Affidavit. They were as to whether there was any legal impediment in deciding the Applicant's representation, as to whether the case is fit to be considered in the light of certain averments in Para 6.14 of that OA, as to whether the application/representation of the Applicant, a copy of which was at Page 33 in that OA could be considered and finally, the time frame within which the same could be considered.



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4. The Respondents in Public Health Department by the order dated 31<sup>st</sup> May, 2016 (Exh. 'F', Page 30 of the PB) issued a fresh order and to the extent, they are relevant hereto, the Applicant was transferred to the District Hospital, Nashik on a vacant post. Thereafter, on 7.6.2016 vide Exh. 'H' (Page 36), OA 288/2016 was disposed of and the Hon'ble Chairman was informed that the Applicant was satisfied with the action taken by the Respondents.

5. It was thereafter that, on 7.6.2016 itself, the Applicant made representation to the Government with regard to the issue involved in this OA. The same is at Exh. 'G' (Page 34 of the PB). He has set out all the facts therein mentioned including the fact that, he could not resume at Nampur on account of family difficulties but he had taken charge at District Hospital, Nashik. The joining report was submitted. He had filed an OA in this Tribunal, and therefore, he requested that the period from 5.9.2015 to 2.6.2016 (new posting) should for all purposes be treated as service spent on duty. By the order herein impugned, that request was turned down. The crux of the communication from the Government to the Commissioner of Health Services was that the Applicant did not report for duty at Nampur not because of any administrative reason but because of his family reasons, and therefore, his



request could not be considered favourably. As already mentioned above, this is the order that is challenged in this OA.

6. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

7. The sole Respondent is the State of Maharashtra in Public Health Department. The Respondents have relied upon Rule 9(14)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. That particular provision lays down the period for which a Government servant was required to wait compulsorily until the receipt of his posting order. For the reasons to be presently stated, I do not consider it necessary to deal with in extenso this particular provision. The factual state of affairs is that the Applicant on account of the health condition of his wife and then awaiting the outcome of his OA did not take charge at Nampur and ultimately, the charge was taken at a new place of posting.

8. At this stage, it will be appropriate to discuss the case of Dr. Anay P. Thigale. The case of the Applicant is

  
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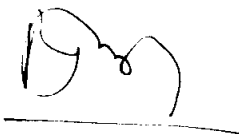
that, his case is exactly similar to the case of Dr. Thigale. In earlier Paragraphs in the Affidavit-in-reply, although on this fact, the stand may be vacillating, but then in Para 21 of the Affidavit-in-reply at Page 58 of the PB, it is clearly stated, "with reference to Para 6.21 and 6.22, I say as follows. Though Dr. Thigale's case and Applicant's case, prima-facie, are similar being Medical Officer, the Applicant was supposed to join at Rural Hospital, Nampur but the Applicant did not join at his transferred place".

9. At this stage, it will be appropriate on my part to read to the extent necessary the Judgment in the matter of the said Dr. Thigale. I had an occasion to deal with that matter as well. He brought **OA 477/2015 (Dr. Anay P. Thigale Vs. State of Maharashtra, dated 10.7.2015 (Exh. 'K', Page 47 of the PB)**. That was also a matter wherein the duration of time from the date of joining the new place of posting and relieving from the earlier one was involved. Dr. Thigale's earlier OA 912/2014 came to be dismissed by this Tribunal on 28.1.2015. He went in **Writ Petition No.1460/2015** which was disposed of on 13<sup>th</sup> March, 2015 with directions to the Government to look into the request of the said Petitioner Dr. Thigale and take an appropriate decision about his posting. He had been relieved on 21<sup>st</sup> June, 2014 and assumed charge of the new



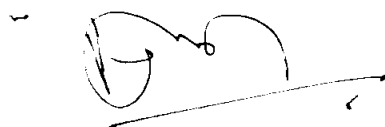
posting on 2<sup>nd</sup> June, 2015. In OA 477/2015, a request was made to me that the representation made by the said Applicant be decided expeditiously. Consequently, that OA was disposed of with a direction that if the Applicant made an application with regard to the period just referred to being treated as on duty for the purposes of pay and emoluments within two weeks from that day, then the concerned authority should take an appropriate decision thereon within two months of the receipt thereof and convey its decision within one week to the Applicant. On 12<sup>th</sup> July, 2016, the Government in Public Health Department issued an order (Exh. 'L', Page 50 of the PB) stating therein the facts above referred to. In Para 4 (in Marathi), it was stated that the said Dr. Thigale had to await the order of his posting during 22.6.2014 and 2.6.2015, and therefore, that period was treated as 'compulsory waiting period'.

10. Now, quite pertinently, in Para 6.19 of this matter, it is pleaded that, no stay was granted in Dr. Thigale's matter though none was granted in favour of the Applicant also. Those averments were traversed on Page 58 of the PB in the Affidavit-in-reply (Para 20) which covered as many as 5 Paragraphs whereby those facts were admitted. It is, therefore, quite clear that, just as in Dr.

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Thigale's case, here also, no stay was granted by the Tribunal, and therefore, there is absolutely no reason why there should be any differential treatment to the present Applicant vis-à-vis Dr. Thigale. I am not at all impressed by the reasoning that the Applicant did not report for the duty at Nampur and that was sufficient enough reason to deny to him the requisite benefits. The matter has to be studied in its entirety and not in isolation. In the context of the present facts, if one did that, it would become very clear that the Applicant was facing the problem of his wife's acute renal condition to the extent hereinabove mentioned. Therefore, regard being had to the totality of the circumstances, I am not able to persuade myself to distinguish the present matter with Dr. Thigale's matter. I would, therefore, conclude by holding that the period under consideration herein will have to be treated in the manner exactly it was done in Dr. Thigale's case as "compulsory waiting period". I Reject the contentions to the contrary so vociferously advanced by Mrs. Kololgi, the learned PO.

11. The Respondents are directed to treat the period of absence of the Applicant from 6.9.2015 to 2.6.2016 as a period spent as compulsory waiting period and in effect on duty. All steps necessary in this behalf may be taken on





the footing as if the impugned order was never made which is accordingly quashed and set aside and the Original Application is allowed in these terms with no order as to costs. Compliance within four weeks.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**02.08.2017**

2-8-17

Mumbai

Date : 02.08.2017

Dictation taken by :

S.K. Wamanse.

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