

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 223 /2013**

Dr. Vinod S/o Gowardhan Jethwani,  
Aged : Major, Occ.Service as Medical Officer,  
Sub District Hospital,  
Murtijapur, District : Akola.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Department of Health Services,  
Mantralaya, Mumbai-32.
- 2) Director of Health Services,  
St. Jorge Hospital Compound,  
Mumbai-32.
- 3) Deputy Director of Health Services,  
Akola Circle, Akola.

**Respondents**

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**Mr. Shantanu Ghate, Adv. for the applicant.**

**Smt. S.V. Kolhe, Id. P.O. for the respondents.**

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

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**JUDGEMENT**

**(Delivered on this 2<sup>nd</sup> day of May,2017)**

Heard Ms. Pandey, Id. Counsel holding for Shri S. Ghate,  
Id. Counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the  
respondents.

2. The applicant is the Medical Officer and he is claiming absorption in the post of Medical Officer in terms of the Rules notified under Notification dated 2/2/2009. He also claiming directions to the respondents to grant deemed date benefits with all consequential benefits.

3. The applicant is educated upto MBBS and was appointed on an ad-hoc Medical Officer by respondent no.3. However, vide order dated 29/11/2006 the applicant came to be terminated. He challenged that order by filing O.A. 70/2007. The said O.A. was allowed on 17/11/2008 and the respondents were directed to reinstate the applicant. The applicant made number of representations, but he was not immediately appointed. In the similarly situated circumstances one Mr. Sudhir Karale was absorbed and his services were regularised.

4. The respondents admitted the fact that the applicant was temporarily appointed on adhoc basis and was working as Medical Officer vide appointment order dated 5/9/2003. His initial appointment was for a period of 11 months only. The applicant was found responsible for misappropriation of Government funds and therefore he was terminated vide order dated 29/11/2006. It is admitted fact that the applicant filed O.A.No.70/2007 as already stated and was reinstated. In fact the respondent/ state filed W.P.No.3325/2010

against the order passed by this Tribunal as regards to the reinstatement. The said Writ has been dismissed. The respondents ultimately issued G.R. dated 23/11/2010 and appointed the applicant as an ad-hoc Medical Officer.

5. The respondents also referred to Rule 2 (1) of One time Absorption of Medical Officers appointed on Adhoc basis in Maharashtra (Special), Rules,2009 (hereinafter referred to as "Rules of 2009"). It is stated that as per Rule 2 (1) of Rules, 2009, "ad hoc Medical Officer" means a Medical Officer, who is appointed in the Department of Public Health on adhoc basis and completed three years on 31/12/2007 and who is in service, on the date of commencement of these rules. It is stated that notified rules of 2009 came into force on 2/2/2009, whereas the services of the applicant were terminated on 29/11/2006 and he was reinstated on 2/2/2009 and therefore he is not eligible.

6. The rules of 2009 clearly shows that the adhoc Medical Officer who has completed three years of service on the date of notification and who is already in service on the date of notification is eligible for absorption. The rules have been notified on 2/2/2009. Even though the applicant was terminated earlier vide order dated 29/11/2006, admittedly the applicant had filed O.A. No. 70/2007 challenging that termination. This Tribunal vide order dated 5/2/2007

in O.A. 70/2007 had directed the respondents to reinstate the applicant immediately and also to grant arrears of the pay to the applicant. The respondents however reinstated the applicant in service vide order dated 12/11/2010 and consequently the appointment order dated 23/11/2010 has been issued in favour of the applicant. The order of the Govt. reinstating the applicant is at P.B. page nos. 43 & 44 (A-R-2), whereas the order of fresh appointment dated 23/11/2010 is at P.B. page nos. 45 & 46. Instead of absorbing the applicant as directed by the Tribunal, the respondents have issued fresh order of appointment for 11 months only. This is absolutely nothing but in contravention of the order issued by this Tribunal. Since the applicant has been granted benefit of reinstatement with immediate effect and since it has already been held that he has been entitled to claim arrears of pay and allowance, it make no difference as to whether the order is passed in 2010 or otherwise. The respondents are responsible for not issuing the reinstatement order immediately. The effect of the order passed by this Tribunal in O.A.70/2007 clearly shows that the applicant was entitled to reinstatement with immediate effect. In other words it can be presumed that the applicant was already in the service on the date of notification of the rules of 2009. Admittedly, the applicant is in service on adhoc basis since 2003 and therefore he fulfils both prerequisites

for absorption i.e. on the date of notification of rules of 2009, he was in service and till that time he had already completed more than three years service on adhoc basis. It seems that this Tribunal has already passed similar order of absorption in case of **Dr.Narendra B. Mawale Vs. State of Maharashtra & 4 ors.,** in O.A.No.572/2007 on 17/11/2008. The respondents therefore should have absorbed the applicant as Medical Officer in view of rules of 2009. Hence, the following order :-

### **ORDER**

The O.A. is allowed. The respondents are directed to absorb the applicant in the post of Medical Officer in terms of the rules notified under the Notification dated 2/2/2009. The respondents are further directed to grant deemed date benefits to the applicant with all consequential benefits as prayed. No order as to costs.

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

dnk.