

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.337 OF 2019

DISTRICT : THANE

Shri Bhagwat Manikrao Dahiphale.)
R/o. Vijay Galaxy Tower 2, Flat No.306,)
Waghbil Naka Ghodbander Road,)
Thane (W) – 400 607.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)

2. The Director of Public Health)
Department, Aarogya Bhavan,)
5th Floor, St. Jeorge Hospital)
Compound, P.D'Mello Road,)
Near CSMT, Fort, Mumbai – 1.)

3. The Deputy Director.)
Public Health Department,)
Regional Mental Hospital Compound)
Thane.)...**Respondents**

Mr. A.G. Gugale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 13.12.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 13.07.2013 passed by Respondent No.1 – Government thereby rejecting his application to regularize his period of suspension on the ground that he being in temporary service not entitled for the same.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was appointed as Medical Officer purely on temporary basis initially for the period of four months or till the availability of the candidates through MPSC whichever is earlier by order dated 15.07.1996. Later, he was continued in service with some breaks purely on temporary basis. While he was posted as Medical Officer, Primary Health Centre, Adas, Taluka Dharu, District Beed, an offence under Section 7, 13(1)(d) read with 13(2) and 12 of Prevention of Corruption Act, 1988 was registered against him. Consequently, he was suspended by order dated 23.06.2005 invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules 1979' for brevity). After investigation, the Applicant was prosecuted in Special Case No.05/2005 by Special Judge, Malegaon. He was acquitted from all the charges by Judgment dated 21st July, 2009. Consequently, he was reinstated in service invoking Rule 4(5)(c) of 'Discipline & Appeal Rules 1979' by order dated 2nd November, 2011. Later, his appointment was regularized on the post of Medical Officer, Group 'A' by Government G.R. dated 12.08.2014. In the meantime, the Applicant by his letter dated 15.06.2012 requested Respondent No.2 – Director of Public Health Services, Mumbai to regularize his suspension period from 19.08.2005 till 19.12.2011 for all purposes. In turn, the Respondent No.2 referred the matter to the Government. However, the Government by impugned order dated 30.07.2013 rejected the application on the ground that the Applicant at the relevant time being temporary employee, the services cannot be

regularized, as the provisions of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules 1981' for brevity) does not apply to him. The Applicant has challenged the said order in the present O.A.

3. The Respondents resisted the Original Application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents reiterated this stand taken in impugned order that, at the relevant time, the Applicant being purely on temporary basis, his suspension period cannot be regularized for the purpose of Pay and Allowances, pension, etc. and 'Joining Time Rules 1981' are not applicable to him. The Respondents further contend that the Applicant was regularized in service in terms of G.R. dated 12.08.2014, and therefore, earlier temporary service on ad-hoc basis cannot be considered as regular service for the benefit of continuity, pension purposes or for any other purpose.

4. Shri A.D. Gugale, learned Advocate for the Applicant sought to contend that, as the Respondents have invoked the provisions of Rule 4 of 'Discipline & Appeal Rules 1979' for suspending the Applicant, now the Respondents cannot turn around to contend that 'Joining Time Rules 1981' are not applicable to him. He admits that at the relevant time, the appointment of the Applicant was purely on temporary basis but sought to canvass that, in that period, the Applicant was getting yearly increments and there was also deduction of G.P.F. from his salary. He, therefore, sought to contend that the appointment of the Applicant has to be treated substantive and regular, and therefore, in view of acquittal in Criminal Case and he is entitled to regularize the period of suspension.

5. Per contra, the learned Chief Presenting Officer urged that the Applicant being admittedly working purely on temporary basis at the relevant time, he cannot be treated on par with regular Government

servant, and therefore, not entitled to the relief claimed, as the provisions of 'Joining Time Rules 1981' cannot be made applicable to him.

6. Admittedly, the Applicant was suspended invoking the provisions of Rule 4 of 'Discipline & Appeal Rules 1979' in view of registration of offence against him under the provisions of Prevention of Corruption Act, 1988. Later, in view of acquittal in Criminal Case, he was reinstated in service invoking Rule 4(5)(c) of 'Discipline & Appeal Rules 1979'. However, at the time of reinstatement, no order was passed about the Pay and Allowances for the treatment of period of suspension. Material to note that the order dated 02.11.2011 was passed by the Government.

7. It is necessary to make it clear that, in the present O.A, the issue is not about the regularization of the temporary service of the Applicant, but it is restricted to Pay and Allowances during the period of suspension. Therefore, the Respondent No.1 ought to have considered the issue to the extent of grant of Pay and Allowances claimed by the Applicant. The issue of regularization of temporary service is altogether different and independent issue which could not be mixed with the restricted claim made by the Applicant for grant of Pay and Allowances treating the suspension period as duty period.

8. Indeed, Rule 72 of 'Joining Time Rules 1981' cast duty upon the competent authority to pass order of Pay and Allowances or otherwise pertaining to period of suspension. The competent authority is under obligation to see whether the suspension was wholly unjustified and to pass further appropriate order about Pay and Allowances to which the Government servant would have been entitled, had he not been suspended as contemplated under Rule 72(3) of 'Joining Time Rules, 1981'.

9. In so far as the applicability of 'Joining Time Rules 1981' is concerned, Rule 2 of the said Rules is material, which is as follows :-

"2. Extent of application.- Except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. They shall also apply to –

- (a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force.
- (b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and
- (c) Government servant paid from Local Funds administered by Government, except rules relating to the Foreign Service."

10. As such, there is no such express provision in Rule 2 which can disentitle the Applicant at least claiming the relief of Pay and Allowances during the period of suspension. At the cost of repetition, it is necessary to make it clear that the question of regularization of temporary service is altogether different which has nothing to do with the present issue, which is restricted to grant of Pay and Allowances pertaining to period of suspension. Therefore, the rejection of the claim of the Applicant for Pay and Allowances is hardly sustainable in law.

11. Material to note that the Applicant was reinstated in service in view of his clear acquittal in Criminal Case and no further action of initiation of Departmental Enquiry, etc. was initiated against him. On the contrary, his services were regularized by G.R. dated 12.08.2014. Be that as it may, the present O.A. has to be considered restricting the claim of Pay and Allowances during the period of suspension. The Applicant was reinstated in service in view of his clear acquittal and no further steps were taken against him for D.E, etc. This being the position, the Respondents cannot deny the liability to pay, Pay and

Allowances to the Applicant during the period of suspension. During that period, he was paid Subsistence Allowance as prescribed in Rules. I, therefore, see no reason much less justifiable to deny Pay and Allowances to the Applicant during the period of suspension. To this extent, the O.A. deserves to be allowed.

12. The totality of aforesaid discussion leads me to sum-up that the Applicant is entitled to Pay and Allowances during the period of suspension after adjusting Subsistence Allowance paid to him. However, this order should not be construed or acted upon for the purpose of regularization of the services of the Applicant rendered before 12.08.2014. It is altogether different issue on which this Tribunal have not made any comment. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 30th July, 2013 is quashed and set aside.
- (C) The Respondents are directed to pay, Pay and Allowances during the period of suspension from 19.08.2005 to 19.12.2011 adjusting Subsistence Allowance paid to him within two months from today by treating it as duty period.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 13.12.2019
Dictation taken by :
S.K. Wamanse.