

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.406 OF 2019

DISTRICT : MUMBAI

Mrs Shaila Shashikant Kamble)
Age 55 years, Occ. Matron (Grp – C))
Police Hospital, Nagpada, Mumai 400 008.)
R/o. ESIS Hospital Staff Qtrs, Type-5/B-2/10,)
LBS Marg, Mulund (W), Mumbai 400 089.)...**Applicant**

Versus

1. The Principal Secretary, Public Health)
Department, Mantralaya, Mumbai 32.)
2. The Director of Health Services, M.S.)
Mumbai.)
3. The Deputy Director (Nursing), Directorate)
Of Health Services, M.S.Mumbai.)...**Respondents**

Shri U. V. Bhosale, Advocate for Applicant.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.10.2019

JUDGMENT

1. Heard Shri U. V. Bhosale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. In the present O.A., short question posed for consideration is whether two spells of absence on duty i.e. from 03.06.2015 to 30.11.2015 and 2nd period from 01.12.2015 to 11.09.2016 can be termed as compulsory waiting period.

3. The Applicant has filed present O.A. being aggrieved by the order dated 21.04.2018 whereby her representation to treat her absence as compulsory waiting period has been rejected.

4. Admitted facts are as follows:-

- (a) The Applicant serving as Sister Tutor was transferred by order dated 30.05.2019 from Thane to Sindhudurg and was relieved on 02.06.2015.
- (b) The Applicant had made various representations dated 16.05.2015, 05.06.2015, 07.07.2015 and 03.11.2015 for cancellation of transfer citing medical grounds.
- (c) The Applicant chooses not to join at Sindhudurg at the place of her transfer and was waiting for decision on her representations.
- (d) Government by order dated 01.12.2015 cancelled the Applicant's transfer order dated 30.05.2015 and the Respondent No.2 – Director of Health Services, Mumbai was directed to verify whether the post of Sister-Tutor is vacant at Thane and do the needful so as to get her joined.
- (e) Despite the order dated 01.12.2015, Respondent No.2 did not take any steps and the Applicant was kept waiting for posting order.
- (f) Again, the Applicant made representation dated 12.01.2016, 05.02.2016, 01.03.2016 for issuance of posting order but in vain.
- (g) Ultimately, the Applicant has filed O.A. No.412/2016 for directions for issuance of posting orders.
- (h) O.A.No.412/2016 was disposed of on 19.08.2016 with following directions:-

“In my opinion, even with the jurisdictional constraints, such an order can be made and therefore, this O.A. is disposed of with a direction that the Applicant may report for duties in Police Hospital, Nagada within one week from today and thereafter, if she makes an application in the nature of request for being transferred and posted

at Thane, her request may be sympathetically considered. With these directions, this OA is disposed of with no order as to costs.”

- (i) Despite, the order in O.A. No.412/2016 the Applicant was not allowed to join at Police Hospital, Nagpada.
- (j) Again the Applicant made representations for permission to join in pursuance of the order passed by this Tribunal but in vain.
- (k) Ultimately, the Applicant was allowed to join at Police Hospital, Nagpada on 12.09.2016 and since then she is serving there. Now she is Matron.

5. In view of above, the question is whether the Applicant is entitled to the relief claimed.

6. In so far as 1st spells of absence from 03.06.2015 to 30.11.2015 is concerned, it is explicit that the Applicant herself was responsible for not joining at Sindhudurg in pursuance of transfer order dated 30.05.2019. Admittedly, she did not challenge the transfer order dated 30.05.2019 and there was no protection in her favour. She preferred not to join at Sindhudurg and chooses to remain absent from duty.

7. Shri A. J. Chougule, learned Presenting Officer for the Respondents has rightly pointed out that it was incumbent on the part of the Applicant to join the place of transfer immediately or after availing joining time as may be permissible to her and there was no justification whatsoever not to join at Sindhudurg.

8. True, the Applicant in this period made various representations for cancellation of transfer order citing medical grounds. However, admittedly there was no stay to the transfer order either in judicial proceeding or from administration so as to justify her non-joining at Sindhudurg. This being the position, the Applicant herself was responsible for not joining at Sindhudurg, and therefore, the absence

period from 03.06.2015 to 30.11.2015 cannot be termed as compulsory waiting period.

9. Needless to mention that compulsory waiting period can be considered only in situation where public servant is not responsible for non joining the post and delay is caused due to administrative lapses or reasons. In the present case, in so far as the period from 03.06.2015 to 30.11.2015 is concerned, there is absolutely no administrative reason.

10. By order dated 30.05.2019, specific posting at Sindhudurg was given to the Applicant but she preferred not to join, and therefore, she must thank herself in so far as absence from 03.06.2015 to 30.11.2015 is concerned. Therefore, rejection of representation to this extent is legal and cannot be faulted with.

11. Now turning to 2nd spells of absence from 01.12.2015 to 11.09.2016, material to note that when by order dated 01.12.2015, the Government had cancelled the transfer order of Applicant dated 30.05.2015 and directions were given to Director Public Health Services, Mumbai to ensure posting of the Applicant District Hospital, Thane. It would be appropriate to reproduce the relevant portion of the order which is as follows:-

“श्रीमती शैला शशिकांत कांबळे, पाठयनिर्देशिका सामान्य रुग्णालय, ठाणे यांची बदली संदर्भिय दिनांक ३०.०५.२०१५ च्या आदेशान्वये जिल्हा सामान्य रुग्णालय, सिंधुदूर्ग येथे करण्यात आली आहे, तथापि श्रीमती शैला शशिकांत कांबळे, पाठयनिर्देशिका यांनी त्यांची संदर्भ क्रमांक २ येथील आदेशान्वये झालेली बदली रद्द करण्याची विनंती केली आहे. त्यानुसार श्रीमती शैला शशिकांत कांबळे, पाठयनिर्देशिका यांची जिल्हा सामान्य रुग्णालय ठाणे येथे झालेली बदली रद्द करण्यात येत आहे. जिल्हा सामान्य रुग्णालय ठाणे येथे पाठयनिर्देशिका हे पद रिक्त असल्याची खातरजमा करून श्रीमती शैला शशिकांत कांबळे पाठयनिर्देशिका यांना जिल्हा सामान्य रुग्णालय, ठाणे येथे पाठयनिर्देशिका पदी रुजू करून घेण्याची कार्यवाही संचालक, आरोग्य सेवा, मुंबई यांनी करावी.”

12. As such, in view of the order dated 01.12.2015, it was incumbent on the part of Respondent No.2 – Director of Health Services to take immediate action for issuance of further posting order of the Applicant but he failed to do so and again Applicant was kept without posting. Even thereafter, the Applicant had made representation and ultimately filed O.A. It is only on 12.09.2016, the Applicant was allowed to join at Police Hospital, Nagpada.

13. Thus, what transpires from the admitted position that the Applicant ought to have been allowed to join immediately in pursuance of order dated 01.12.2015 and the Respondent No.2 – Director of Health Services was to issue appropriate posting order. However, there is failure on the part of Respondent No.2 to take appropriate action and again the Applicant was kept in abeyance without any fault on her part. In other words, there is administrative lapses for not issuing appropriate posting orders, and therefore, it resulted in absence from 01.12.2015 to 11.09.2016. There is absolutely no reason whatsoever in impugned order dated 21.04.2018 for rejecting the Applicant's request to treat her absence from 01.12.2015 to 11.09.2016 as compulsory waiting period.

14. Indeed, it is explicit that the Applicant was deprived of positing due to administrative lapses and non-coordination between the Respondents. Therefore, the period of absence from 01.12.2015 to 11.09.2016 has to be treated as compulsory waiting period.

15. The totality of aforesaid reasons leads me to sum-up that Original Application deserves to be allowed partly. Hence the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) The absence of the Applicant from 03.06.2015 to 30.11.2015 cannot be termed as compulsory waiting period and to that extent, impugned transfer order is legal.
- (C) However, in so far as period from 01.12.2015 to 11.09.2016 is concerned, the impugned order rejecting the representation to treat the said period as compulsory waiting period is quashed and set aside.
- (D) The period of absence from 01.12.2015 to 11.09.2016 shall be treated as compulsory waiting period.
- (E) The Respondent No.2 shall issue further appropriate order about the compulsory waiting period from 01.12.2015 to 11.09.2016 within a month from today.
- (F) Respondent No.1 is further directed to note that the Applicant was not responsible for non joining in the period from 01.12.2015 to 11.09.2016 and she was kept out of posting due to administrative lapses and non-coordination between the departments. He, should, take cognizance of it and take appropriate action in this behalf against the concerned as deems fit.
- (G) No order as to costs.

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