

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.56 OF 2012**

**DISTRICT : THANE**

Mr. Vijaysingh Vitthalrao Shinde )  
Age : 31 years, Occ : Health Supervisor, )  
R/at. C/o. 'Shivam Classic', 201/A, Sec 23, )  
Nerul (E), Navi Mumbai 400 706. )

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
Health Department, )  
Mantralaya, Mumbai 32 )
2. Joint Director of Health Services, )  
(Malaria & Filariasis Water Borne Diseases), )  
Arogya Bhavan, )  
Opp. Vishrantwadi Police Station, )  
Vishrantwadi, Yerwada, Pune 411 006 )
3. Director of Health Services, )  
Saint Georges Compound, )  
Near CST, Fort, Mumbai. )

**....RESPONDENTS**

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Shri K.R. Jagdale, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN  
SHRI R.B. MALIK, MEMBER(J)

DATE : 19.07.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

### **J U D G M E N T**

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the communication dated 22.06.2015 issued by the Respondent No.1, which was issued during the pendency of this Original Application. The Original Application was amended to challenge the aforesaid communication. The Applicant claims that he was absorbed in the post of Health Supervisor in the State Government w.e.f. 29.04.2011 by order of the same date issued by the Respondent No.1 and any subsequent refusal to allow that Applicant to work as Health Supervisor may be declared as illegal.


3. Learned Counsel for the Applicant argued that the Applicant was initially appointed as Health Supervisor in Zilla Parishad, Pune on 08.06.2005. As per revised staffing pattern of the Health Department, the post of Health Supervisor was declared surplus in Zilla Parishad, Pune. As the post of

Health Supervisor become surplus in Zilla Parishad, Pune, in September, 2008, the Applicant submitted application to the Respondent No.2 for absorption of his services on his establishment on the post of Health Supervisor. The Respondent No.2 submitted a proposal to the Respondent No.1 accordingly on 16.07.2009. A further communication was sent by the Respondent No.2 to the Respondent No.1 on 20.08.2009. With the approval of General Administration Department and Finance Department of Government of Maharashtra by order dated 29.04.2011, the Applicant was ordered to be absorbed in the State Government. He was relieved from Zilla Parishad, Pune on 10.06.2011. However, the Respondent No.2 did not allow the Applicant to join as Health Supervisor on his establishment. The Applicant made many representations but to no avail. Learned Counsel for the Applicant argued that many surplus employees of Zilla Parishads from various Departments have been absorbed in various Government Departments in the post. The Applicant was ordered to be absorbed in the same pay scale in which he was working in Zilla Parishad and he is ready to be placed, at the bottom in seniority list in the cadre of Health Supervisors in the State of Maharashtra. No financial burden will be caused to the Government if order dated 29.04.2011 is implemented.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the order dated 29.04.2011 is a letter of conditional approval issued by the Respondent No.1 to the proposal sent by Zilla Parishad, Pune vide letter dated 19.06.2008 to absorb the Applicant in the State cadre. The

Respondent No.2 had informed the Respondent No.1 on 12.12.2011 that the Applicant did not fulfill the requirement of Government Resolution (G.R.) dated 10.09.2001, regarding absorption of surplus employees in other departments, as he was not an employee of the State Government. The Applicant, was, therefore, not allowed to join. The order of absorption of surplus Government employees is required to be issued by the Divisional Commissioner in the field. The Zilla Parishad, Pune should not have relieved the Applicant before conditions in letter dated 29.04.2011 were fulfilled. Learned P.O. argued that the Applicant was admittedly an employee of Zilla Parishad (Z.P.), Pune. Other surplus employees were absorbed by Zilla Parishad (Z.P.), Pune. The Applicant could also be absorbed by Z.P., Pune as he is not eligible to be absorbed in Government as per G.R. dated 10.09.2001.

5. The Applicant is relying as the order dated 29.04.2011 issued by the Government (the Respondent No.1) absorbing the Applicant in the Government service. This order is at Exhibit 'G' (page 37 of the paper book). The Respondents are not denying that this letter was issued by the Respondent No.1. The following reasons are cited for not acting on this letter, viz.

- (i) G.R. dated 10.09.2001 issued by the Finance Department (F.D.), regarding surplus employees is applicable only to Government employees. The Applicant was working in Zilla Parishad, Pune and as such he is not eligible for absorption in Government service. The Zilla Parishad, Pune could have absorbed him on its own establishment in some other post.
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- (ii) The order dated 29.04.2011 was a conditional order. As the conditions in this order were not fulfilled, the Applicant could not be allowed to join the establishment of the Respondent No.2. This fact is specially emphasized in the affidavit-in-reply dated 07.03.2012 filed by the Respondent No.2.

6. Let us examine the letter/ order dated 29.04.2011 issued by the Respondent No.1. This letter is addressed to the Respondents No.2 & 3 and also to the Chief Executive Officer, Z.P., Pune. It states that the Applicant, who was working in Z.P., Pune as Health Supervisor and as the posts of Health Supervisors in Z.P., Pune have been declared surplus in the revised staffing pattern, approval is granted for absorption of the Applicant in an equivalent vacant post, in the same pay scale in the Directorate of Public Health. Off Course, there are certain conditions. The Respondent No.2 has stated in his affidavit-in-reply that the order dated 29.04.2011 was a conditional order and could not be implemented as the conditions were not fulfilled. This is stated in paragraph 4 of the affidavit as below :-

*"4. With reference to para 3, I say and submit that the Exhibit "G" produced by the Applicant is a letter of conditional approval issued by the Respondent No.1 to the proposal sent by Z.P. Pune vide letter dated 19.06.2008 to absorb the Applicant in the State cadre. Therefore, the respondent no.2 has issued a letter to Respondent no.1 dated 12/12/2011 informing respondent no.1 that the Applicant is not fulfilling the condition of G.R. dated 10/09/2011. Hence, the applicant was not allowed to join. Hence, the applicant was not allowed to join. The copy of letter dated 12.12.2011 is annexed hereto and marked as **Exhibit R-1.**"*

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7. Letter dated 12.12.2011 is at Exhibit R-1 as page 65 of the paper book. This letter mentions that the Applicant does not fulfill requirement of G.R. dated 10.09.2001. There are certain allegations against Z.P., Pune. However, contrary to the claim in the affidavit, this letter does not disclose non-fulfillment of any of the conditions in order dated 29.04.2011. The contentions in para 4 of the affidavit are obviously incorrect. The Applicant has placed on record letter dated 16.07.2009 from the Respondent No.2 to the Respondent No.1. Paragraph 2 of this letter reads :-

“तथापि श्री.शिंदे, आरोग्य पर्यवेक्षक यांचे नियुक्ती प्रधिकारी हे मुख्य कार्यकारी अधिकारी, जिल्हा परषिद, पुणे हे असल्यामुळे तसेच श्री.शिंदे यांचे समायोजन राज्यक्षेत्रातील आरोग्य पर्यवेक्षक या रिक्त पदावर करावयाचे असल्याने त्याबाबतचे समायोजनाबाबतचे आदेश शासन स्तरावरून निर्गमित होणे प्रशासकियदृष्ट्या संयुक्तीक ठरते.”

8. It is quite clear that the Respondent No.2 was fully aware that the Applicant was employee of Z.P., Pune, who had become surplus there. The Respondent No.1 was requested to issue order of absorption of the Applicant in the State Government by the Respondent No.2 by aforesaid letter dated 16.07.2009. It is not understood as to why the <sup>Respondent no.2</sup> Applicant did not bring it to the notice of the Respondent No.1 at that time that the Applicant was not covered by G.R. dated 10.09.2001. In letter dated 12.12.2011, the Respondent No.2 had made a lot of allegations against Z.P., Pune, who was said to have sent a vague proposal without any scrutiny on 01.01.2008 to the Respondent No.2. It the proposal from Z.P., Pune dated 01.01.2008 was so bad, why the deficiencies were not pointed out by the Respondent No.2 in his letter dated 16.07.2009 to the Government is not clear. It is, however, clear that the

order dated 29.04.2011 was passed by the Respondent No.1 on the recommendation of the Respondents No.2 & 3. It is not understood as to how and why the Respondent No.2 changed his stand once the order dated 29.04.2011 was issued by the Respondent No.1.

9. Now coming to the issue of G.R. dated 10.09.2001, it is true that G,R, dated 10.09.2001 does not apply in the case of the Applicant as he was not employee of the State Government, but was admittedly declared surplus by Z.P., Pune. However, his case was never examined in the light of G.R. dated 10.09.2001. From the proposal dated 16.07.2009 from the Respondent No.2 and letter dated 20.08.2009, letter of Government dated 14.09.2009, letter of Z.P., Pune dated 20.11.2009, etc. it is clear that the Applicant's case was examined independently of G.R. dated 10.09.2001. In the file notings of the Respondent No.1 dated 05.05.2010 (pages 26-27 of the paper book), it is stated that :

“श्री. व्ही. व्ही. शिंदे, आरोग्य पर्यवेक्षक, जिल्हा परिषद, पुणे येथे रु.५०००-८००० या वेतनश्रेणीत वेतन घेत होते. समावेशनानंतर त्यामध्ये कोणताही बदल होणार नाही. तसेच महाराष्ट्र जिल्हा परिषद जिल्हा सेवा (सेवा प्रवेश) नियम १९६७ परिशिष्ट.५ अ मधिल तरतुद व शासन निर्णय सार्वजनिक आरोग्य विभाग क्र.एमसीडब्लू-१०८२/५८८/(१)सेवा-६, दिनांक १२/०९/१९८५ मधिल तरतुदी सारख्या आहेत. श्री. शिंदे आरोग्य पर्यवेक्षक यांच्या राज्यस्तरीय समावेशनाबाबत मुख्य कार्यकारी अधिकारी, जिल्हा परिषद, पुणे यांनी ना-हरकत प्रमाणपत्र दिले आहे. श्री. शिंदे यांच्या राज्यस्तरीय समावेशनाने शासनास कोणताही जादा आर्थिक भार पडणार नाही. ही वस्तुस्थिती विचारात घेता राज्य शासनाकडील आरोग्य संचालनायाअंतर्गत आरोग्य पर्यवेक्षक पदावर समावेशन करण्यास शासन गान्यता देण्यास हरकत नसावी तत्पुर्वी याबाबत ग्रामविकास विभागाचे अभिप्राय प्राप्त झाल्यानंतर सदर प्रकरण मा. मंत्री (आरोग्य) यांना त्यांनी मा. अध्यक्ष, महाराष्ट्र, विधान सभा यांच्या दि.३१.३.२०१० च्या पत्रावर दिलेल्या आदेशानुसार सादर करण्यात येईल.”

10. The Applicant has stated in para 6.7 of the O.A. that the proposal of his absorption was approved by the General Administration Department (G.A.D.) on 01.01.2011 and Finance Department (F.D.) on 19.03.2011. This fact is not denied in para 8 of the affidavit-in-reply dated 15.03.2012. The conclusion is inevitable that G.A.D. and F.D. had approved absorption of the Applicant in State Government though they were fully aware that the Applicant was employee of Z.P., Pune and thus not covered by G.R. dated 10.09.2001. Order dated 29.04.2011 also clearly mentions that it was issued with the approval of Finance Department and also of the Rural Development Department. Having once approved the absorption of the Applicant in the Government after following due procedure, it is not correct on the part of the Respondents to claim that Applicant was not eligible to be absorbed in Government as his case was not covered by G.R. dated 10.09.2001. The order issued by the Government dated 22.06.2015 cancelling the absorption of the Applicant by order dated 29.04.2011 is issued as an after thought and for extraneous considerations and cannot be upheld.

11. In para 6.23, the Applicant has cited instances of other Z.P. employees, who were absorbed in State Government. In para 9 of the affidavit-in-reply to the amendment, dated 29.01.2016, the Respondents have stated that :

*“9. With reference to contentions made in para no.6.23, I say and submit that Respondent denied all contents in this Para, I say and submit that the names of Mr. Chandratre Gawari, Mr. Sunil Dhivar and Mr. Anant D. Hande were in existence in the list of surplus employee of*



*Central / Regional surplus cell, therefore they are absorbed in different Departments. However in this case the Applicant's name does not exist in the list of surplus employee of Central / Regional surplus cell and therefore, Applicant who does not fulfill the terms and condition laid down in the Para Annexure 3(10) of appendix of Government Resolution Finance Department date 10.9.2001, therefore it prima facie proves that the act of the Respondents about cancellation of absorption letter is not discriminatory and not arbitrary and not contrary to the Article 14 and 16 of Constitution of India."*

12. It is noted that the Respondents have not denied that S/Shri Gowari, Dhivar were employees of Z.P., who were absorbed in Government service on being declared surplus. Only ground for absorbing them given above is that their names were included in the list of surplus employees maintained by Divisional Commissioner, Pune. It is not explained by the Respondents as to how the surplus employees of Z.P. were included in the list of surplus Government employees maintained by the Divisional Commissioner. If the Government has been absorbing surplus employees of Z.P., there is no reason, why the same benefit should not be extended to the Applicant. It is an admitted fact that all expenses of Salary of Z.P. employees in the State are borne by the State Government. Under various statutory rules, Z.P. employees are promoted to posts under the State Government, without loss of any benefits of past services etc. Their pension is also paid ultimately by the Government. By absorbing the Applicant in the State Government post, no additional financial burden will have to be borne by the State Government.

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13. Having regard to the aforesaid facts and circumstances of the case, this O.A. is allowed. Order dated 22.06.2015 issued by the Respondent No.1 is quashed and set aside. The order dated 29.04.2011, passed by the Respondent No.1 is upheld. The Respondents will allow the Applicant to join duties as Health Supervisor in the Directorate of Public Health within a period of two weeks from the date of this order. The Applicant will be allowed to get salary from the date he was relieved from Z.P., Pune to join as Health Supervisor in the State Government from 10.06.2011 onwards from the Respondent No.2. His seniority will be counted from 10.06.2011 in the cadre of Health Supervisor in the State by placing him at the bottom of the list of Health Supervisors working in the State on 10.06.2011. It is, however, made clear that if the Applicant has drawn salary from Z.P., Pune for any period after 10.06.2011, he will not be entitled to get any salary from the State Government for that period. There will be no order as to costs.

Sd/-  
**(R.B. MALIK)** 19.7.16  
**MEMBER(J)**

Sd/-  
**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 19.07.2016**  
**Typed by : PRK**