

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI, BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO 584 OF 2017

DISTRICT : AURANGABAD

Mohammad Abdul Sami,)
Occ : Pharmacist,)
R/o: Plot no. 18, Huda Complex,)
Mehmood Pura Opp Taj Hotel,)
Aurangabad.)

...Applicant

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Medical Education & Research,)
Mantralaya, Mumbai.)
2. The Director,)
Directorate of Medical Education)
& Research, St. Georges Hospital)
Compound, Mumbai.)
3. The Dean,)
Government Medical College & Hospital,)
Aurangabad.)

...Respondents

Shri A.D Sugdare, learned advocate for the Applicant.

Shri N.U Yadav, learned Presenting Officer for the Respondents.

CORAM : Shri B.P Patil (Acting-Chairman)

DATE : 20.08.2019

ORDER

1. The applicant has challenged the order dated 19.6.2017 by the Respondent no. 3 directing recovery of amount of license fees and also prayed for directing the Respondent no. 3 to refund the amount of licence fee recovered from him and to pay license fees regularly in his salary by filing the Original Application.

2. The applicant was appointed as Pharmacist in the office of the Respondent no. 3 by order dated 14.3.1995. He joined the service on 16.3.1995. Thereafter, he worked at different places. He was confirmed in the service in due course and also received benefit of time bound promotion scheme on completion of 12 years continuous service by order issued by Respondent no. 3 on 14.9.2007.

3. The Government of Maharashtra framed rules regarding Recruitment for the posts of Pharmacists and published in Maharashtra Civil Medical Code. As per rule 9.9 the Compounders are as per condition of service, entitled to rent free quarters or house rent allowance in lieu thereof. Government has extended the same concession to Pharmacists. The concession is available from the date of creation of the post of Pharmacists or from the date from which it was filled, whichever is late. In view of this, the applicant was receiving house rent allowance as he had not been allotted rent free quarter. But he was not receiving the license fees in addition to that. On 18.11.2003, the employees working on the post of Pharmacists, made

representation and claimed additional amount of license fees in addition to house rent allowance. The Respondent no. 2, the Director, Medical Education and Research, Mumbai by letter dated 3.2.2004 directed Dean, Medical College, Aurangabad to pay license fees in addition to house rent allowance to them. Accordingly the Respondents no. 3, Dean, Medical College, Aurangabad granted license fees to the Pharmacists by order dated 5.3.2014.

4. The applicant was transferred to Government Medical College & Hospital, Nanded from 1.6.2013. At that his last pay certificate was issued by the Respondent no. 3, wherein it was mentioned that he was getting license fee. On the basis of it, the Dean, Medical College & Hospital, Nanded paid license fees to him while working at Nanded as no rent-free quarter was allotted to him. Thereafter, the applicant came to be transferred to Government Medical College & Hospital, Aurangabad, under the control of Respondent no. 3. But in the Last Pay Certificate, inadvertently the amount of license fees paid to the applicant had not been mentioned. Therefore, the Respondent no. 3 refused to pay the said license fees. The Dean, Government Medical College & Hospital, Nanded, issued necessary order regarding license fees paid to him. Therefore, the license fees was paid to him from 15.5.2017. The applicant had made representation to the Respondent no. 3 on 15.5.2017 and claimed arrears of license fees. He made representation on 28.9.2016, 26.12.2016 to the Respondent no. 3. Because of the repeated representation made by him, the concerned Clerk was annoyed and therefore on the basis of his misrepresentation the Respondent no. 3 passed the

impugned order dated 19.6.2017 and directed recovery of amount of Rs. 6440/- from the applicant. Accordingly, said amount had been recovered from his salary of July, 2017. The applicant had made representation with the Respondent no. 3 against the impugned order. The Respondents had not considered his representation but he stopped to give benefit to the applicant.

5. It is the contention of the applicant that as many as 15 Pharmacists working in the office of Respondent no. 3 and no rent free quarters are provided to them.

6. it is his contention that the action on the part of the respondents to stop the benefit of license fee in addition to house rent allowance is contrary to the rules and G.R. The Respondent no. 3 has illegally recovered the same. Therefore, he has filed the present Original Application.

7. Respondent nos 1 to 3 filed their affidavit in reply and additional affidavit in reply and resisted the claim of the applicant. It is their contention that the Government in Finance Department vide Government Circular dated 24.5.2001 laid down the provisions regarding house rent allowance admissible to the employees of the State Government who are held entitled for rent free quarters. As per the said Circular, if Government quarters are not available for allocation then and then only employees considered for rent free quarters are entitled for availing benefit of house rent allowance including additional license fees.

8. It is their contention that on 29.7.2015, the applicant was transferred to Aurangabad from Nanded and at that time Government quarters were available for allotment. After joining the posting at Aurangabad, it was necessary on the part of the applicant to make an application to the competent authority for allotment of Government quarter and if the competent authority is unable to provide quarter due to unavailability of quarters, then only the applicant is entitled to claim benefit of house rent allowance including additional license fees. The applicant never made any application for allotment of quarter and therefore the Respondent no. 3 recovered the amount of license fees, which was inadvertently paid to the applicant and there is no illegality in it.

9. It is their further contention that the applicant joined the office of the Respondent no. 3 on 30.7.2015 as Pharmacist, Class-III in the pay scale of Rs. 9300-34800, grade pay Rs. 4200/- and since then he is receiving house rent allowance of Rs. 4484/-. On 29.1.2018, the applicant made an application to the Respondent and asked for allotment of Government quarter. Accordingly, Respondent no. 3, allotted quarter having area of 470 sq. meter to the applicant vide order dated 27.12.2018 as per G.R dated 19.4.2011. But the applicant refused the same on the ground that it is not having area of 551-750 sq. mtr. The said quarter is still vacant. It is their contention that since 1.8.2015, 80 Government quarters are available for Class-III employees and out of which 21 quarters are still vacant. It is their further contention that as the applicant refused to occupy the quarter allotted to him, he is not entitled to get

license fees as claimed by him. It is their contention that the amount of license fees inadvertently paid to the applicant has been recovered as per rules and there is no illegality in it. Therefore, they prayed to dismiss the Original Application.

10. I have heard Shri A.D Sugdare, advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents. I have perused the documents on record produced by both the parties.

11. Admittedly, the applicant was appointed as Pharmacists by order dated 14.3.1995 and he joined the service w.e.f 16.3.1995 on the establishment of Respondent no. 3. Thereafter, he has been transferred to Government Medical College and Hospital at Nanded from 1.6.2016. Thereafter, he was transferred to the office of Respondent no. 3 and since 30.7.2015 he is working there. Admittedly, the applicant being pharmacists is entitled to get rent free accommodation to which he is entitled or house rent allowance in lieu thereof as per Recruitment Rules. Admittedly, the rent free quarter was not provided to him during his previous tenure at Aurangabad and Nanded and therefore, house rent allowance and license fees in addition to house rent allowance was granted to him during that period. Admittedly, since his joining at Aurangabad from 30.7.2015 no government quarter was allotted to him and therefore, he is getting house rent allowance. Admittedly, the license fee in addition to H.R.A at the rate of Rs. 460/- p.m was paid to the applicant by the Respondent no. 3 for the period from April 2016 to May 2017. But the license fees paid to the applicant during that period

to the tune of Rs. 6440/- has been recovered from the applicant by impugned order from the salary of the applicant.

12. Learned advocate for the applicant has submitted that as per the rules, the applicant is entitled to get rent free Government accommodation as per his entitlement but the Respondent had not provided the Government quarter to the applicant as per his entitlement since he joined at Aurangabad on 30.7.2015, and therefore, the applicant is entitled to get H.R.A and license fees in addition to it in view of the G.R dated 24.5.2001 and office communication dated 3.2.2004 addressed to the Respondent no. 3 by Director, Directorate of medical Education and Research, Mumbai. He has submitted that the applicant has received HRA and license fees accordingly till 30.7.2015. He has submitted that the Respondent no. 3 had granted HRA and license fees to the applicant but by the impugned order he has recovered the amount of license fees paid to the applicant and stopped the further payment of license fee without just ground. He has argued that during the pendency of the O.A, the Respondent no. 3 has not provided the Government quarter to the applicant as per his entitlement and therefore, the applicant is entitled to get the license fee in addition to HRA paid to him. Therefore, he prayed to allow the Original Application and to quash the impugned order and to direct the Respondent no. 3 to refund the amount recovered from him.

13. Learned Presenting Officer has submitted that the applicant joined the office of Respondent no. 3 on 30.7.2015. Several Government quarters are available and vacant at

Aurangabad for Group-III employees. The applicant is also Group-III employee. But the applicant never applied for the allotment of quarter, but he is getting the H.R.A and license fee in contravention of the Circular dated 24.5.2001 and G.R dated 19.4.2011. Therefore, the Respondent passed the impugned order and recovered the amount of license fees which was inadvertently paid to the applicant, and there is no illegality in it. He has submitted during the pendency of the O.A, the Respondent allotted Government accommodation to the applicant on his application, but applicant refused to occupy it. Therefore, he is not entitled to HRA and license fees as claimed. On these grounds he prayed to reject the Original Application.

14. On perusal of record, it reveals that previously the applicant served at Aurangabad and Nanded and that time no Government quarter was allotted to him and therefore, HRA and license fees was granted to him. On 30.7.2015, he has been transferred to Aurangabad and since then no Government quarter as per his entitlement has been allotted to him. Therefore, H.R.A has been granted to him since then. Initially, he was not granted license fees but on his representation, license fees was granted to him for the period April 2016 to May, 2017. When he claimed arrears of license fees for the period from August 2015 to March, 2016, the Respondent rejected his claim and recovered the amount of license fees paid to him during the period April 2016 to May 2017 by impugned order on the ground that no order to pay such license fees had been received to his office.

15. On perusal of Circular dated 24.5.2001, it reveals that in view of the provisions of G.R dated 30.12.1991, the Government employees to whom Government quarters are not provided as per their entitlement are entitled to receive H.R.A and license fee in lieu of it. Not only this, but the Respondent no. 2 by communication dated 3.2.2004 informed the Respondent no. 3 that the Pharmacists are entitled to get H.R.A and license fees in lieu of Government quarters. On the basis of this the applicant was getting H.R.A and license fees till 30.7.2015. The Respondent no. 3 without any reason stopped to pay license fees to the applicant from August 2015 though he continued to pay HRA to the applicant as no Government quarter was provided to him. There is no just reason to reject the claim of license fee of the applicant. The order dated 19.6.2015 issued by the Respondent no. 3 is in contravention of the G.R dated 30.12.2011 and Circular dated 24.5.2001 as well as the communication issued by Respondent no. 3 on 30.2.2004. Therefore, the impugned order is not sustainable in law. The Respondent no. 3 has issued the impugned order arbitrarily.

16. During pendency of the Original Application, the Respondent no. 3 allotted Government quarter to the applicant stating that the applicant is eligible for it. But on perusal of communication dated 28.8.2019 received to Respondent no. 3 from Assistant Engineer, Public Works Department, Aurangabad, it reveals that the carpet area of the quarters allotted to the applicant are 311.47 sq. ft and 315.71 square ft. and the built up area is 44.34 sq. mtrs, i.e. 477.40 sq. ft. The applicant is getting grade pay of Rs.

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4200/-. As per G.R dated 19.4.2011, the applicant falls under category mention at Sr. no. 3 and accordingly he is entitled to get quarter having carpet area in between 321 to 420 sq. ft. But the Respondent no. 3 has not allotted the quarter to which he is entitled. Therefore, the applicant has rightly refused to occupy the said quarter. On that ground, the Respondents cannot refuse license fees admissible and payable to him. On that ground also the impugned order is not legal.

17. Respondent no.3 has not provided Government quarter to the applicant as per his entitlement and therefore, the applicant is entitled to get HRA & license fees in addition to it as per the G.Rs and Circular referred above. He is entitled to get HRA & license fees till the Government Quarter to which he is entitled, is provided. Therefore, the Respondent no. 3 cannot refuse to pay license fee to the applicant. In view of this impugned order requires to be quashed and set aside by allowing the Original Application.

18. In view of the discussion in the foregoing paragraphs, the Original Application is allowed and the impugned order dated 19.6.2017 issued by the Respondent no. 3 is hereby quashed and set aside. Respondent no. 3 is directed to pay the license fee to the applicant in addition to H.R.A since August, 2015. No order as to costs.

(B.P Patil)
Acting-Chairman

Place : Aurangabad
Date : 20.08.2019
Dictation taken by : A.K. Nair.

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