

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.79 OF 2020

DISTRICT : SANGALI

Dr. Milind M. Kesarkhane)
Age 34 years, Occ Assistant Professor)
Department of Regional Blood Bank in)
Government Medical Miraj Dist. Sangali.)
R/o. Haripriya Bunglow No.17, Shriram)
Miraj 416410, Miraj)...**Applicant**

Versus

1. The State of Maharashtra, through)
Secretary, Medical Education&)
Drugs Department, 9th floor,)
Administrative Building, Gokuldas)
Tejpal Hospital Campus, Lokmanya)
Tilak Marg, Mumbai 400 001.)
2. The Director, Medical Education)
And Research, St. George Hospital)
Compound, 4th floor, Govt. Dental)
College building near C.S.T.)
Mumbai 400 001.)
3. The Dean, Government Medical)
College, Miraj, Pandharpur Road,)
At. Miraj 416410, Dist. Sangali.)...**Respondents**

Shri M.R.Kulkarni, learned Advocate for the Applicant

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 02.02.2021.

J U D G M E N T

This Original Application was filed on 27.01.2020 with following prayers

- “(B) The Respondent No.1 to 03 may kindly be directed that applicant’s service shall not be terminated by appointing another adhoc appointee till the candidate selected by MPSC/regular incumbent is available.*
- (C) By issuing appropriate order or direction to the respondent No.03 restraining not to fill up the fresh adhoc/temporary on the present post of applicant i.e. Asst. professor in Regional Blood bank department.”*

2. The Applicant is MBBS and MD in Pathology. Initially by order dated 04.08.2017, he was appointed as Medical Officer for the period from 05.08.2017 to 02.12.2017 for 120 days at Government Medical College & Hospital, Miraj on temporary basis. Thereafter, with break he was again appointed from time to time for 120 days purely on temporary basis by order dated 11.12.2017, 11.04.2018, 16.08.2018, 27.09.2018, 22.01.2019 and lastly by order dated 11.09.2019. As per last order of appointment dated 11.09.2019, he was appointed particularly for period from 01.10.2019 to 28.01.2020. The Applicant was appointed purely on temporary basis subject to conditions stipulated in appointment order which are as follows:-

- (A) The appointment of the Applicant could be purely on temporary basis and it would come to an end after expiry of period of appointment automatically.
- (B) The appointment would come to an end in case of appointment of direct candidate by nomination or transfer of somebody else in his place or appointment of regular candidate through regional selection board whichever is earlier.
- (C) The Applicant should not do any kind of private practice since he will be getting non practicing allowance.
- (D) The candidate has to submit undertaking on stamp of Rs.100/- agreeing terms and conditions set above.

3. Admittedly, it is on acceptance of terms and conditions and on execution of bond, the Applicant had accepted the service purely on temporary basis.

4. As stated in the opening of the judgment that this O.A. was filed on 27.01.2020 to seek interim relief since his appointment was come to an end on 28.01.2020. The Tribunal by order dated 28.01.2020 rejected interim relief for continuation in service by passing reasoned order. Thus, admittedly the Applicant is no more in service with the Respondents as his service had already come to an end on 28.01.2020.

5. In view of above, the question is whether the Applicant is entitled for the relief claimed in O.A. as reproduced above. One of the prayers was for restraining the Respondents from terminating the service of the Applicant. Since the Applicant's tenure had already come to an end on 28.01.2020 and he is no more in service, the said prayer of seeking injunction has become infructuous.

6. Shri M. R. Kulkarni, learned Counsel for the Applicant submits that all that he is restricting the O.A. for his second prayer that the Respondent No.3 should not fill in the post by appointing another ad-hoc employee.

7. Per contra, Smt. Archana B.K., learned Presenting Officer has pointed out that during the tenure of temporary employment, the Applicant had indulged in misconduct and complaints received against the Applicant were inquired with. The first complaint was of tempering biometric attendance on 04.02.2018 though, on that day he was at Pune. In so far as this complaint is concerned, the Enquiry Committee had submitted its report with following conclusion :

“निष्कर्ष

वरील सर्व बाबींचा विचार केला असता असे दिसते की रक्तपेढी मध्ये ठेवलेले क्रॉस मॅच रजिष्टर व इश्यु रजिष्टर मधील काही दिनांकास रुग्णांच्या नोंदीसमोर दोन अधिकारी यांच्या स्वाक्ष-या आहेत त्यामध्ये दिनांक ०४.०२.२०१८ रोजीच्या सर्व रुग्णांच्या नोंदीसमोर डॉ.केसरखाने व डॉ.शेंडे यांच्या स्वाक्ष-या आहेत रक्तपेढीत कार्य करणारे सर्व अधिकारी व कर्मचारी यांच्या जबाबावरून असे दिसते की फक्त काही प्रकरणात ०२ स्वाक्ष-या असू शकतात. परंतु दिनांक ०४.०२.२०१८ रोजीच्या सर्व रुग्णांच्या नोंदीसमोरील रकान्यात डॉ.

केसरखाने यांची दुसरी स्वाक्षरी आहे व पहिली स्वाक्षरी डॉ.शेंडे यांची आहे त्यामुळे डॉ.केसरखाने यांनी त्याच दिवशी या स्वाक्ष-या केल्या आहेत किंवा नाही याबद्दल संशय निर्माण होतो.

मात्र बायोमेट्रिक मशीन मधून उपस्थिती बाबतची माहिती संगणकात घेऊन त्याची प्रिंट घेतलेली आहे त्या माहितीमध्ये फेरफार करू शकतो किंवा नाही, किंवा यामध्ये फेरफार झाला आहे की नाही याबद्दलचा निष्कर्ष ही समिती काढू शकत नाही. यासंबंधी गरज असल्यास संबंधित तज्ञांकडून बायोमेट्रिक मशीन व संगणकामध्ये फेरफार होऊ शकतो किंवा नाही याबद्दलच्या माहितीसाठी सल्ला घ्यावा.’’

8. Second complaint was pertaining to service in private hospital namely Sevasadan Lifeline Super Specialty Hospital, Miraj despite his appointment in Government Medical College and Hospital, Miraj and taking benefit of non practicing allowance. Perusal of Enquiry Committee report reveals that the Applicant found working in Sevasadan Lifeline Super Specialty Hospital, Miraj during the period from 01.11.2018 to 30.08.2019. Though in that period, he was in service with Government Medical College and Hospital, Miraj and accepted non practicing allowance. The Enquiry Committee report further reveals that the Applicant had also accepted honorarium for serving in Sevasadan Lifeline Super Specialty Hospital, Miraj and thereby committed breach of agreement. Indeed, subsequently the Government Medical College Miraj had issued notice to the Applicant for refund of Rs.72,429/- which he had availed towards non practicing allowance.

9. In so far as alleged misconduct is concerned, material to note that it is not a case where the Applicant's service has been terminated on account of alleged misconduct. Apparently, this is the case where Applicant's temporary tenure had come to an end on 28.01.2020. This being the position, the reference of decision reported in **(2016) 5 AIR BOM 257 (Namdeo Dhakate V/s State of Maharashtra)** and the decision of Jammu & Kashmir High Court as well as Allahabad High Court relied by learned Counsel for the Applicant are not at all relevant or of any assistance to the Applicant. In these judgments, the services of the petitioners therein were terminated attributing misconduct. Termination being found stigmatic without due process of law were quashed. Whereas, in the present case, there is no such termination as

the Applicant's temporary service itself had come to an end on 28.01.2020.

10. As stated above, the Applicant was appointed purely on temporary basis for stipulated period or till appointment of regular candidate whichever is earlier.

11. The legal position is well settled that ordinarily where services of temporary or ad-hoc employee are come to an end or even terminated by efflux of time no interference is called for by judicial forum since temporary or ad-hoc appointee has no right to hold the post. In other words the Applicant has no legal or subsisting right to continue on the said post.

12. The totality of the aforesaid discussion leads me to conclude that the Applicant is not entitled to the relief claimed and Original Application deserves to be dismissed. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 02.02.2021
Place : Mumbai
Dictation taken by : Vaishali S. Mane
Uploaded on :
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