

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.889 OF 2016**

DISTRICT : MUMBAI

Dr. Azharuddin Najmuddin,)
Age 29 years, Medical Officer, Class II, ESIS Hospital,)
Near Tukdoji Statue, Somwar Peth, Nagpur)
R/o Muneef Palace, Mohmedali Road, Mominpura,)
Nagpur)
C/o A.S. Pathan, 41/2, LIG Colony, V.B. Nagar,)
Kurla (W), Mumbai 400070)..Applicant

Versus

1. The Commissioner/Director (Administration),)
Employees State Insurance Scheme,)
Panchdeep Bhavan, 6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai 400013)
2. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400032)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri K.B. Bhise – Presenting Officer for the Respondents



CORAM : Shri Justice A.H. Joshi, Chairman
RESERVED ON : 11th October, 2017
PRONOUNCED ON: 26th October, 2017

ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. This OA has taken up for final disposal with consent.
3. Heard both the sides.
4. Applicant herein is holding the degree of MBBS. He has applied for appointment to the post of Medical Officer in a vacancy available for bonded candidate i.e. a candidate who has to serve under the Government as a condition for admission to medical education.
5. The applicant was appointed by order dated 7.9.2015. The appointment order contains as much as 21 clauses. Clauses relevant for the present case are clauses 2, 3, 11, 12, 15, 19 and 21. These clauses are quoted for ready reference:

“२. त्यांची सदरची नियुक्ती तात्पुरत्या स्वरूपातील असून त्यांना महाराष्ट्र वैद्यकीय विमा सेवा गट-अ मधील कायम स्वरूपाच्या नियुक्तीचा हक्क असणार नाही. कायम स्वरूपाच्या नियुक्तीसाठी ज्यावेळी पदांची जाहिरात येईल त्यावेळी त्यांनी संबंधीतांकडे अर्ज केला पाहिजे आणि इतर उमेदवाराबरोबर परीक्षा दिली पाहिजे व निवड व्हावयास पाहिजे.

३. त्यांची सेवा तात्पुरत्या स्वरूपाची असून त्या कोणतीही पूर्वसूचना न देता केव्हाही समाप्त करण्यात येतील.

११. बंधपत्रित असल्याचे प्रमाणपत्र दाखल करावे.

१२. त्यांना नियुक्तीच्या मुख्यालयी हजर रहाणे बंधनकारक असून गैरहजर आढळून आल्यास त्यांच्या सेवा तात्काळ समाप्त करण्यात येतील तसेच शासन नियमानुसार त्यांवेकडून बंधपत्राची रक्कम बसुलीची कार्यवाही करण्याकरीता संबंधित सक्षम अधिका-यास कळविण्यात येईल.

१५. त्यांची अस्थायी नियुक्ती केवळ हजर झालेल्या दिनांकापासून निव्वळ ३६४ दिवसांच्या कालावधीकरीता असल्यामुळे हा कालावधी पूर्ण होताच सदर नियुक्ती आपोआप संपुष्टात येईल. त्यानंतर ते आपोआप कार्यमुक्त झाले असे समजण्यात येईल व त्यानंतर त्यांनी काम केल्यास त्यांना त्या कालावधीचे वेतन व भत्ते मिळणार नाहीत व त्याला ते स्वतःजबाबदार राहतील. आपणास या शासन निर्णय क्र.एनओसी ३०५७/सीआर-३/९५/शिक्षण-१, दिनांक २७.०२.१९९६ मध्ये विहित केलेल्या अटी व शर्तीचा लाभ अनुज्ञेय असणार नाही.

१९. उमेदवाराना ३६४ दिवसांचा बंधपत्रित कालावधी पूर्ण करणे बंधन कारक राहिल. ३६४ दिवसांचा कालावधी पूर्ण न करता सेवा सोडून जाण्याची परवानगी मागितल्यास कार्यरत सेवा कालावधीची मिळालेली वेतनाची संपूर्ण रक्कम शासन जमा करावी लागेल. तथापि काही अरिहार्य कारणास्तव/वैद्यकीय कारणास्त बंधपत्रित कालावधीमध्ये खंड पडल्यास तो गैरहजेरीचा कालावधी समजून तेवढा कालावधी त्यांच्या मुळ नियुक्तीच्या ठिकाणी पूर्ण केल्यानंतरच त्यांचे संपूर्ण बंधपत्रित कालावधीचे सेवा प्रमाणपत्र निर्गमित केले जाईल. कोणत्याही परिस्थितीत ३६४ दिवसांच्या बंधपत्रित कालावधी पूर्ण केल्याशिवाय सेवा प्रमाणपत्र दिले जाणार नाही.

२१. आपण या आदेशाप्रमाणे नियुक्ती स्वीकारल्यास व दिलेल्या पदस्थापनेच्या ठिकाणी सेवेत रुजू झाल्यास वरील अटी व शर्ती आपणास मान्य आहेत असे गृहीत धरण्यात येईल.”

(Quoted from Pages 18A, 18B & 18C of OA)

6. The applicant joined the post pursuant to the order of appointment. His appointment was due and came to an end on 6.9.2016.

7. In the background that as per the stipulation contained in the order of appointment that the appointment has to come to an end after



completion of 364 days i.e. on 6/9/2016, the applicant has filed this OA for protection of his employment.

8. When the case was heard initially on 1st date, this Tribunal has recorded in its order dated 6.9.2016 that the applicant wanted similar treatment as was given to the applicants in OA No.189 of 2016 decided on 14.3.2016 on principle from the point of view of 'bond', though the class of applicants therein was that of Nurses.

9. This OA has been opposed by filing reply.

10. Main defense and the ground of objection of the respondents are that:

- (a) The principle and object behind appointment of "bonded candidates" is to provide to the bonded candidates, the opportunity to serve under the Government and discharge the liability under the bond.
- (b) Ipso facto, by virtue of said appointment, a right of continuation does not accrue or vest in the candidate.
- (c) In case an appointee of bonded candidate category is replaced by another bonded candidate, this does not amount replacement of one 'ad hoc' by another 'ad hoc' candidate.

11. The Ld. Advocate for the applicant, in addition to the judgment in case of OA No.189 of 2016, has placed reliance on various judgments which are seven in number. Those are as follows:

- (i) Anil Dhage Vs. State of Maharashtra, W.P. No.1250 of 2002 decided by High Court Nagpur Bench on 13.8.2015.
- (ii) S.P. Kasodekar Vs. State of Maharashtra, OA No.763 of 1993 decided on 6.2.1995 by MAT, Mumbai.
- (iii) Dr. (Smt.) Vaishali Nemane Vs. State of Maharashtra, OA No.232 of 2011 decided on 1.4.2015 by MAT, Mumbai.
- (iv) Dr. Kabeer Umakumar & Ors. Vs. State of Maharashtra, WP No.1440 of 2011 & Ors. decided by High Court, Bombay on 20.10.2011.
- (v) Sushil Kumar Jha V s. Union of India & Ors., AIR 1986 SC 1636.
- (vi) Smt. R.S. Thakurdesai & Ors. Vs. State of Maharashtra, OA No.1136 of 2012 decided on 22.1.2016 by MAT, Mumbai.
- (vii) Dr. Vijay Kumar Patne Vs. State of Maharashtra, OA No.255 of 2016 decided on 6.3.2017 by MAT, Mumbai.

12. The State has placed strong reliance on unreported judgment of Nagpur Bench, Bombay High Court in W.P. No.4953, 4954 & 5097 of 2013 decided on 9.10.2013 Dr. Harshal Mohan Chandorilar Vs. State of Maharashtra and others, copy whereof is annexed to State's reply at page No.69 to 74.

13. In the first case relied upon by the Ld. Advocate for the applicant viz. Anil Dhage Vs. State of Maharashtra, the Hon'ble High Court was examining the case of a candidate who had served for considerable long



time, much after the expiry of duration of appointment for the duration of bond. The petitioner therein claimed continuation in the employment on the ground of adhoc employment for long duration only on adhoc basis. He was thereby claiming absorption or permanency and the said demand was being denied and opposed by the State on the purported ground that the vacancy was needed for absorption of "bonded candidates". The question "As to whether a bonded candidate who has served for singular spell of bond" has a right of absorption, had not fallen for consideration before the Hon'ble High Court in Anil Dange's case.

14. Only case in which the aspect of right of bonded candidates is considered and is ruled adverse to appointee who is a "bonded candidate", is done in the Writ Petition No.4953, 4954 & 5097 of 2013 decided on 9.10.2013 Dr. Harshal Mohan Chandorilar Vs. State of Maharashtra (supra).

15. It is a matter of fact that in the judgment of Hon'ble High Court, in case of Anil Dhage supra, Hon'ble High Court has expressed displeasure about opposing demand of absorption by posing the shield of bonded candidate. Therefore, Anil Dhage's case supra is on the point of denial of absorption by using bonded candidates as a pawn on the chess board. Therefore, Anil Dhage's case is not a precedent which would govern the issue of unfettered and absolute right of a bonded candidate to be continued in preference to other bonded candidate.

16. Therefore by placing reliance on the precedent as emerges from the judgment in Writ Petition No.4953 of 2013, this Tribunal holds that present applicant is a "bonded candidate" and he does not have a vested right of continuation or absorption upon his completion of employment by relying on the principles that "one adhoc candidate cannot be replaced by another adhoc candidate".

17. It shall undoubtedly be arguable that a bonded candidate ought not to be displaced solely on the ground that his termination being a “bonded candidate” could be detriment to the interest and need of community and contemporary requirement of his service as a Medical Officer due to absence of any bonded candidate waiting to serve or a candidate ready to occupy the post upon due selection.

18. This Tribunal has perused all judgments relied upon by learned Advocate for the applicant. However, in even one among those judgments relied on by applicant, the question as to whether “A bonded candidate has a right to be continued on the post notwithstanding with the fact that other ‘bonded candidates’ are in waiting”, is dealt with.

19. The principles of adhocism would be alien to the principle of providing an employment to a bonded candidate upon completion of tenure of a candidate who was serving to complete the period of bond and when a vacancy which has occurred, since the term of appointment of a “bonded candidate” has come to an end.

20. The principle of adhocism which is most vicious practice followed in many public employments, does not come into play in relation to simplicitor discharge of bonded candidate upon completion of first tenure of bond.

21. The cases of plurality of continuation of bonded candidates may stand on a different footing and may attract an argument as was advanced in case of Anil Dhage (supra) which is not a fact in present case.

22. The applicant’s case is a plain and simple case of single tenure bond and it does not fit into the need of remedying mischief of a long tenure

service being discontinued under the guise of services being temporary rather than under the bond.

23. Hence, Original application has no merit and is dismissed. Parties are directed to bear their own cost. Record does not show that interim relief was granted, however in case there being any interim order, it shall stand automatically vacated.



Sd/-

(A.H. Joshi, J.)
Chairman
26.10.2017

Dictation taken by: S.G. Jawalkar.