

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 927 of 2017 (SB)

Rajkumar S/o Babulal Meshram,
Aged about 50 yrs, Occ. Service
R/o Plot No. 53, Samata Nagar,
Phage I, Mendha Road, Bhandara
District- Bhandara 441 904.

Applicant.

Versus

- 1) District Hivatap Officer,
Rashtriya Hattirog Niyatrak Pathak Lal Bahadur Shastri School,
Shivaji Ward, Bhandara. 441904.
- 2) District Hivatap Officer, District Gadchiroli.
- 3) Assistant Director, (Hivatap)
Mata Kacheri, Near Diksha Bhumi, Nagpur.
- 4) The Deputy Director, health Services Mata Kacheri,
near Diksha Bhumi, Nagpur
- 5) Director, Health Services,
'Arogya Bhavan' Saint George Hospital
Campus, P.Demello Road,
Maharashtra State, Mumbai 400001.
- 6) Secretary,
Health Services, Maharashtra State,
Mantralaya, Mumbai.

Respondents.

S/Shri P.P. Kotwal, A.S. Nagdeve, Advocates for applicant.
Shri H.K. Pande, learned P.O. for respondents.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 27th June, 2023.

Date of Pronouncement of Judgment : 25th August, 2023.

JUDGMENT

(Delivered on this 25th day of August, 2023)

Heard Shri P.P. Kotwal, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. Case of the applicant is as follows –

On 01/12/1992, the applicant joined the respondent department as Seasonal Worker. From 01/04/1993 to 31/03/1994 he completed one year training as Multipurpose Health Worker. By order dated 17/08/1994 (Annex-A-3) the applicant was appointed as Insect Collector on a temporary basis for 179 days. He joined on 20/08/1994 (Annex-A-5). His tenure was extended from time to time by issuing fresh appointment orders for 179 days (Annex-A-6, collectively). Breaks in service were given arbitrarily. As per decision (Annex-A-7) taken by the Selection Committee in the meeting dated 31/03/1997, the applicant was appointed by order dated 23/24-08-1997 (Annex-A-8) as Health Worker. By this order his services were regularized w.e.f. 20/08/1994 on terms and conditions enumerated in Annex-A-9. On 20/08/1997, the impugned order (Annex-A-1) was issued that date of regularization of services of the applicant shall be taken to be

24/04/1997 and not 20/08/1994 as was done by order dated 23/24-08-1997 (Annex-A-8).

3. Stand of the respondents is as follows –

The O.A. which assails order dated 20/08/1997 is clearly barred by limitation. Respondent no.2 issued the impugned order postponing the date of regularization of services of the applicant from 20/08/1994 to 24/04/1997 because his previous services were purely temporary in nature. Selection Committee had not issued any guideline regarding granting regularization from the date of beginning of temporary service. Hence, the impugned order does not suffer from any infirmity.

4. By filing a rejoinder the applicant contended that the O.A. was not barred by limitation and in view of Notification dated 31/03/2015 (Annex-A-14) and Judgment of this Tribunal dated 04/05/2018 (Annex-A-15) the O.A. deserves to be allowed.

5. To the rejoinder the applicant has attached 20 representations made by him for redressal for his grievance.

6. Notification dated 31/03/2015 states as under –

“प्रस्तावना :

सार्वजनिक आरोग्य विभागांतर्गत सन १९९० ते २००२ या कालावधीत नियुक्त केलेल्या आरोग्य कर्मचा-यांपैकी १५५ कर्मचाऱ्यांच्या सेवा नियमित करण्यात आल्या नसल्याने यापैकी बहुतांश आरोग्य कर्मचाऱ्यांनी मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, औरंगाबाद / मुंबई येथे मूळ अर्ज क्र.

६६/९५, ३६०/९५, ३९९/९५, ४००/९५ ५४४/९५, ५४५/९५, ७८७/९५, १२०९/९८, १३७०/९८, ३४७/९९, ८९१/९९, ८४८/२००४, ८३७/२०११ दाखल केले होते. "सदर आरोग्य कर्मचाऱ्यांच्या सेवा दि.२७/०५/१९९७ आणि दि. १७/०९/१९९७ या शासन निर्णयातील तरतदीनुसार नियमित करण्याबाबत विचार करावा" असे प्रस्तुत प्रकरणी मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, औरंगाबाद यांनी दि.१३.०६.२०११ रोजी आदेश दिले आहेत. मा.मॅटच्या आदेशानुसार कार्यवाही करण्याच्या दृष्टीकोनातून प्रस्तुत प्रकरणी विधी व न्याय विभाग, सामान्य प्रशासन विभाग आणि वित्त विभागाचे अभिप्राय घेण्यात आले. सा.प्र.विभाग आणि वित्त विभागाच्या अभिप्रायानुसार बंधपत्रित आरोग्य कर्मचाऱ्यांच्या सेवा नियमित करण्याबाबतचा प्रस्ताव मा. मुख्यमंत्री यांच्या मान्यतेनुसार राज्य मंत्रीमंडळासमोर सादर करण्यात आला. दि. १२ मार्च २०१५ रोजी आयोजित राज्य मंत्रीमंडळाच्या बैठकीत, १५५ बंधपत्रित आरोग्य कर्मचाऱ्यांच्या सेवा नियमित करण्याबाबतच्या प्रस्तावास मंत्रीमंडळाने मान्यता दिली आहे. त्या अनुषंगाने, बंधपत्रित आरोग्य कर्मचाऱ्यांच्या सेवा नियमित करण्याबाबतचे आदेश निर्गमित करण्याची बाब विचाराधीन होती.

शासन निर्णय:-

राज्य मंत्रीमंडळाच्या दिनांक १२ मार्च २०१५ रोजी आयोजित बैठकीतील निर्णयानुसार, खालीलप्रमाणे नमूद सार्वजनिक आरोग्य विभागांतर्गत १५५ बंधपत्रित आरोग्य कर्मचाऱ्यांच्या त्यांच्या मूळ नियुक्तीच्या दिनांकापासून सेवा एक वेळची बाब (One Time Measure) म्हणून नियमित करण्यात येत आहेत. ”

7. The Judgment of this Tribunal dated 04/05/2018 was delivered in O.A.No.538/2016. In this case it is held –

“6. From the facts discussed in the aforesaid paras, it will be clear that admittedly the applicants were appointed in the year 2000 also and in any case they were working as Multi Purpose Health Workers prior to the issuance of the Government Resolution. Though the respondent no. 3 has stated that he has merely supplied the information of 167 Multi Purpose Health Workers and not recommended anybody including the applicants, the said proposal/ recommendation shows that the information was called about the Bounded Multi Purpose Health Workers (Male) and this information is regarding 167 Multi Purpose Health Workers (Male). It is

material to note that in the said list alongwith letter (Annexure-A-3) the names of all the applicants have been included and they are shown to be working as a Bounded Health Workers (Male) even prior to 2000 and their names were included in the list of 167 Multi Purpose Health Workers. However, vide G.R. dated 31/03/2015, only 155 Bounded Multi Purpose Health Workers were regularized from their initial date of appointment. It seems that these 155 Bounded Multi Purpose Health Workers are regularized. In view of the Judgments passed by this Tribunal at Aurangabad and Principal Bench at Mumbai, no reasons are given in the said G.Rs. as to why the names of the applicants have been excluded.

7. From the facts on record, it is clear that admittedly all the applicants were working as Bounded Multi Purpose Health Workers from 2000. They were appointed in the year 2000 for initial period of 2 years and thereafter they were selected through regular Selection Committee in the year 2003. By virtue of the Government Resolution dated 31/03/2015, the services of 155 Bounded Multi Purpose Health Workers (Male) were regularized though they were not selected through regular Selection Committee and merely because the applicants were selected through regular Selection Committee in the year 2003, their earlier services have been ignored. This is nothing but injustice on the applicants because the regularization of 155 workers will get them seniority over the applicants though the applicants are working as Bounded Multi Purpose Health Workers continuously even prior to these 155 workers merely because they were selected through regular Selection Committee. This action on the part of respondent no. 1 to delete the names of the applicants from the list of regularization without assigning any reasons is absolutely illegal and arbitrary. Vide the decision delivered by this Tribunal in various O.As., as already referred. it has been directed that the Bounded Health Workers shall be regularized from the date of their initial appointment and therefore there is no reason as to why such benefits shall be denied to the present applicants. In view thereof, it is clear that the

case of the applicants is required to be reconsidered for regularization from the date of their initial appointments.”

These observations fully apply to the facts of this case.

8. So far as the question of limitation is concerned, the cause of action is a continuing one. In ***Union of India and others Vs. Tarsem Sing (2008) 8 SCC 648*** it is held –

"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

9. For the reasons discussed hereinabove the impugned order dated 20/08/1997 (Annex-A-1) is quashed and set aside. Services of the applicant shall be treated to have been regularized w.e.f. 20/08/1994. However, he will be entitled to consequential relief relating to arrears only for a period of three years prior to the date of filing of the O.A. The arrears shall be paid within four months from today. No order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 25/08/2023.
dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 25/08/2023.