

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**Original Application No. 535 OF 2017**

DIST. : Osmanabad

Dr. Shrinivas s/o Ramrao Jadhav,  
Age 46 years, Occu. Service as Medical Officer,  
Presently working as Medical Superintendent Class I,  
Sub District Hospital, Omerga, Dist. Osmanabad,  
R/o Omerga, Tq. Omerga,  
Dist. Osmanabad.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through the Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai.  
(Copy to be served through the  
C.P.O., M.A.T.)
2. The Director,  
Public Health Department,  
Arogya Bhavan, Saint George  
Hospital's Compound, Mumbai.
3. The Deputy Director of Health Services,  
Latur Region, Latur,  
Arogya Sankul, Barshi Road, Latur,  
Tq. & Dist. Latur.
4. The Civil Surgeon, Osmanabad,  
Dist. Osmanabad.

-- RESPONDENTS

APPEARANCE :- Shri Shamsundar B. Patil, learned  
Advocate for the applicant.

: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents.

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CORAM : Shri Justice A.H. Joshi, Chairman  
AND  
Shri Atul Raj Chadha, Member (A)

DATE : 2<sup>nd</sup> April, 2018

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

(PER : Shri Justice A.H. Joshi, Chairman.)

1. Heard Shri Shamsundar B. Patil, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent.
2. The matter is taken up for hearing.
3. The applicant was appointed as a Medical Officer Class-II on 23.4.1996 on ad-hoc basis. He has been continued on the same basis by renewing the ad-hoc appointment by various orders.
4. By the order dated 24.6.2006 applicant's employment is regularized. The text of the said order of regularization reads as follows :-

**“महाराष्ट्र वैद्यकीय व आरोग्य सेवा गट अ  
(वेतनश्रेणी रु ८०००-१३५००)  
अस्थाई नियुक्ती कालावधीतील तांत्रिक खंड  
नामनिर्देशनाने नियुक्तीबाबत**

**महाराष्ट्र शासन  
सार्वजनिक आरोग्य विभाग  
शासन निर्णय क्र. मवेअ २२०६/२९३/प्र.क्र. १७८/सेवा -३  
मंत्रालय, मुंबई ४०० ०३२.  
दिनांक २२ जुन २००६**

**वाचा-संचालक आरोग्य सेवा, मुंबई यांचे पत्र क्र. मवेआसे/२/एलटीजे/डॉ.जाधव/**

**शासन निर्णय -**

डॉ. श्रीनिवास रामराव जाधव, वैद्यकीय अधिकारी, गट-अ यांची शासन निर्णय सार्वजनिक आरोग्य विभाग क्र. मवेअ १००१/१७६७/प्र.क्र.४०२/ सेवा-३, दि. ३.४.२००२ अन्वये महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून वैद्यकीय अधिकारी, गट-अ पदावर नामनिर्देशनाने नियुक्ती होण्यापूर्वी ते दि. २४.४.९६ ते दि. २.४.२००२ या कालावधीत वैद्यकीय अधिकारी, गट-अ पदावर अस्थाईरित्या कार्यरत होते. या अस्थाई नियुक्तीच्या कालावधीत त्यांना दि. २४.४.९८, दि. २४.४.९८, दि. २६.४.९९, दि. २७.४.२०००, दि. २८.४.२००१ व दि. २९.

४.२००१ रोजी तांत्रिक खंड देण्यात आले होते. डॉ.श्री निवास रामराव जाधव, वैद्यकीय अधिकारी, गट-अ यांना देण्यात आलेले हे उपरोक्त तांत्रिक खंड क्षमापित करण्यास शासन मान्यता देत आहे.

वरील प्रमाणे तांत्रिक खंड क्षमापित करून डॉ. श्रीनिवास रामराव जाधव, वैद्यकीय अधिकारी, गट-अ यांची दि. २४.४.९६ पासुनची नियुक्ती सलग करण्यात आली असलीतरी नामनिर्दिशानाने नियुक्तीपुर्वीची त्यांची नियुक्ती अभावितच राहणार असुन ती सेवा ज्येष्ठतेसाठी ग्राह्य धरली जाणार नाही.

हे आदेश सार्वजनिक आरोग्य विभाग पत्र क्र. ११९४/२८२६/प्र.क्र. ८७९/सेवा-३, दि. १४.१.९७ अन्वये सामान्य प्रशासन विभाग व वित्त विभागाने या विभागास प्रदान केलेल्या अधिकारानुसार निर्गमित करण्यात येत आहेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व या नावाने.

स्वाक्षरीत/-

(अनिस शेख)  
कार्यासन अधिकारी

प्रति,

संचालक, आरोग्य सेवा, मुंबई  
उपसंचालक, आरोग्य सेवा, लातूर मंडळ, लातूर  
जिल्हा आरोग्य अधिकारी, जिल्हा परिषद, उस्मानाबाद  
महालेखापाल, महाराष्ट्र-२, (लेखा परीक्षा) (लेखी व अनुज्ञेयता), नागपुर  
जिल्हा कोषागार अधिकारी, उस्मानाबाद  
डॉ. श्रीनिवास रामराव जाधव, वैद्यकीय अधिकारी,  
(उपसंचालक, आरोग्य सेवा, लातूर मंडळ, लातूर यांचे मार्फत)  
निवडनस्ती (सेवा-३)''

(reproduced from Annex. A.2 page 24 of O.A.)

5. Applicant's request for voluntary retirement has been rejected by the res. no.1 through order dated 30.3.2017. The text of the said order reads as follows :-

“महाराष्ट्र शासन

क्रमांक: स्वेसेनि-१३१७/प्र.क्र.७४/सेवा-२  
सार्वजनिक आरोग्य विभाग,  
गो.ते.रुग्णालय इमारत संकुल,  
१० मजला, मंत्रालय, मुंबई-४०० ००१  
दिनांक : ३० मार्च, २०१७

प्रति,

संचालक आरोग्य सेवा,  
आरोग्य सेवा संचालनालय,  
आरोग्य भवन, मुंबई.

विषय : स्वेच्छा सेवानिवृत्तीबाबत.....

डॉ. श्रीनिवास रामराव जाधव, वैद्यकीय अधीक्षक,  
उपजिल्हा रुग्णालय, उमरगा

संदर्भ : संचालक, आरोग्य सेवा संचालनालय, मुंबई यांचे पत्र क्र.  
संआसे/कक्ष-१/टे-१/, डॉ. श्रीनिवास जाधव  
स्वेसेनि/७८३/ /१७, दि. १७.३.१७.

उपरोक्त विषयाबाबत संदर्भाधीन पत्राव्यये सादर केलेल्या डॉ. श्रीनिवास रामराव जाधव यांच्या स्वेच्छा सेवा निवृत्ती प्रस्तावाच्या अनुषंगाने कळविण्यात येते की, डॉ. जाधव यांची २० वर्षांची अर्हताकारी सेवा पूर्ण होत नसल्याने, त्यांनी महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम, १९८२ मधील नियम ६६ (१) अनुसार दिलेली स्वेच्छा सेवा निवृत्तीची विनंती मान्य करता येत नाही. सदर वस्तुस्थिती डॉ. जाधव यांच्या तात्काळ निदर्शनास आणण्यात यावी.

स्वाक्षरीत/-  
(वि.पु. घोडके)  
अवर सचिव, महाराष्ट्र शासन

प्रत :

- १) उपसंचालक, आरोग्य सेवा, लातूर मंडळ, लातूर.
- २) डॉ. श्रीनिवास रामराव जाधव, वैद्यकीय अधीक्षक, उपजिल्हा रुग्णालय, उमरगा  
(संचालक, आरोग्य सेवा, आरोग्य सेवा संचालनालय, मुंबई यांच्यामार्फत)
- ३) निवडनस्ती (सेवा-२)”

**(reproduced from Annex. A.6 page 72 of O.A.)**

6. Applicant has applied for voluntary retirement considering the fact that the breaks in service are condoned / regularized, the applicant has completed 20 years of service on 31.3.2017.

7. Applicant's application for voluntary retirement has been rejected. According to the applicant rejection is done without application of mind, and by practicing discrimination.

8. In the O.A. the applicant's pleading that the applicant was appointed as a Medical Officer Class-II on ad-hoc basis, his ad-hoc services were continued by the different orders and the breaks were condoned / regularized for all purposes, except for the purpose of

counting the seniority, are admitted by the respondents in the affidavit in reply.

9. The applicant has averred in the O.A. as ground nos. (xv), (xvi), (xvii) & (xviii) that four other Medical Officers who are similarly situated to that of applicant in all respects have been granted voluntary retirement upon their completion of 20 years span of employment including the duration at their service on ad-hoc basis. The factual averments relating to four officers have been admitted in the affidavit in reply filed by the res. nos. 1 to 4 in paragraph nos. 22, 23, 24 & 25. This admission is without any ambiguity, explanation or a rider. Text of paragraphs 22 to 25 of the said affidavit of Dr. Vidyadhar Manohar Kulkarni, Deputy Director of Health Services, Latur Circle, Latur, who has affirmed the affidavit for respondent No. 1 State and for other respondents read as follows :

***“22. With reference to para no. 6 (xv) I say and submit that Dr. Pandurang Kondiba Jadhav was working as a Medical Officer for the period 13.07.1990 to 08.09.2012 on temporary basis. Dr. Jadhav was regularly appointed on the recommendation made by the M.P.S.C. by an order dated 09.09.1992 during the temporary period Dr. Jadhav was given technical break. The government by the order dated 7.01.2005 has condoned the break and continued the earlier temporary service from 13.7.1990. In the order dated 7.01.2005 it is specifically mentioned that though temporary service was continued his earlier service prior to M.P.S.C. appointment will be treated as fortuitous service. It is true that Dr. Jadhav was granted permission to retire voluntarily by an order dated 15.3.2011.*”**

**23. With reference by para no. 6 (xvi) I say and submit that Dr. (Smt.) Arunadevi Vidyadhar Mhaske was working as a Medical Officer for the period 29.10.1993 to 19.07.1995 on temporary basis. Dr. Mhaske was regularly appointed on the recommendation made by the M.P.S.C. by an order dated 20.07.1995 during the temporary period Dr. Mhaske was given technical break. The government by the order dated 10.12.2013 has condoned the break and continued the earlier temporary service from 29.10.1993. In the order dated 10.12.2013 it is specifically mentioned that though Dr. Mhaske temporary service was continued his earlier service prior to M.P.S.C. appointment will be treated as fortuitous service and will not be counted for the seniority. It is true that Dr. Mhaske was granted permission to retire voluntarily by an order dated 22.4.2015.**

**24. With reference to para no. 6 (xvii) I say and submit that Dr. Umakant Vasantrao Zadke was working as a Medical Officer for the period 27.4.1995 to 05.07.1998 on temporary basis. Dr. Zadke was regularly appointed on the recommendation made by the M.P.S.C. by an order dated 06.07.1998 during the temporary period Dr. Zadke was given technical break. The government by the order dated 22.07.2007 has condoned the break and continued the earlier temporary service from 27.04.1995. In the order dated 22.07.2007 it is specifically mentioned that though temporary service was continued his earlier service prior to M.P.S.C. appointment will be treated as fortuitous service and will not be counted for the seniority. It is true that Dr. Zadke was granted permission to retire voluntarily by an order dated 2.09.2016.**

**25. With reference to para no. 6 (xviii) I say and submit that Dr. Vinod Dhondiba Mahindrakar was working as a Medical Officer for the period 21.07.1987 to 28.05.1990 on temporary basis. Dr. Mahindrakar was regularly appointed on the recommendation made by the M.P.S.C. by an order dated 29.05.1990 during the temporary period Dr. Mahindrakar was given technical break. The government by the order dated 24.07.2008 has condoned the break and continued the earlier temporary service from 21.07.1987. In the order dated 24.07.2008 it is specifically mentioned that**

***though Dr. Mahindrakar temporary service was continued his earlier service prior to M.P.S.C. appointment will be treated as fortuitous service and will not be counted for the seniority. It is true that Dr. Mahindrakar was granted permission to retire voluntarily by an order dated 25.07.2008.***

***Meanwhile General Administration Department on the basis of order given by the Supreme Court of India has issued the circular on dated 25.8.2005. As per the said circular Medical Officers break in service shall be continued only for the purpose of seniority.”***

***(Quoted from page Nos. 94 to 97 of paper book of O.A.)***

10. On 27.2.2018 this O.A. was heard and this Tribunal passed order and granted time to the respondents to take corrective measures in the applicant's case / claim in the background of admitted facts as regards discriminatory treatment.

11. Though one month's period has lapsed, no corrective measures have been taken by the respondent no. 1. On the contrary, today learned P.O. states that time has been sought for filing affidavit. In fact affidavit in reply is already on record and facts as to cases are cited by applicant as those, whose request for voluntary retirement is accepted (as pleaded in ground Nos. xv to xviii), are unambiguous and those are candidly admitted.

12. It is very shocking that, when Dr. Vidyadhar Manohar Kulkarni, Deputy Director of Health Services, has filed affidavit in reply on behalf of res. nos. 1 to 4 and admitted the facts pleaded in ground para nos. (xv) to (xviii), now an adjournment is sought for filing affidavit. In fact, no new facts are pleaded and no new plea is

to be replied. It has to be borne in mind that the Deputy Director, Health Services (Dr. Vidyadhar Kulkarni) has filed affidavit in reply on behalf of res. nos. 1 to 4 after due scrutiny of papers and approval of affidavit from the Govt. - the Respondent No. 1 particularly in the background of applicant's pleading of discrimination.

13. It is a matter of record that the pleadings of discrimination are tacitly admitted by admitting the facts upon verification yet further time is sought for filing affidavit, which is totally unnecessary and unjustified. One cannot make out, as to which record and facts are to be explored for which now time is sought for filing additional affidavit, in the background of admitted facts.

14. In the foregoing premises, the attempt of the Government in seeking time for filing affidavit, is nothing but unnecessarily stretching & dilating the issue. Such tactics are contrary to the Government's litigation policy, where Govt. accepts the facts which are pleaded but denies the relief.

15. In the premises discussed hereinbefore, the applicant has made out the case of grossly arbitrary and discriminatory act of the Government in refusal to grant applicant's request of voluntary retirement particularly when similarly situated persons have been granted the same benefit, and that too on factually erroneous ground.



16. In the circumstances, in the interest of justice, present O.A. deserves to be allowed and is allowed as follows :-

- (a) Impugned communications dtd. 30.3.2017 (paper book page 72) and 15.6.2017 (paper book page 74) issued by the res. no. 1 are hereby quashed and set aside.
- (b) This Tribunal directs that applicant's request for voluntary retirement submitted by him through the notice dated 31.3.2017 (paper book page 73) be accepted and consequential orders be issued within 30 days from the date of this order.
- (c) In case Govt. fails to pass an eloquent and express order of acceptance of voluntary retirement, consequences as prescribed by Maharashtra Civil Services (Pension) Rules, 1982 such as of deeming effect shall follow and applicant shall be free to act on that basis.
- (d) In the circumstances, we leave the parties to bear own costs.

**(Atul Raj Chadha)**  
**MEMBER (A)**

**(A.H. Joshi, J)**  
**CHAIRMAN**

**Place : Aurangabad**  
**Date : 2<sup>nd</sup> April, 2018**