

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 376 OF 2013

DISTRICT : - BEED.

Smt. Nilam Nanasaheb Nemane,

Age: 56 years, Occu. Doctor,
R/o. Sub-district hospital,
Parli-Vaijnath, Dist. Beed.

.. APPLICANT.

V E R S U S

1. **The State of Maharashtra,**
(Through the Secretary, Health
Department, Copy to be served
On C.P.O. MAT Bench at
Aurangabad)
2. **The Director of Health Services,**
Sachivalay, Mumbai.
3. **The Joint Director of Health Services,**
Arogyaseva Sanchalanalay,
New Central Building, First Floor,
Pune-1.
4. **Medical Superintendent,**
Parli-V, Tq. Parli, Dist. Beed. .. RESPONDENTS.

APPEARANCE : Shri Arun V. Rakh, learned Advocate
for the Applicant.

: Mrs. Deepali S. Deshpande – learned
Presenting Officer for the
respondents.

CORAM : **HON'BLE SHRI RAJIV AGARWAL,**
VICE CHAIRMAN (A).
AND
: **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **24TH MARCH, 2017.**

J U D G M E N T

[Per : Hon'ble Shri B.P. Patil, Member (J)]

1. The applicant viz. smt. Nilam Nanasaheb Nemane has challenged the termination order dated 12.06.2013 issued by the respondent No. 2 terminating her services as Medical Officer.

2. The applicant was appointed to officiate in MM & HS class-III Medical Officer at General Hospital, Ahmednagar on 1.10.1982 for one year. Thereafter, her appointment was continued for twelve months without break and again it was continued for six months. The applicant rendered her services without break for two years and six months. Thereafter, the respondents gave her six months' appointment with break of one year till the year 1990. On

12.3.1990 the respondent No. 3 terminated the service of the applicant on the ground that there was no need of her seasonal service to the Government. The applicant challenged the order of termination in the Hon'ble Bombay High Court Bench at Aurangabad by filing Writ Petition No. 1760/1990. The Hon'ble High Court stayed the order of termination and thereafter transferred the matter to this Tribunal. The said matter was decided on 31.3.2005 by this Tribunal in terms of interim order dated 3.7.1990 passed by the Hon'ble High Court and termination order dated 12.3.1990 has been quashed and set aside. After the interim order dated 3.7.1990 passed by the Hon'ble High Court, the respondent authority issued appointment order in favour of the applicant for the period of three months instead of six months with one day break till the date of impugned order. After decision of this Tribunal, respondent No. 2 inquired with the applicant about pendency of the matter regarding termination. The applicant supplied the copy of judgment and order passed by this Tribunal to him, but the respondent authority intentionally neglected the order.

3. In the year 1994 a proposal was sent to the Government for regularization of the candidates who had been appointed before establishment of the Maharashtra Secondary Service appointment commissions and Regional Secondary Service Appointment Commissions i.e. before 17.2.1988, Maharashtra Medical and Health Service, Medical Officer, Class-III on temporary basis and thereafter their service period was continued time to time giving technical break of one day for the public interest. After considering the said proposal the Government of Maharashtra passed Government Resolution No. MMT/1090/836/CR-51/SEVA-5 dated 28.10.1994 and permitted to regularize the service / appointment of the said Medical Officers. The applicant, therefore, filed an Original Application bearing No. 229/2012 for regularization of her service before this Tribunal. It was rejected by this Tribunal by its order dated 16.4.2012, a copy of which is placed on record at page-23 of paper book (Exhibit 'E'). The respondents had not considered the said facts. The respondents had passed the termination order under challenge without recording reasons. They have not

considered that the applicant is working since the year 1982 and she will be retiring in the month of October. Therefore, she has filed the present Original Application and prayed to quash and set aside the termination order dated 12.6.2013 and to reinstate her as a Medical Officer.

6. Respondent Nos. 1 to 3 has filed affidavit in reply and denied the allegations made by the applicant against them. It is their contention that the applicant was appointed as a Medical Officer, Class-III in stop gap arrangement on temporary basis on 1.10.1982. Thereafter, her service was continued with one day break and her service was terminated by respondent No. 2 by an order dated 12.3.1990. The said order was challenged before the Hon'ble Bombay High Court Bench at Aurangabad by filing Writ Petition No. 1760/1990. The Hon'ble High Court granted stay to the termination order and thereafter the said Writ Petition was transferred to this Tribunal vide Transfer Application No. 2337/1991. This Tribunal quashed and set aside the termination order

of the applicant by its order dated 31.3.2005. Thereafter, respondent No. 2 has issued appointment order on temporary basis in favour of the applicant with one day technical break till the date of impugned order. The applicant is not entitled to get monetary benefits without regularization of her service. The applicant, therefore, approached this Tribunal by filing O.A. No. 229/2012, but this Tribunal rejected the prayer of the applicant and disposed of the said O.A. on 14.6.2012. The respondent No. 2 communicated the decision to the applicant vide letter No. 10728-32 dated 20.4. 2013 and called upon the applicant to file say on termination of her temporary service in view of the order passed by this Tribunal on 16.4.2012 and thereafter issued termination order on the basis of order passed by this Tribunal. The respondents submitted that there is no merit in the present Original Application and, therefore, urged to dismiss the same.

7. We have heard the arguments advanced by Shri Arun V. Rakh – learned Advocate for the applicant and Mrs. Deepali S. Deshpande – learned Presenting Officer for

the respondents, at length. We have also perused the application, affidavit, affidavit in reply filed by respondent Nos. 1 to 3. We have also carefully gone through the documents placed on record by the learned Advocates for the respective parties.

8. Learned Advocate for the applicant submitted that the applicant is working as a Medical Officer w.e.f. 1.10.1982. Initially she worked continuously without break for two and half years and thereafter she was appointed continuously till the order dated 1980 with a break of one day after six months. On 12.3.1990 she was terminated by respondent No. 3 and the said termination order was challenged by her before the Hon'ble High Court by filing Writ Petition No. 1760/1990, wherein the Hon'ble High Court granted stay to the order of termination and thereafter the said Writ Petition was transferred to this Tribunal vide Transfer Application No. 2337/1991. The said T.A. No. 2337/1991 has been decided by this Tribunal on 31.03.2005 and it was disposed of in terms of

interim order dated 3.7.1990 passed by the Hon'ble Bombay High Court and the termination order dated 12.3.1990 has been quashed and set aside. Thereafter, the respondents issued appointment orders for three months with one day break till passing the impugned order of termination.

9. He has further argued that vide Government Resolution No. MMT/ 1090/836/CR-51/SEVA-5 dated 28.10.1994, the Government of Maharashtra permitted to regularize the service / appointment of the Medical Officers. Therefore, the applicant filed Original Application bearing No. 229/2012 before this Tribunal for regularization of her services and this tribunal rejected the prayer of the applicant for regularization. He has argued that without considering the above said fact and without giving reasons the respondents terminated the services of the applicant on 12.7.2013. He has submitted that the applicant is on the verge of retirement and without considering the said fact the respondent authority has

issued the impugned order of termination. He has submitted that the order is illegal and he, therefore, prayed to quash and set aside the impugned order of termination.

10. The learned Presenting Officer has submitted that the applicant was appointed temporarily to the post of Maharashtra Medical and Health Services Class-III in a stop gap arrangement. The applicant's services were terminated by order dated 12.3.1990, but the said order has been quashed and set aside in T.A. No. 2337/1991 by this Tribunal as the Writ Petition No. No. 1760/1990 filed in the Hon'ble Bombay High Court Bench at Aurangabad has been transferred to this Tribunal. He has submitted that the service of the applicant has not been regularized and, therefore, no monetary benefits can be given to the applicant without regularizing the service of the applicant. The applicant filed O.A. No. 229/2012 before this Tribunal for regularizing her service, but the Tribunal rejected the claim of the applicant and disposed of O.A. No 229/2012

on 16.4.2012. Thereafter, the respondents called upon the applicant to produce decision in that regard.

11. He has submitted that the service of the applicant being temporary cannot be regularized in view of the judgment of the Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA VS. UMA DEVI AND OTHERS reported in 2006-AIR-SCW-1991**. He has also placed reliance on the Circular dated 25.8.2005, wherein it has been directed that the regularization cannot be given to the employees, whose services are ad hoc in nature.

12. We have carefully perused the documents placed on record by the learned Advocate for the respective parties. The applicant was appointed on ad hoc basis. Her service was continued time to time with one day technical break. Her service has been terminated by the respondents by order dated 12.3.1990. The said order has been challenged by the applicant in Writ Petition No.

1760/1990 before the Hon'ble Bombay High Court Bench at Aurangabad. The Hon'ble High Court granted stay to the termination order and thereafter the said Writ Petition was transferred to this Tribunal vide Transfer Application No. 2337/1991. The said Transfer Application has been decided on 31.3.2005 by this Tribunal and the termination order of the applicant dated 12.3.1990 has been quashed and set aside. Thereafter, the applicant has filed Original Application No. 229/2012 for regularization of her service, but it was rejected on 16.4.2012. Thereafter, the impugned termination order dated 12.6.2013 came to be passed by respondent No. 3. Before issuing the termination order, notices were issued to the applicant calling upon her to inform about the status of the T.A. No. 2337/1991 (W.P. No. 1760/1990). In response to the said notice, the applicant produced a copy of the judgment passed by this Tribunal in O.A. No. 229/2012 dated 16.4.2012. As the service of the applicant has not been regularized, the respondent No. 3 terminated her service. All these facts are sufficient to show that there was no illegality on the part of the

respondent No. 3 in passing the impugned order dated 12.6.2013. The respondent No. 3 had given an opportunity to the applicant before passing the impugned order. He has passed the impugned order on the basis of earlier decision of this Tribunal. Therefore, the respondent No. 3 cannot be faulted. Therefore, we do not find any substance in the submissions made by the applicant and hence, the present Original Application deserves to be dismissed. Hence, the present Original Application stands dismissed accordingly with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.376-2013(hdd)-2017(DB)