

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 404 OF 2016

DISTRICT: - OSMANABAD.

Dr. Avinash S/o. Tukaram Landge,
Age : 45 years, Occu. Service,
working as Medical Officer,
Primary Health Center, Para,
Tq. Washi, Dist. Osmanabad.
R/o. Moha Road, Kallamb,
Tq. Kallamb, Dist. Osmanabad.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
(Copy to be served on the C.P.O.,
M.A.T. Aurangabad.)
2. The Director of Health Services,
Public Health Department,
Maharashtra State,
Mantralaya, Mumbai-32.
3. The Deputy Director of Health Services,
Latur Division, Latur.
4. The Chief Executive Officer,
Zilla Parishad, Osmanabad.

.. RESPONDENTS

APPEARANCE : Shri A.S. Shelke – learned Advocate
for the applicant.

- : Smt. Sanjivani Deshmukh-Ghate –
learned Presenting Officer for the
respondent Nos. 1 to 3.
- : Shri A.A. Nimbalkar – learned Advocate for
respondent No. 4.
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CORAM : **HON'BLE SHRI B.P. PATIL,
MEMBER (J)**

DATE : **8TH SEPTEMBER, 2017.**

ORDER

1. By filing the present Original Application, the applicant has challenged the impugned order dated 05.05.2016 passed by respondent No. 4, Chief Executive Officer, Zilla Parishad, Osmanabad, by which he was placed under suspension and prayed to quash and set aside the said order.

2. The applicant was appointed as Medical Officer, Group-II on ad hoc basis by an order dated 12.01.1995 on certain terms and conditions issued by the Deputy Director of Health Services, Aurangabad Division, Aurangabad. On 13.08.1997, the Deputy Director, Aurangabad Division, Aurangabad, issued one more order

appointing the applicant on ad hoc basis for a period of one year or till regular candidate from Maharashtra Public Service Commission (for short 'the Commission) is made available and accordingly he was posted at Primary Health Centre, Anala, Dist. Osmanabad. The applicant continued in the employment as a Medical Officer on ad hoc basis till February, 2009.

3. The applicant came to be absorbed on the post of Medical Officer, Group 'A', Maharashtra Medical and Health Services in view of the Government Resolution dated 09.02.2009, as he has completed 3 years of service as on 31.12.2007 on ad hoc basis and in view of the Medical Officers (Absorption of Medical Officer appointed on Ad hoc basis) Rules, 2009. The applicant was working as a Medical Officer at Primary Health Centre, Para, Tq. Washi, Dist. Osmanabad. At that time, one Smt. J.M. Jadhav, was working as Health Worker at Sub Centre Lakhangaon, Tq. Washi, Dist. Osmanabad. On 22.1.2016 she filed a complaint alleging that the applicant harassed her sexually. On the basis of her complaint dated

24.01.2016, the F.I.R. bearing No. 16/2016 came to be registered at Police Station, Washi, against the applicant under Section 354-A(1)(i) of I.P.C. The applicant was arrested, but he was released on bail immediately as the offence is bailable. The said incidence was reported in the Daily Newspaper. Therefore, Taluka Health Officer conducted an inquiry. Shri Vijay Deshpande, Health Worker, Sub Centre, Lakhangaon, gave his statement on 27.01.2016. On 9.2.2016, the District Health Officer, Zilla Parishad, Osmanabad, issued notice to the applicant and called upon him to submit his explanation as to why departmental inquiry should not be initiated against him for alleged misconduct.

4. The applicant submitted his reply to the show cause notice on 20.02.2016 and denied all the allegations. On 5.5.2016, the respondent No. 4 i.e. Chief Executive Officer, Osmanabad, issued the impugned order and suspended the applicant w.e.f. 25.01.2016 in view of the provisions of Rule 4 (1) (c) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short "the M.C.S. (D&A)

Rules, 1979”). The copy of the said order is served on the applicant on 9.5.2016 through the Taluka Health Officer, Washi. It is contention of the applicant that he has regularly worked as Medical Officer, Primary Health Officer, Para, Tq. Washi, District Osmanabad from 25.1.2016 till 9.5.2016. It is contention of the applicant that he has been appointed as Medical Officer, Group-A under the orders of State Government. The Director of Health Services i.e. respondent No. 2 is the appointing authority of the applicant. Respondent No. 4 i.e. the Chief Executive Officer, Zilla Parishad, Osmanabad, is not subordinate authority of the Director of Health Services and also he is not a disciplinary authority of the applicant. No powers of appointing authority had been delegated to the respondent No. 4 by the respondent No. 2 by express General or Special Order. Respondent No. 4 has no authority to suspend him, as he is not competent authority and, therefore, the impugned order passed by the respondent No. 4 is illegal and without authority. It is his further contention that the rules do not provide for issuing the suspension order with retrospective effect.

The impugned order has been issued with retrospective effect, which is illegal and, therefore, he prayed to quash the impugned order of suspension passed by respondent No. 4 by filing the present Original Application.

5. Respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. It is their contention that one Smt. Jayshree Mahadeo Jadhav, working as Health Worker at Primary Health Center, Para, Tq. Washi, District Osmanabad, at Sub-Center Lakhangaon, Tq. Washi, Dist. Osmanabad, lodged FIR bearing No. 16/2016 at Police Station Washi, Tq. Washi, Dist. Osmanabad under Section 354-A (1) against the applicant making grave allegation of her sexual harassment by the applicant. Respondent No. 4, the Chief Executive Officer, Zilla Parishad, Osmanabad, directed to the Taluka Health Officer to conduct an inquiry. After receiving the inquiry report, respondent No. 4 issued show cause notice to the applicant. The applicant had given reply to it. The applicant has arrested by the Police, Washi in the complaint filed by Smt. Jayshree Mahadeo

Jadhav and criminal case has been registered against him. It is their contention that respondent No. 4 issued the suspension order suspending the applicant on the basis of provisions of Rule 4 (1) (c) of the M.C.S. (D&A) Rules, 1979. It is contended by them that as per the Departmental Enquiries Manual, 1991 Chapter III, Rule 3.2 (4) disciplinary cases of Government servants whose services are lent by one department of Government to another department of Government or to any other Government of India or to any authority subordinate to local or other authority (including any company or corporation owned or controlled by Government) should be dealt with by borrowing authority. The borrowing authority shall have the powers of appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him. The borrowing authority should inform the authority, which lent the services of the Government servant, of the circumstances leading to the order of suspension of such Government servant on the

commencement of the disciplinary proceeding, as the case may be. It is their contention that the respondent No. 4 communicated the appointing authority about the suspension of the applicant vide letter dated 6.5.2016. It is their contention that respondent No. 4 passed the order in view of the provisions of M.C.S.R. and there is no illegality in the impugned order passed by the respondent No. 4. The applicant was suspended and detained in Police or Judicial custody. Therefore, he was placed under suspension from the date of arrest i.e. on 25.1.2016. It is their contention that the impugned order is just and proper and, therefore, they prayed to reject the Original Application.

6. Respondent No. 4 has also filed affidavit in reply and raised the similar contentions that of the contentions of the respondent Nos. 1 to 3 and prayed to reject the Original Application.

7. Heard Shri Shri A.S. Shelke – learned Advocate for the applicant, Smt. Sanjivani Deshmukh-Ghate – learned Presenting Officer for the respondent Nos. 1 to 3 and Shri

A.A. Nimbalkar – learned Advocate for respondent No. 4. I have perused the affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the sides.

8. Admittedly, the applicant was appointed as Medical Officer on ad hoc basis by an order dated 12.01.1995 issued by the Deputy Director of Health Services, Aurangabad Division, Aurangabad. Thereafter, he was continued in service for one year or till regular candidate is made available from the Commission and accordingly he was posted at Primary Health Centre, Anala, Dist. Osmanabad. The applicant continued in the employment as a Medical Officer on ad hoc basis till February, 2009. In view of the Medical Officers (Absorption of Medical Officer appointed on Ad hoc basis) Rules, 2009, the applicant came to be absorbed on the post of Medical Officer, Group 'A', Maharashtra Medical and Health Service and in view of the Government Resolution dated 9.2.2009. Admittedly, the applicant is working as Medical Officer at Primary Health Centre, Para, Tq. Washi, District

Osmanabad in the year 2016. It is admitted fact that one Smt. J.M. Jadhav, Health Worker, Sub Centre Lakhangaon, Tq. Washi, Dist. Osmanabad, filed complaint on 22.1.2016 against the applicant alleging her sexual harassment. On the basis of her complaint, the crime bearing No. 16/2016 came to be registered with Police Station, Washi, against the applicant under Section 354-A(1)(i) of I.P.C. Admittedly, the said incidence was published in the Daily Newspaper and thereafter, Taluka Health Officer conducted an inquiry and submitted his report. Admittedly, on 9.2.2016 a show cause notice was issued by the District Health Officer, Zilla Parishad, Osmanabad, to the applicant to which the applicant has filed reply on 20.02.2016. Admittedly, on 05.05.2016, the respondent No. 4 Chief Executive Officer, Zilla Parishad, Osmanabad, passed the impugned order and suspended the applicant w.e.f. 25.1.2016 by exercising the power under Rule 4 (1) (c) of the M.C.S. (D&A) Rules, 1979.

9. Learned Advocate for the applicant has submitted that the applicant is appointed as a Medical Officer, Group

'A' by the Government and he is working under the control and supervision of Director of Health Services, Government of Maharashtra. He has argued that the applicant is posted at Primary Health Center, Zilla Parishad, Osmanabad. He has argued that the pay, salary and allowances of the applicant used to be paid by the Government of Maharashtra. The Director, Health Services, is the appointing and disciplinary authority of the applicant. Respondent No. 4, Chief Executive Officer, Zilla Parishad, Osmanabad, is not the appointing and disciplinary authority. He has further argued that respondent No. 2 i.e. the Director of Health Services never delegated the powers of disciplinary authority to the respondent No. 4 by general or special order. Therefore, the respondent No. 4 is not empowered to issue the suspension order of the applicant. The suspension order issued by the respondent No. 4 is illegal and against the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules. He has further submitted that the impugned order issued by the respondent No. 4 with retrospective effect from 25.01.2016 is against the

provisions of Maharashtra Civil Services Rules and, therefore, it is bad in law. Therefore, he prayed to allow the Original Application and to quash the impugned order, as it is illegal.

10. Learned Advocate for the applicant has submitted that issue regarding the powers of Chief Executive Officer, Zilla Parishad, to place under suspension the Medical Officer at P.H.C. under the control of Zilla Parishad, has been decided by this Tribunal in **O.A. No. 60/2014 [Dr. Vilas Anantrao Gupte Vs. State of Maharashtra & Others] on 26.6.2014**. He has submitted that this Tribunal has also decided the similar issue in O.A. Nos. 635 & 661 both of 2014. He has submitted that in all the above OAs this Tribunal held that the Chief Executive Officer, Zilla Parishad, has no authority to place the Medical Officer under suspension and, therefore, the order passed by this Chief Executive Officer placing the Medical Officer under suspension has been quashed and set aside. He has submitted that the order passed by this Tribunal in O.A. Nos. 635 & 661 both of 2014 had been challenged

before the Hon'ble Bombay High Court Bench at Aurangabad by filing W.P. Nos. 5237, 5242 & 5248 all of 2015 and the Hon'ble High Court upheld the view taken by this tribunal and disposed of the writ petitions. The copy of the order passed by this Tribunal in O.A. No. 60/2014 as well as copy of the judgment delivered by the Hon'ble High Court in Writ Petition No. 5237/2015 is placed on record.

11. He has further submitted that the impugned suspension order dated 05.05.2016 has been passed by the respondent No. 4 placing the applicant under suspension with retrospective effect from 25.01.2016. Now more than 6 months has been lapsed since the date of order, but it had not been revoked and, therefore, the suspension cannot be continued for indefinite period. In support of his submission he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA reported in 2015 AIR (SC) 2389.**

12. Learned Advocate for the applicant has attracted my attention towards G.R. dated 28th March, 2014, wherein it

has been specifically mentioned that the Chief Executive Officer has to make preliminary enquiry in respect of the complaint against the Medical Officer and submit his proposal along with his opinion to the Government. He has attracted my attention towards G.R. dated 28th March, 2012 filed on the record. He has submitted that the respondent No. 4 has not considered the said aspect and the legal position and passed the impugned suspension order without authority and, therefore, he prayed to set aside the same.

13. Learned Presenting Officer for respondent Nos. 1 to 3, has submitted that the serious allegations of sexual harassment of the Health Worker, working under the applicant were made against him and considering the charges, the respondent No. 4 has rightly issued the order of suspension of the applicant, in view of the provisions of Rule 4 (1) (c) of the M.C.S. (D&A) Rules, 1979 and reported the matter to the respondents. He has submitted that the applicant was posted at Primary Health Center, Para, Tq. Washi District Osmanabad, which comes under the

jurisdiction of the respondent No. 4. All the administrative and other issues related with the Primary Health Centre are to be dealt with by the respondent No. 4. Therefore, respondent No. 4 has taken the appropriate action against the applicant and, therefore, he supported the impugned order passed by the respondent No. 4.

14. Learned Presenting Officer has submitted that the respondent No. 4 has directed Taluka Health Officer to make an enquiry in the alleged allegations against the applicant. Taluka Health Officer conducted the enquiry and submitted his report and after giving an opportunity of hearing to the applicant, the respondent No. 4 passed the impugned order, in view of the provisions of Rule 4 (1) (c) of the M.C.S. (D&A) Rules, 1979. He has submitted that the applicant was arrested on 25.1.2016 and, therefore, he has been suspended w.e.f. his date of arrest. He has further submitted that the services of the Medical Officers, who are serving at P.H.C., Zilla Parishad have been borrowed by the Zilla Parishad from the Government of Maharashtra. Therefore, in view of the provisions of

Rule 14 of the M.C.S. (D&A) Rules, 1979, the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against the said employee i.e. Medical Officers. He has submitted that in view of the provisions of Departmental Enquiries Manual, 1991, the borrowing authority i.e. respondent No. 4 is empowered to take necessary action as an appointing authority against the applicant and to place him under suspension and, therefore, the order passed by the respondent No. 4 is legal and in view of the provisions of Rule 4 (1) (c) of the M.C.S. (D&A) Rules, 1979. He has attracted my attention towards the provisions of Rule 3.2 (4) of Departmental Enquiries Manual, 1991.

15. Learned Presenting Officer for the respondents has submitted that Rule 14 of the M.C.S. (D&A) Rules, 1979 had not been considered by this Tribunal while deciding the O.A. Nos. 60, 635 & 661 all of 2014. Not only this,

but the said provision has not been cited before the Hon'ble High Court while deciding the W.P. No. 3237/2015 with W.P. No. 5242/2015 and 5248/2015. As the said rule has not been considered by this Tribunal, as well as, by the Hon'ble High Court, the decisions on which the applicant has placed reliance are not attracted in this case.

16. It is further submitted on behalf of the res. no. 4 that the Government Resolution dated 28th March, 2012 is not in consonance with the provisions of M.C.S. Rules and, therefore, it will not prevail over the Rule 14 of M.C.S.R. as Rules have been framed in view of the provisions of Article 309 of Constitution of India. In support of his submission he placed reliance on the judgment delivered by the Hon'ble Bombay High Court in the case of **SHRINIVAS GOVIND SAMANT & OTHERS VS. STATE OF MAHARASHTRA & OTHERS** reported in 2007 (6) Bom. C.R. 766, wherein it has been observed as follows: -

"11.

.. .. The said Rule being in the form of subordinate legislation under Article 309 of the Constitution of India would, therefore, prevail over the Government Resolution dated 11.11.1983 and the circular dated 24.7.1991 on the basis of which the impugned orders have been passed against the petitioners. In our view therefore, the action taken by the respondents for making recoveries, and re-fixation of pay of the petitioners is unsustainable.”

17. Learned Advocate for respondent No. 4 has submitted that a crime has been registered against the applicant on the basis of the complaint filed by one Smt. J.M. Jadhav, Health Worker, Sub Centre Lakhangaon, Tq. Washi, Dist. Osmanabad and the applicant was arrested in that crime. Therefore, the respondent has placed him under suspension from the date of his arrest i.e. from 25.01.2016, in view of the provisions of Rule 4 (2) (a) of the M.C.S. (D&A) Rules, 1979. He has submitted that in view of the said provision the impugned order is legal one and, therefore, no interference is called for in the impugned order.

18. I have gone through the documents placed on record. I have perused Rule 14 of the M.C.S. (D&A) Rules, 1979, which provides the powers of the borrowing authority regarding the officers lent by one department of Government to another department of the Government or to any other Government in India or to an authority subordinate thereto or to a local or other authority. The said rule provides that the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him. No doubt the said provision confers right on the borrowing authority to suspend the Government servant borrowed by it. In order to attract the said provision, it is necessary to the respondents to establish that the services of the Medical Officers including the applicant have been borrowed by the Zilla Parishad from the Department of Medical Health service. Neither the respondent No. 4 nor the respondent Nos. 1 to 3 have placed documentary evidence on record to show that the service of the Medical Officers, who are

appointed by the department of Medical Health Service of Government of Maharashtra have been lent to local authority i.e. Zilla Parishad. Except bald statement made on behalf of the respondents there is nothing on record to show that the services of the applicant, who is Medical Officer has been borrowed by the respondent No. 4. Therefore, the rule 14 of the M.C.S. (D&A) Rules, 1979 is not attracted in this case. Therefore, the respondent No. 4 has no authority or power to exercise the powers of the appointing authority or disciplinary authority for placing the applicant under suspension.

19. Learned Advocate for the res. no. 4 has submitted that at the most it can be said that the applicant was deputed on the establishment of the respondent No. 4. He has submitted that the deputation means assignment of an employee from one department to another department. He has submitted that considering the said definition it can be held that the applicant was on deputation with the respondent No. 4. In support of his submission, he has placed reliance on the judgment delivered by the Hon'ble

Supreme Court in the case of **UMAPATI CHOUDHARY VS. STATE OF BIHAR AND ANOHTER** reported in **(1999) 4 SUPREME COURT CASES 659**, wherein it has been observed as follows: -

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.....”

20. Learned Advocate for res. no. 4 has submitted that if it is held that the applicant was sent on deputation on the

establishment of the res. no. 4 then the powers under Rule 14 of M.C.S. (Discipline & Appeal) Rules, 1979 can be entertained by the res. no. 4 in view of definition of 'deputation' as quoted above.

21. I have gone through the above said definition of 'deputation'. Even considering the said aspect also it cannot be said that the applicant was sent on deputation on the establishment of respondent No. 4, as there is no lending or borrowing of the employee between the Medical Health Services and respondent No. 4. There is no specific order of deputation of the applicant on the establishment of res. no. 4. Therefore, I do not find substance in the submission of the learned Advocate for the applicant in that regard.

22. The applicant was appointed by respondent No. 2, Director Health Services. The respondent No. 2 is the appointing, controlling and disciplinary authority of the applicant. The respondent Nos. 1 to 3 i.e. the State Government used to pay salary to the applicant. He is the employee of the State Government. There is nothing on

record to show that the respondent No. 2 i.e. the Director of Health Services, Public Health Department, Government of Maharashtra, by special or general order delegated the powers of the appointing authority to the respondent No. 4. Therefore, respondent No. 4 cannot be said to be disciplinary authority of the applicant, who is Medical Officer. The Government Resolution dated 28th March, 2012 provides that in case there are complaints against the Medical Officer working in the Primary Health Center then the Chief Executive Officer, Zilla Parishad, has to make preliminary enquiry and to submit his report and send proposal to the Government along with his opinion/recommendation to the Government, if he finds substance in the complaint. It also provides that if the complaint is of a serious nature and it was necessary to keep away the concerned officer from discharging duties, then he has to place the Medical Officer at Headquarter of the Zilla Parishad and obtain necessary orders from the Government regarding his further posting within 7 days. It has been specifically mentioned in the G.R. that the Chief Executive Officer has no power to withdraw his

charge without getting approval of the appointing authority. The provision of the said G.R. is material and, therefore, I reproduce the same as under.

“४. प्राथमिक आरोग्य केंद्रातील वैद्यकीय अधिकारी ते जिल्हा आरोग्य अधिकारी यामधील कोणत्याही वैद्यकीय अधिका-यासंबंधात जिल्हा प्रशासनाच्या काही तक्रारी असतील तर, त्या संदर्भातील तक्रारीबाबत मुख्य कार्यकारी अधिकारी, जिल्हा परिषद यांनी प्राथमिक चौकशी करावी व त्यात तथ्य आढळल्यास आपल्या अभिप्रायासह प्रस्ताव त्वरीत शासनास सादर करावा. त्याचबरोबर तक्रारीचे स्वरूप गंभीर असल्यास व कर्तव्यापासून दूर ठेवण्याचे गरजेचे असल्यास शासनाकडून त्याबाबत योग्य ती कार्यवाही होईपर्यंत जिल्हा परिषदेच्या मुख्यालयास संबंधित वैद्यकीय अधिका-याची पदस्थापना ठेवण्यात यावी व शासनाकडून पुढील पदस्थापनेबाबत सात दिवसात आदेश घ्यावेत. त्यावर योग्य ती कार्यवाही आरोग्य विभागामार्फत तत्परतेने करण्यात येईल. मुख्य कार्यकारी अधिकारी, जिल्हा परिषद यांनी व्यक्तीशः याबाबत दक्षता घ्यावी.”

23. In the said Government Resolution it has been specifically mentioned that the Government Medical Officers are employees / servants of the State Government and they have been posted at Primary Health Center to render their services. It shows that the respondent No. 2 is appointing and disciplinary authority of the applicant. Therefore, the Chief Executive Officer i.e. respondent No. 4

has no authority to exercise the powers of appointing and disciplinary authority for those Medical Officers posted at Primary Health Centers. Therefore, the respondent No. 4 has no power to suspend the applicant in view of the provisions of M.C.S. (D&A) Rules, 1979.

24. The said issue has been considered by this Tribunal in O.A. Nos. 60, 635 & 661 all of 2014 and it has been held that the Chief Executive Officer, Zilla Parishad, is not empowered to issue the suspension order of the Medical Officer working at Primary Health Center. It has been specifically held in those decisions by this Tribunal that if there are complaints against the Medical Officer, the Chief Executive Officer may make preliminary enquiry and if he finds some substance he may make proposal to the State Government along with his opinion to the Government in view of the Government Resolution dated 28th March, 2012. It has been observed in the said decision that if the complaint is of a serious nature and it was necessary to keep away the concerned officer from discharging duties, then he has to place the Medical Officer at Headquarter of

the Zilla Parishad and obtain necessary orders from the Government regarding his further posting within 7 days. The said decision delivered by this Tribunal has been upheld by the Hon'ble High court Bench at Aurangabad in W.P. Nos. 5237, 5242 & 5248 all of 2015 decided on 2nd March, 2016. Therefore, I am bound by the said decisions.

25. In view of the said facts and the legal position the impugned order passed by the respondent No. 4 placing the applicant under suspension is illegal. The respondent No. 4 has passed the impugned order without powers and authority and, therefore, it is not maintainable in law. Therefore, I do not find substance in the submission made on behalf of the respondents in that regard.

26. The Government Resolution dated 28th March, 2012 is not against the provisions of the M.C.S. (D&A) Rules, 1979. Therefore, the said G.R. cannot be said to be illegal and, therefore, I do not find substance in the submission advanced by the learned Advocate for the res. no. 4 in that regard.

27. It is also material to note here that admittedly the applicant was arrested on 25.01.2016. Learned Advocate for the applicant has submitted that on the very day, he has been released on bail. This fact has not been disputed by the respondents and the said fact evident from the copy of the application filed by the applicant to release on bail, which is on record. The applicant was not detained in Police custody or Judicial custody for a period exceeding 48 hours. On the contrary, the record shows that he was arrested on 25.1.2016 and he was released on bail on the very day by the order of learned J.M.F.C., Washi in C.R. No. 16/2016. Therefore, the provisions of Rule 4 (2) of the M.C.S. (D&A) Rules, 1979, will not attract in the instant case. As the applicant was not in Police or Judicial custody for a period exceeding 48 hours, he cannot be placed under suspension w.e.f. date of his detention. Therefore, the impugned order passed by the respondent No. 4 placing the applicant under suspension with retrospective effect i.e. w.e.f. 25.1.2016, is illegal. On that count also the impugned order requires to be quashed and set aside.

28. Considering the aforesaid discussion, the impugned order passed by the respondent No. 4 is not in accordance with the provisions of the M.C.S. (D&A) Rules, 1979. The respondent no. 4 has passed the impugned order without having power to suspend the applicant. The respondent No. 4 is not an appointing or disciplinary authority of the applicant and, therefore, the impugned order passed by him is against the provisions of law and the provisions of the M.C.S. (D&A) Rules, 1979. Therefore, it required to be quashed and set aside by allowing the Original Application. Therefore, I proceed to pass the following order: -

ORDER

- (i) The present Original Application is allowed.
- (ii) The impugned order dated 5.5.2016 passed by the respondent No. 4 placing the applicant under suspension w.e.f. 25.01.2016 is hereby quashed and set aside.
- (iii) The respondent No. 4 shall reinstate the applicant in service as a Medical Officer forthwith and release all the

consequential financial benefits to the applicant immediately.

(iv) There shall be no order as to costs.

MEMBER (J)

O.A.NO.404-2016(SB)-HDD-2017- suspension