

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 52 OF 2017

DISTRICT: - AURANGABAD

Smt. Bharati D/o Shankarrao Sonawne
Age : 56 years, Occu. Govt. Service as
Lady Medical Officer, Gynecology Dept.,
Govt. Medical College, Ghati,
Aurangabad
C/o. Dr. A.R. Magre, Block No. 5,
Laxmi Colony, Opp. Milind College,
Aurangabad.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra
Medical Education & Drugs Dept.
Thro. Its Secretary, Mantralaya,
Mumbai. C Copy served on P.O.
MAT, Aurangabad.
- 2) Director, Medical Education &
Research St. George Hospital
Compound, Dental College,
Bldg. Mumbai.
- 3) The Dean, Govt. Medical College,
Ghati, Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri B.B. Lakhkar – learned
Advocate for the applicant.

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

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)
DATE : **19TH JULY, 2017.**

ORDER

1. The applicant has sought directions of this Tribunal to the respondents to release her salary for the month of November, 2016 onwards after regularizing her service in view of the Government Resolution dated 22.10.2016 . She has also sought directions to the respondents to continue her GPF Account and to grant time bound promotion and to pay regular pension as per the Pension Rules by filing the present Original Application.

2. The applicant was appointed as Lady Medical Officer in the Department of Obstetrics and Genealogy of Government Medical College, Aurangabad on 01.03.1990. The said appointment was on temporary basis and after her selection by the Regional Selection Board by the Government of Maharashtra vide order dated 2nd January, 1990 for one year. In view of the order passed by the

Hon'ble High Court of Judicature Bombay Bench at Aurangabad in Writ Petition No. 700/1991 on 22.02.1991 her service was continued till the candidate selected and nominated by the Maharashtra Public Service Commission (for short 'MPSC') is appointed. The applicant has rendered satisfactory service w.e.f. 1.3.1990 till today. No MPSC candidate had been nominated for the appointment on the post on which the applicant was working.

3. The applicant filed Original Application No. 711/2000 before this Tribunal for releasing all benefits such as leave, Maternity leave, annual increments etc. The said O.A. was allowed and Rs. 86,000/- towards arrears of increment was ordered to be paid to the applicant by the order of this Tribunal dated 25.4.2000. It is contention of the applicant that she is a subscriber to G.P.F. since beginning. Her services are regularized w.e.f. 24.10.2016 without any request from her by Government Resolution dated 22.10.2016. In condition 5 of the schedule B attached to the said Government Resolution dated 22.10.2016, it has been mentioned that New

National Pension Scheme will be applicable to the employees, whose services are regularized by the Government Resolution dated 22.10.2010. It is the contention of the applicant that the said condition was detrimental and prejudicial to the interest of the applicant. The respondents made attempt to close the GPF Account, but the concerned authorities did not close the GPF Account in view of the provisions of Rule 9 (1) of the Maharashtra General Provident Fund Rules. The applicant had rendered 26 years of service, but the respondents had not given her time bound promotional higher pay scale after completion of 12 years' service in the year 2000 and thereafter on completion of 24 years' service. It is contention of the applicant that she has not agreed to subscribe to the New Pension Scheme and protested against the pressure brought on her by the respondents. Therefore, her salary for the month of November and December, 2016 had been withheld by the respondents. It is the contention of the applicant that the MPSC has not issued advertisement for the post on which she was working. Therefore, she cannot be blamed for

that. Her services are continued since beginning. As the respondents had not paid salary to her for the month of November and December, 2016, she approached this Tribunal and prayed for issuing necessary directions to the respondents by filing the present Original Application.

4. The respondents have filed affidavit in reply and refuted the claim of the applicant. It is their contention that taking into consideration the prolonged time in making appointments as per the recommendation of MPSC, the power has been delegated to Divisional Selection Board constituted under the Chairmanship of the Dean of respective Medical Colleges to make appointments on purely temporary basis to the post of Medical Teachers and Medical Officers. Accordingly, the applicant was appointed on purely temporary basis in the year 1990. The said temporary services of the applicant continued due to the intervention of order of the Hon'ble High Court. The State Government had not continued her voluntarily. Not only this, but the benefits of the temporary services, for the purpose of leave, increments

have been granted to the applicant, as per the directions given by this Tribunal. This Tribunal never directed to consider the temporary services of the applicant for the purpose of pension.

5. It is averred by the respondents that the Government had taken policy decision to regularize the temporary services of the persons holding Medical Educational Qualification for fulfillment of the norms of Medical Council of India for the welfare of entire Medical Education and Research Service of the State. Therefore, no question of considering the request of a particular individual arises. It is further averred by the respondents that the applicant had accepted the order of regularization of her temporary service and by admitting all the terms and conditions mentioned therein in the G.R. and joined the service at Government Medical College and Hospital, Aurangabad by filing application/letter dated 24.10.2016 and now the applicant is denying the order of regularization for getting the benefit of Old Pension Scheme 1982. It is averred by the respondents that as per

Government Resolution dated 22.10.2016 the temporary service of the applicant has been regularized w.e.f. 24.10.2016. Therefore, she is entitled for New National Pension Scheme and not for Old Pension Scheme, 1982. For getting the benefit of Old Pension Scheme it is necessary to regularize the temporary service of the applicant from first date of her initial appointment. The applicant is not regularized from the date of her first appointment. It is contended by the respondents that considering various judgments, it is not possible to regularize the temporary services of the applicant from the first date of initial appointment. She was appointed temporarily in the year 1990 and her appointment was made as a stop gap arrangement and her service was not continued voluntarily by the State Government, but it was continued by the intervention of orders of the Hon'ble High Court. It is contended by them that in view of the decision of the Hon'ble Supreme Court in case of **STATE OF KARNATAKA VS. UMADEVI** for the regularization of temporary service the concerned employee should have worked for 10 years or more in duly sanctioned post

without the benefit or protection of the order of any Court or Tribunal, but the applicant is working as per the protection of the order of Hon'ble High Court and, therefore, her service cannot be regularized from the date of her initial appointment. This Tribunal has granted benefit of temporary service to the applicant only for the purpose of leave and increments in several cases. In many cases, this Tribunal has denied to consider the temporary service of the employee for pensionary benefits. The applicant is appointed regularly w.e.f. 24.10.2016 and, therefore, she is not entitled to get time bound higher pay scale as claimed by her, as the said scale is admissible to the employees, who are regularly appointed. In view of Government Resolution dated 22.10.2016 New Pension Scheme is applicable to the applicant. Therefore, the applicant was asked to open NPS Account, but she has not responded and, therefore, her salary was not released.

6. It is their contention that there were large number of advertisements published by MPSC since the year 1991

for the appointments to the post of Medical Officer under the administrative control of Public Health Department of the State Government, which requires same educational qualifications possessed by the applicant, but the applicant had not applied for the post since her temporary services were protected by the order of the Hon'ble High Court. It is their contention that the applicant is not entitled to claim relief as claimed by her in the present Original Application. Therefore, they prayed to dismiss the present Original Application.

7. I have heard Shri B.B. Lakhkar – learned Advocate for the applicant and Mrs. Deepali S. Deshpande – learned Presenting Officer for the respondents. I have also perused the affidavit, affidavit in reply filed by the respondents so also various documents placed on record by the respective parties.

8. Admittedly, the applicant was initially appointed as Lady Medical Officer in the Government Medical College and Hospital at Aurangabad in view of the order dated 2nd January, 1990 and 24.2.1990 and she joined the duty on

1st March, 1990 for one year and her appointment was on temporary basis. Admittedly, the applicant filed Writ Petition No. 700/1991 before the Hon'ble High Court of Bombay High Court Bench at Aurangabad and in view of the order of the Hon'ble High Court dated 22.2.1991 her services were continued till candidate nominated by MPSC is appointed. It is not much disputed that thereafter the applicant filed O.A. No. 711/2000 before this Tribunal for extending the benefits such as leave, Maternity leave, annual increments etc. to her. The said Original Application was allowed on 25.4.2000 and it was directed to the respondents to give facilities to the petitioner in view G.R. dated 1st March, 1997 (Exh. 'F' page-18) including the leave, maternity leave and annual increments. This Tribunal has further directed the respondents to pay increments amounting to Rs. 86,000/- to the applicant. It is not disputed that on 22.10.2016 the Government had passed resolution and took policy decision to regularize the temporary services of the persons holding Medical Educational Qualification for fulfillment of the norms of Medical Council of India for the

welfare of entire Medical Education and Research Service of the State. Accordingly, the temporary services of the applicant came to be regularized w.e.f. 24.10.2016. Admittedly, the applicant joined in Government Medical College, Aurangabad on the basis of the said Government Resolution dated 22.10.2016 w.e.f. 24.10.2016. In view of the Government Resolution dated 22.10.2016 the services of the temporary employees have been regularized w.e.f. 24.10.2016, as an exceptional case. The applicant joined the Government service as Lady Medical Officer in the Government Medical College, Aurangabad on 24.10.2016 in view of the Government Resolution dated 22.10.2016 (page-34 of paper book of O.A.).

9. Learned Advocate for the applicant has submitted that the applicant is working as Lady Medical Officer since 1.3.1990 without interruption and she has rendered service more than 26 years. She was subscriber of GPF Account since beginning. Her services have been regularized by Government Resolution dated 22.10.2016. Therefore, it can be deemed that her service has been

regularized since she joined her duties on 1st March, 1990. As she was recruited and appointed on 1st March, 1990, the Old Pension Scheme of the year 1982 is applicable to the applicant and New National Pension Scheme is not applicable to the applicant. He has submitted that clause No. 5 in the Schedule 'B' attached to the Government Resolution dated 22.10.2016 is not applicable to the applicant. The case of the applicant will be governed by the Old Pension Scheme. He has further submitted that since she has been regularized, benefit of Assured Career Progression Scheme will be extended to her. He has submitted that the applicant has not agreed to subscribe to the New Pension Scheme and protested against the pressure brought by the respondents. Therefore, the respondents withheld her salary for the month of November, 2016 onwards, which is not legal.

10. He has submitted that the MPSC has failed to advertise the post of Lady Medical Officer on which the applicant is serving since the year 1990 and, therefore, she was continued in the said post. There was no fault on

the part of the applicant and, therefore, she cannot be punished. There was inaction on the part of the Government in not filling the said post and, therefore, for that purpose the applicant cannot be blamed and held responsible. He has submitted that the applicant has acquired required qualification for the said post. She never made request to the Government for regularization of her service and, therefore, the Government Resolution dated 22.10.2016 issued by the Government on its own accord and more particularly clause No. 5 of Schedule 'B' is not binding on the applicant. In support of his submission, he has placed reliance on the case of **MRS. KUNDA W/O RAMCHANDRA LAKHKAR VS. STATE OF MAHARASHTRA AND OTHERS [W.P. NO. 8327/2013]** decided by the Hon'ble Bombay High Court Bench at **Aurangabad on 10.02.2015**, wherein the petitioner was initially appointed as Lecturer in Biophysics at Government Medical College, Aurangabad on temporary basis for the period of one year or till the post is filled in on long term basis through the Maharashtra Public Service Commission. She was reappointed on the

recommendation of Divisional Selection Board by an order dated 25.6.1979 on the condition that the petitioner should apply through the MPSC for regular appointment. She received benefit of Senior scale as admissible and enjoyed the same, but subsequently it was cancelled. The said order has been challenged before this Tribunal. The Tribunal partly allowed the said Original Application, but the request to quash resolution has been rejected. The said order has been challenged by the petitioner in the Writ Petition before the Hon'ble Bombay High Court Bench at Aurangabad. The Writ Petition was allowed by the Hon'ble High Court and it was held that Government Resolutions dated 22.01.2009 and 04.05.2009 were not binding on the petitioner.

11. On going through the said decision, it reveals that the facts in the Writ Petition are different than the facts in the present case. In that case the petitioner was appointed on temporary basis, but thereafter she was appointed as per the recommendation of the Divisional Selection Board. She received benefits like Senior pay

scale as admissible and she enjoyed the same. She has been regularized in view of the resolution of the Government. In the instant case, the respondent had not regularized the services of the applicant till the year 2016. Her temporary service continued due to the intervention of orders of the Hon'ble High Court. The benefits of earned leave, increment has been extended to her in view of the order passed by this Tribunal. Therefore, it cannot be said that she was continued in service by the orders of the respondent. Therefore, it cannot be said that she is a regular employee and her services are regularized with effect from her initial appointment. Therefore, the said decision is not useful to the applicant.

12. On going through the record, it reveals that the applicant was regularized w.e.f. 24.10.2016 in view of the Government Resolution dated 22.10.2016. On going through the Government Resolution dated 22.10.2016 (page-17 of the paper book of O.A.) and more particularly Scheduled 'B' attached to the said Government Resolution it reveals that New National Pension Scheme has been

made applicable to the employees whose service has been regularized by the said Government Resolution. The applicant filed application dated 24.10.2016 (Annexure R-1, page-34 of the paper book of the O.A.) and joined the duties in view of the Government Resolution dated 22.10.2016. She accepted the conditions therein. Therefore, the said Government Resolution is applicable to her. Since the services of the applicant are regularized w.e.f. 24.10.2016, the New National Pension Scheme is applicable to the applicant and, therefore, the respondents directed the applicant to open to open NPS Account under New National Pension Scheme, but she had not complied with the said direction and, therefore, her salary was withheld. As the Government Resolution dated 22.10.2016 expressly provide that the New National Pension Scheme is applicable to the employees, who have been regularized by the said Government Resolution w.e.f. 24.10.2016, the applicant cannot claim benefit of Old Pension Scheme as she is regularized by the said G.R. w.e.f. 24.10.2016. Therefore, Old Pension Scheme is not applicable to her. The respondents have rightly decided to

apply the New National Pension Scheme to the applicant and issued directions accordingly. Therefore, in my opinion, there is no illegality on the part of the respondents in that regard.

13. Learned Presenting Officer for the respondents has submitted that the initial appointment of the applicant was on temporary basis and for the period of one year. Her temporary service continued in view of the intervention of orders of the Hon'ble High Court passed in W.P No. 700/1991. This Tribunal extended the benefit of leave and increment to the applicant and regularized the service of the applicant. He has submitted that time and again this Tribunal has held that temporary service of the employees cannot be considered for the pensionary benefits. In support of his submission he has placed reliance on the judgment in case of **DR. SATISH S/O. BABRUVNA MANE & OTHERS VS. THE STATE OF MAHARASHTRA AND OTHERS** delivered by the **Principal Seat of this Tribunal at Mumbai in O.A. NOS. 568 & 569 OF 2013 decided on 29.09.2015**, wherein

reliance has been placed on the decision of the Full Bench of this Tribunal in O.A. No. 1284 of 2009. The relevant paragraph reads as under : -

“7. The Applicants have accordingly continued in ad hoc service by virtue of order passed by this Tribunal till they were selected by M.P.S.C. Some of the Applicants were granted annual leave and increments also. Government of Maharashtra, issued notification dated 2.2.2009, viz. Medical Officers in Maharashtra Medical and Health Services, Group ‘A’ (one time absorption of Medical Officers appointed on ad hoc basis in Maharashtra) (Special) Rules, 2009. The issues like whether the Medical Officers appointed on ad hoc basis and whose services were regularized by the aforesaid rules were entitled to count their ad hoc service for any purpose were examined by Full Bench of this Tribunal in O.A. No. 240/2009. By order dated 30.3.2012, the Full Bench decided the following issues:

1) Can an ad hoc employee seek condonation in technical breaks of two or three days in between two such spells of ad

hoc appointment and also seek release of yearly increments after completion of one year service and go on seeking release of increments for successive years and for grant of consequential benefits including leave benefits?

2) Can an ad hoc employee claim the benefit of continuity and not to be replaced by another ad hoc employee or a temporary employee, but should such an ad hoc employee be replaced by a regularly selected candidate?

3) Whether an ad hoc employee, even if absorbed as per Government Notification dated 2.2.2009 are entitled to claim service benefits, such as leave, annual increments, seniority and pension by including the ad hoc service rendered by them prior to absorption?

4) Validity of Government Notification dated 2.2.2009?

The answer to the above questions were as follows:

- 1) Negative**
- 2) Negative**

3) & 4) It was held that the Government Notification dated 2.2.2009 provides that the service rendered prior to absorption shall not be considered for benefits of pay, pension, leave and grant of promotion, (i.e. seniority) and the said notification was held to be valid.

The case of the present applicants is slightly different, as their services were not regularized but they were selected by M.P.S.C. Some of such persons had filed O.A. No. 1284 of 2009 and other O.As. By a common order dated 4.3.2013, Division Bench of this Tribunal held that Full Bench judgment was delivered in the context of Notification dated 2.2.2009, while in the case before the Tribunal, the Applicants were selected by M.P.S.C. The following order as passed:

“23. Under the aforesaid facts and circumstances, we do hereby quash and set aside the order in each of the aforesaid Original Applications declining to grant the benefit of condoning technical breaks, earned leave and annual increment. We direct the respondents to consider the case

of all the above applicants for condoning technical breaks and grant of other benefits like annual increments, earned leave etc., especially having regard to the provisions of Rule 30 and Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982.

24. The exercise of considering grant of condonation of technical breaks, annual increment and earned leave shall be completed by the respondents preferably within a period of 3 months from the date of receipt of this order. All the above Original Applications are disposed off accordingly, however, with no order as to costs.”

14. I gone through the aforesaid decision delivered by the Principal Seat of this Tribunal at Mumbai. On going through the said decision time and again this Tribunal had held that the service rendered prior to absorption shall not be considered for benefits of pay, pension, leave and grant of promotion. Therefore, the applicant is not entitled to claim relief that her service rendered prior to regularization by the Government Resolution dated 22.10.2016 be regularized for the purpose of pensionary

benefits. The applicant was appointed on temporary basis w.e.f. 1.3.1990, she was not appointed in officiating capacity. Therefore, it cannot be said that she was continued in service w.e.f. 1.3.1979. On the contrary, her service was continued because of the intervention of the orders of the Hon'ble High Court passed in Writ Petition. Therefore, the service rendered by the applicant prior to 24.10.2016 cannot be taken into consideration.

15. The above decisions referred by the learned Presenting Officer are most appropriately applicable in the instant case considering the facts in this case.

16. It is the contention of the applicant that she has not been given benefits of time bound promotion on completion of 12 years' and 24 years' of service. But as discussed above, she was not in regular service of the Government. Her service has been regularized w.e.f. 24.10.2016. Therefore, she is not entitled to claim benefit under Assured Career Progression Scheme on completion of 12 years' and 24 years' of service. Therefore, I do not

find substance in the contention of the applicant in that regard.

17. Learned Advocate for the applicant has submitted that in view of the order passed by the Hon'ble High Court in the Writ Petition, as well as, order passed by this Tribunal in earlier Original Application, the services of the applicant are continued and the benefit of earned leave and increments were granted to her. Therefore, she is entitled to get the regular pensionary benefits also.

18. To this, learned Presenting Officer has submitted that this Tribunal has granted earlier O.A. and directed to extend the benefit of earned leave and increment to the applicant and this Tribunal never passed order extending benefit of regular pension or applicability of Old Pension Scheme. Therefore, the same cannot be granted to the applicant.

19. I do find substance in the submission advanced by the learned Presenting Officer in that regard. On perusal of the order passed in O.A. No. 711/2000, it reveals that

the respondents in that O.A. were ordered to give facilities to the petitioner in view of G.R. dated 1st March, 1997 including the leave, maternity leave and annual increments and according the said O.A. was allowed. The order is material. Therefore, it would be better to reproduce the said order.

“It is also necessary to give reference to the letter (Exh. G page 20) dated 27.2.1996 by which the Director of Medical Education & Research, Mumbai has informed the Dean of Govt. Medical College Nanded to give these facilities to the employees who are continued in service in view of the orders passed by this Tribunal/Courts.

Respondents are hereby ordered to give facilities to the petitioner in view of G.R. dated 1st March, 1997 (Exh. F page 18) including the leave, maternity leave and annual increments. Similarly in view of statement given by the petitioner, respondents shall pay increments amounting to Rs. 86,000/- to the petitioner within 2 weeks from today”.

20. No order regarding extending benefit of Old Pension Scheme was passed in that O.A. Therefore, I do not find substance in the submissions of the learned Advocate for the applicant in that regard.

21. Considering the above said discussion, the applicant's services is regularized w.e.f. 24.10.2016 by the Government Resolution dated 22.10.2016. Accordingly, the applicant joined on her new posting w.e.f. 24.10.2016. The Government Resolution provides that New Pension Scheme is applicable to the employees regularized under the said Government Resolution. Therefore, the applicant is not entitled to get the benefit of the Old Pension Scheme and the New Pension Scheme is applicable to her in view of the Government Resolution dated 22.10.2016. Her service has been regularized w.e.f. 24.10.2016. Therefore, she is not entitled to the benefit of time bound higher pay scale on completion of 12 years' and 24 years', as well as, the regular pension as per the Pension Rules. The applicant has not opened the account under New Pension Scheme, therefore, her salary is withheld.

22. The applicant has been regularized in service in view of the Government Resolution dated 22.10.2016, the applicant has not challenged the legality of the said Government Resolution. Therefore, the clause 5 in Schedule 'B' of the Government Resolution 22.10.2016 is binding on the applicant. Therefore, the applicant is not entitled to claim relief as prayed for. There is no merit in the present Original Application. Consequently it deserves to be dismissed.

23. In view thereof, the present Original Application stands dismissed with no order as to costs.

MEMBER (J)

O.A.NO.52-2017(SB)-HDD-2017