

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 272 OF 2017

DIST. : JALGAON

Dr. Vaishali d/o Pandurang Deshpande,
Age – 48 years, Occu. Service,
As Medical Officer Group-A
(Pediatician) at Civil Hospital,
Jalgaon, R/o Jalgaon for the present,
Permanent R/o 48/B, Dnyaneshwar Society,
Regency Estate Complex,
Kalyan-Shil Phata Road,
Dombivali (E), Thane.

-- APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Public Health Department,
G.T. Hospital, Sankul Building,
10th Floor, New Mantralaya,
Mumbai 400 001.
2. The Director of Health Services,
8th Floor, 'Aarogya Bhavan',
Saint Georges Hospital Campus,
CST, Mumbai – 400 001.
3. The Deputy Director of Health Services,
District Civil Hospital Campus,
Tryambak Road, Opp. Hotel Rajdoot,
Nashik – 422 001.
4. The Civil Surgeon,
Civil Hospital, Jalgaon,
District – Jalgaon.

-- RESPONDENTS

APPEARANCE :- Shri S.D. Joshi, learned Advocate for the
applicant.

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

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**
A N D
ATUL RAJ CHADHA, MEMBER (A)
DATE : **28th June, 2018**

J U D G E M E N T

(Per : Justice M.T. Joshi, Vice Chairman)

1. Heard Shri S.D. Joshi, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. By the present Original Application, the applicant is seeking a direction to the res. nos. 1 to 4 that the applicant be permitted to join the duty and treat her period of absence as a period on duty by treating the said period as study leave. A Government Resolution dated 7.6.2016 granting permission to the applicant and some other Medical Officers to join the duty, subject to certain conditions, is also assailed to the extent of conditions detailed therein.

3. The applicant was selected and eventually appointed to the post of Medical Officer Group 'A' (Pediatrician) at Civil Hospital, Jalgaon vide order dtd. 9.4.2014. At the time of her appointment, the applicant was a Fellow Student with Nair Hospital at Mumbai.

After joining duty at Dist. Civil Hospital, Jalgaon, she informed the office of res. no. 1 about the fact of her fellowship and for grant of permission to continue the fellowship for remaining period of around 8 ½ months. From time to time she made communications and continued her fellowship at Nair Hospital at Mumbai. However, there was no response from any of the respondents either of permission to continue the study or to grant study leave, within the parameters of M.C.S. (Leave) Rules, 1981.

4. According to the applicant, in the meantime her father, who was about 79 years of age then, was seriously ill and, therefore, she sought one month's leave from 10.5.2014. She also filed leave application in this regard to the respondents. No decision was taken by the respondents. Ultimately on 18.11.2014 the res. no. 4 sent a communication to the present applicant to join her duty forthwith. It was also communicated that as the applicant was unauthorizedly absent, a disciplinary action may follow in case she did not join and her services, which were on probation, would be brought to an end. A show cause notice was issued to the applicant in that regard and she filed her reply to the said show cause notice.

5. In the meantime the applicant completed her fellowship and sent a letter dated 18.6.2015 to the res. no. 1 for grant of

permission to join the duty under res. no. 4. She was, however, directed to give explanation as per show cause notice. Her request to join the duty was not accepted. Ultimately a common Government Resolution dated 7.6.2016 (Annex. A-1 page 19) was issued. Vide the said G.R. the res. no. 1 has allowed 18 Medical Officers including the applicant, to join the duty, who according to respondent State were unauthorizedly absent for certain period. However, following conditions were imposed :-

- (a) Each of Medical Officers would execute a bond of 5 years service under the State Government. Further the Medical Officers, who are absorbed, shall execute bond for 10 years.
- (b) For unauthorized absence no remuneration would be granted and the said absence would not be regularized. The period of unauthorized absence would be presumed as break in service and administrative action for the said unauthorized absence may be followed. The period of unauthorized absence would be treated as extension of probation period.

6. Shri Joshi, learned Advocate for the applicant submits that the period of absence in the case of the present applicant was not

unauthorized absence. In fact, prior to appointment as a Medical Officer, the present applicant joined the fellowship. She sent many communications for grant of study leave to her. No response was given but a show cause notice as mentioned supra was issued to her. He further submits that, in fact, the fellowship is an addition to the qualification of the applicant, which would ultimately be beneficial to the respondent State and eventually to the public at large. He, therefore, submits that the present applicant cannot be treated at par with other Medical Officers, who unauthorizedly remained absent and, therefore, the G.R. dated 7.6.2016 (Annex. A-1 page 19) should not have been issued as regards the present applicant.

7. The respondent State opposed the plea. It was submitted that, no leave was granted to the applicant and she was well aware that either she has to complete her fellowship or to work as a Medical Officer upon appointment. However, no sooner the applicant joined the duties, she went on unauthorized leave without getting it sanctioned. The conditions required for grant of study leave are not applicable in the present matter. In view of unauthorized absence of the applicant, the Government could discontinue the services of the applicant. However, merely as a

mercy, the applicant and other Medical Officers are allowed to rejoin the services on the above conditions.

8. Upon hearing both the sides, in our considered view, the present O.A. of the applicant cannot be allowed. The admitted facts are that the present applicant, without waiting for sanction of any leave, immediately upon joining the post at Jalgaon, remained absent from duty of Medical Services and went to pursue her fellowship. The leave was not granted to the present applicant, her absence therefore was unauthorized. In the result, we pass the following order :-

ORDER

The Original Application No. 272/2017 is dismissed without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 28th June, 2018