

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 285 of 2017 (D.B.)
WITH CIVIL APPLICATION NOS.405/2017 & 580/2017

Dr. Louis S/o Chacko John,
Aged about 49 years,
Resident Medical Officer,
R/o Jaripatka, 65 L.I.C. Colony,
Nagpur, District Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai-440 032.
- 2) The Director of Ayurved,
Government of Maharashtra,
Government Dental College and Hospital,
Building St. Georges Hospital Compound,
CST, Mumbai-400 001.
- 3) The Dean,
Ayurvedic College Umrer Road,
Raghuji Nagar, Nagpur.
- 4) Smt. Anita Nagraj Kolhe,
Aged about : Major Occ. Panchakarma Vaidya
R/o M.A. Podar Hospital Waroli,
Mumbai-400 018.

Respondents.

S/Shri G.N. Khanzode, Mrs. P.T. Joshi, Advocates for the applicant.

Shri H.K. Pande, learned P.O. for respondent nos. 1 to 3.

Shri N.S. Badhe, Advocate for respondent no.4.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT

PER : V.C. (J).

(Delivered on this 6th day of November,2018)

Heard Shri G.N. Khanzode, learned counsel for the applicant, Shri H.K. Pande, learned P.O. for respondent nos. 1 to 3 and Shri N.S. Badhe, learned counsel for respondent no.4.

2. The applicant is claiming a declaration that he is entitled to be promoted on regular basis to the post of Resident Medical Officer (R.M.O.), in view of the Minutes of DPC dated 20/07/2015 and 24/01/2017 being eligible for the said post. He is also claiming that he is senior-most person in the cadre of Panchakarma Vaidya in view of the order passed by this Tribunal in O.A.No. 610/2016 on 29/03/2017 and as such he is entitled to be promoted. By amending the O.A. the applicant has claimed a declaration that respondent no.4 is not eligible for the promotion of Resident Medical Officer (RMO).

3. According to the applicant, he came to be confirmed for all purposes by the respondent no.2 i.e. the Director of Ayurved, Government of Maharashtra, Mumbai as a Panchakarma Vaidya w.e.f. 08/02/1992. The DPC meeting was conducted on 20/07/2016 and 24/01/2017 for preparing a select list to the promotional post of

RMO and in the said DPC meeting the applicant was selected and recommended for the post of RMO. The DPC considered the C.Rs. of five years and experience of the applicant as well as other candidates. However, instead of promoting the applicant on regular basis, the respondent no.2 promoted the applicant on temporary basis on 28/09/2016. On 31/03/2017 the applicant was also given additional charge of the post of Assistant Director of Ayurved. It is thus crystal clear that the applicant is senior-most person and eligible for promotion and therefore he should have been promoted on regular basis.

4. The learned counsel for the applicant submits that as per order dated 25/08/2009 the applicant has been granted permanency benefit to the post of Panchakarma Vaidya w.e.f. 08/02/1999, whereas, the respondent no.4 has been granted said benefit from 01/07/1997 and therefore the applicant is the senior-most than respondent no.4.

5. It is also submitted that the respondent no.4 was directly appointed to the Group-B post in sheer violation of the scheme for compassionate employment as per G.R. dated 26/10/1994. The respondent no.4 was reduced in the rank and said order of punishment was challenged by her by filing O.A.No.610/2016 before the Maharashtra Administrative Tribunal, Bench at Mumbai. In the

Judgment dated 29/03/2017 this Tribunal observed in para no.12 as under :-

“In view of the law laid down by Hon’ble Supreme Court, the applicant’s appointment as Assistant Panchkarma Vaidya, even if irregular, was not illegal and after 10 years, she was eligible to be regularised.”

6. In view of this observation the respondent no.4 should have been regularised in service, but the respondent no.4 seems to have been regularised after 12 years and therefore the respondent no.4 was junior to the applicant.

7. The learned counsel for the applicant further submits that in the DPC meeting dated 20/07/2016 and 24/01/2017 the name of the applicant was recommended for promotion to the post of RMO and as already stated by this Tribunal in O.A.No.610/2017 has observed that though the appointment of Smt. Anita Kolhe (R/4) cannot be called illegal, she can hold regular post after 10 years of service. It is stated that the applicant has been confirmed in the service for all purposes w.e.f. 08/02/1992 in view of the order dated 25/08/2009 and therefore the applicant should have been promoted on regular basis.

8. The respondent nos. 1&2 have filed their reply-affidavit on 23/11/2017. According to the respondents, the applicant was

appointed purely on temporary basis for 29 days only as per the order dated 10/10/1991 and was relieved from the post of Casualty Medical Officer (Class-III) from 24/09/2001. The applicant was appointed on regular basis vide order dated 25/06/1999 as per the G.Rs. dated 08/03/1999 and 14/06/1999. The applicant is wrongly taking advantage of permanency certificate and is claiming that he shall be regularised w.e.f. 08/02/1992, but the respondents have issued specific order regarding regularisation of the applicant w.e.f. 08/03/1999 and seniority was given to him w.e.f. 08/03/1999 and therefore the permanency certificate dated 08/02/1999 which is based on 29 days appointment of the applicant is not legal.

9. The learned counsel for the applicant Shri G.N. Khanzonde invited our attention so called permanency certificate dated 25/08/1999. This certificate shows the date of entry in the service as well as the post. The copy of the Certificate is placed on record at Annex-A-1 which is at P.B. page nos. 13 to 14A (both inclusive). It is material to note that the date of joining in the service of the candidates from sr.no.36 to 56 is not mentioned in the said Certificate. The applicant stands at sr.no.44, whereas, the respondent no.4 stands at sr.no.48. The learned counsel for the applicant submits that the date of appointment of the applicant is 08/02/1992 in the O.A., whereas that of respondent no.4 is

01/07/1997. As pointed out earlier by the learned P.O. that the date of appointment of the applicant is 08/02/1992 for 29 days only and that date cannot be presumed as the date of appointment on permanent basis. As against this, the appointment of respondent no.4 is regular w.e.f. 01/07/1997. It is also material to note that the applicant's own documents shows contradictions in the submission of the applicant. The learned P.O. has invited our attention one order issued by the Director of Ayurved dated 25/06/1999. This order clearly shows that the applicant's seniority will be counted from the date i.e. 08/03/1999. The condition nos.2 and 3 of the appointment of the applicant in the said communication dated 25/06/1999 which is at P.B. page nos. 15 and 16 (both inclusive) i.e. Annex-A-2 reads as under :-

“(2) His seniority of services will be counted from dated 8th March,1999.

(3) Benefit of the occasional appointment will not be given to him for any purpose / reasons.”

10. Thus the order dated 25/06/1999 clearly shows that the applicant's seniority will be counted from 08/03/1999 and he will not be given benefit of occasional appointment for any purpose/ reasons. The applicant therefore cannot take benefit of his earlier order for 29 days and cannot claim seniority from that date of appointment for 29

days. Admittedly, the respondent no.4 has been appointed on regular basis from 01/07/1997. As against this the date of appointment of the applicant on regular basis is 08/03/1999 and therefore in any case the applicant cannot be held to be senior to the respondent no.4 on the basis of order dated 25/08/2009. It is also material to note that the applicant's seniority was counted from 08/03/1999 as per the order dated 25/06/1999 (Annex-A-2). The applicant, however, had never taken objection for such seniority given to him and for the first time he tried to justify that his date of appointment is 08/02/1992 vide communication dated 25/08/2009 as per Annex-A-1. The learned counsel for the applicant admits that since the date of appointment on regular cadre number of seniority list were published every year from 1999 till 2010 and even thereafter till today and in all these seniority lists the respondent no.4 was shown as senior to the applicant. The applicant never challenged those seniority list and therefore for the first time that too in 2017 the applicant cannot claim that he is senior-most or senior than respondent no.4. The applicant has also not challenged the communication dated 25/06/1999 whereby his seniority was counted from 08/03/1999. We are, therefore, of the opinion that the applicant has failed to prove that his seniority shall be counted w.e.f. 08/02/1992.

11. The learned counsel for the applicant submits that the appointment of respondent no.4 on compassionate ground itself was illegal since on Group-B post any candidate cannot be appointed directly on compassionate ground as per G.R. dated 26/10/1994. The applicant was not at all eligible to be appointed on compassionate ground. Such argument cannot be accepted. The respondent no.4 has been appointed in the year 1997 i.e. prior to the applicant and the applicant has no locus-standi to challenge her appointment after such a long period. Even this Tribunal in O.A.No. 610/2016 vide Judgment dated 29/03/2017 has observed that even though the applicant's appointment was on compassionate ground it was regular appointment. Merely because it is stated that after 10 years of service the applicant was liable to be regularised that itself will not mean the respondent no.4 will be junior to the applicant.

12. It is material to note that the O.A.No. 610/2016 was filed by the respondent no.4 against the order of punishment in the departmental inquiry whereby she was punished in respect of following charges :-

^%v½ i n0; q;rj i noh vgrk dk<u ?ls; kr @jnn dj.; kr ; s vkg

¼c½ i n0; q;rj i noh vgr-pk Hkfo"; kr dkBgh mi ; ks @okij dj.; kiki u ifrcdtkr dj.; kr ; s vkg

*¼d½ ekxkl oxh; kulk vuk; vl .kkjh I á wíz Oh ekQhph jDde ol ny dj.; kr ; s vkg I nj ol gylph
dkjokbzvf/k"Bkrk] 'kkI dh; vk; pñ eglfo?kky;] ukxi j; kwh djkoh-***

13. This Tribunal vide its order dated 29/03/2017 has quashed and set aside the punishment order of the respondent no.4 and therefore no punishment remains in force against the respondent no.4. It is now admitted fact that the said punishment has been quashed and the respondent no.4 has been reinstated to the post of Panchakarma Vaidya. It is also material to note that the applicant was never party in O.A.610/2016 and therefore he has no locus standi to take disadvantages in the order passed in O.A.610/2016.

14. The learned counsel for the applicant submits that the applicant has filed Writ Petition No.6960/2017 against the Judgment in O.A.610/2016 before the Hon'ble High Court and said W.P. is still pending. The learned counsel for the applicant also placed reliance on the observations made by the Hon'ble High Court, Bench at Nagpur in W.P.No.6960/2017 on 04/06/2018 wherein the Hon'ble High Court has observed as under :-

"Prima facie, we find that even if the O.A. filed by the respondent no.4 was allowed by the Maharashtra Administrative Tribunal, setting aside her reversion to Group "C" post, the respondent no.4 cannot be shown as senior to the petitioner. The calls for the affidavit from the respondents."

15. The learned counsel for the applicant submits that since the aforesaid observations have been made by the Hon'ble High Court the respondent no.4 cannot be shown senior to the petitioner.

However, it is prima facie observed on the basis of some grievance made by the applicant therein. In the said W.P. on 19th September, 2018 the Hon'ble High Court has also made following observations :-

“(2) Advocate Khond for petitioner is seeking adjournment. Request is being opposed by respondent no.4. Respondent no.4 states that two matters are pending before the Maharashtra Administrative Tribunal and the petitioner is prolonging hearing there because of pendency of present petition.

(3) In this situation, through we accommodate Advocate Khond and list matter for further consideration on 9th October,2018, we make it clear that petitioner shall not, on account of pendency of writ petition, seek any adjournment in MAT.”

16. The learned counsel for the applicant submits that in the minutes of the meeting dated 20/07/2016 the DPC considered the case of the applicant as well as the respondent no.4 for promotion and the applicant was found eligible from Open category, whereas, in case of respondent no.4 it was observed as under :-

v-dz	i dxl	fuom dsy; k depk&; kpsuk@] i dxlo t\$Brk l ph dekd	vfHki t;
1-	[kyk	o\$kk ybz t kkk ¼ [kyk½ ¼ t\$Brk l ph dekd 3½	t\$Brud kj [ky; k i dxkl kBh fuom-
2-	vuq qpr tkrh	o\$kk eat qkk i kVhy ¼ [kyk½ ¼ t\$Brk l ph dekd 4½	fuEu l dxkl dk; jr vt k i dxkpk depkjh 3 o"kkp; k l oph vV i qkz djhr ul Y; keGsfu; fer i nklurhl kBh ik= ukgh- R; keGsl o kts\$Brud kj fuoG rkRi qR; k Lo# i kr 11 efgU; kph i nklurh ns; kpsBjy-

17. It is stated that the DPC observed that the respondent no.4 was not eligible since she has not completed three years experience in the cadre and therefore she was not entitled to be promoted. However it was also made clear that the promotion will be subject to outcome of O.A.No.610/2016 filed by the respondent no.4. It seems that the respondent no.4 was reverted to the post because of punishment given to her in the departmental inquiry. Admittedly, the said punishment has been quashed and set aside by this Tribunal and therefore merely because of such punishment the respondent no.4 was forced to work on the post other than Panchakarma Vaidya, it cannot be said that she was not eligible and admittedly prior to such punishment she was serving on the post of Panchakarma Vaidya and the punishment order has been quashed. Thus in any case the minutes of the meeting dated 20/07/2016 and similar observations made in the meeting dated 24/01/2017 (P.B. page nos.35 to 43 both inclusive) cannot be help the applicant. The respondent no.4 therefore cannot be said to be ineligible for promotion. It is admitted fact that the respondents have already recommended the name of respondent no.4 for promotion to the post of RMO and the Government was to issue promotion order at any time. However because of the interim order passed by this Tribunal on 05/10/2017 the order was not issued.

18. It seems that the applicant, time and again has filed litigations and even approached the Hon'ble Apex Court. The paras nos. 5,6 and 7 in the reply affidavit of the respondent nos. 1 and 2 dated 23/11/2017 will make clear the conduct of the applicant and the said paras are reproduced as under :-

“ It is submitted that the applicant has filed ULP complaint no.209/1992 before the Industrial Court, Nagpur. The said ULP came to be decided by order dated 30/04/1993. The Industrial Court had ordered that the applicant be continued on the post of Purush Vaidya till regular selected candidate from Regional Selection Board become available. The applicant had also filed O.A.No.848/1995 thereby challenging the advertisement issued by the respondents for appointing Purush Vaidya by State Sub Ordinate Service Selection Board, Mumbai. The Hon'ble Tribunal vide order dated 14/08/1996 rejected the Original Application. The applicant filed W.P.No.2905/1995 which was withdrawn by the petitioner as on 01/12/2000. The applicant preferred SLP before the Hon'ble Supreme Court by filing SLP No.19512/1996 and the said SLP become infructuous in view of the regularization of the applicant vide order dated 25/06/1999 of the Directorate of Ayurved as per the State Government G.R. dated 14/06/1999 which was based on GAD G.R. dated 08/03/1999. Applicant from the date of issuance of the G.R. which has been accepted by the applicant by addressing the Hon'ble Supreme Court through his counsel and the Hon'ble Supreme Court had accepted the statement of counsel of the applicant that the SLP become infructuous in view of the regularization of the applicant, so the SLP dismissed as such.

6. *It is submitted that the General Administration Department vide G.R. dated 8/3/1999 has regularised the service of the 3761 employees in the State of Maharashtra in the various department including the post hold by the applicant. In pursuance of the said G.R. the parent department of the applicant had issued the G.R. dated 14/06/1999 and regularised the*

service of 56 temporary employees working with the Directorate of Ayurved. A copy of appointment or regularisation order issued in favour of the applicant dated 25/06/1999 is annexed herewith at Annex-R-5. Bare perusal of the order particularly clause nos. 2 and 3 demonstrate that the applicant cannot claim any benefits of his past service for any reason or for his seniority. The applicant accepted the said regularization order with those conditions. Till today the applicant has not challenged the those conditions or that order of regularization. Therefore the contentions of the applicant that his seniority should be count from 1992 is without any foundation of legal basis but contrary to the facts mentioned above.

7. It is submitted that the applicant regular appointment was given by order dated 25/06/1999 on the basis of the G.R. dated 8/3/1999 and 14/06/1999. Copies of those G.Rs. are annexed herewith as Annex-R-6 and 7 respectively. It is further submitted that even though the applicant objected the seniority list published by the respondents the same has been duly replied by the respondents by their letter dated 17/08/2009 and 20/03/2016 and the demand of the applicant was rejected. The letter dated 17/08/2009 and 20/03/2016 are annexed herewith as Annex-R-8&9 respectively.”

19. The learned counsel for the applicant submits that the applicant was promoted on the post of RMO vide order dated 28/09/2016 and even additional charge of the Assistant Director of Ayurved was given to him vide order dated 31/03/2017. However, it will be clear that these orders are temporary and merely because charge of the post of Assistant Director of Ayurved was given to the applicant, he cannot claim seniority.

20. From the discussion in forgoing paras, it will be thus crystal clear that the applicant was temporarily appointed for 29 days

only in 1992 and he was appointed on regular basis from 8/3/1999 as against this the respondent no.4 was appointed on regular basis in 1997. The number of seniority lists were published time and again from 1999 to 2017 in which the respondent no.4 was shown senior to the applicant and said seniority lists were never challenged by the applicant. The applicant has no locus standi to challenge the appointment of respondent no.4 on the ground that she was wrongly appointed on compassionate ground. Considering all these aspects, we are satisfied that there is no merits in the application. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.
Consequently the C.As. also stand dismissed accordingly.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 06/11/2018.

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