

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 289 of 2016 (S.B.)

- 1) Dr. Parmanand S/o Narayan Timewar,
Aged about 34 years,
Medical Officer, PHC, Runjha,
Tq. Pandharkawda, Distt. Yavatmal.
- 2) Dr. Subhash S/o Govindrao Kendre,
Aged about 34 years,
Medical Officer, PHC, Arli,
Tq. Pandharkawda, Distt. Yavatmal.
- 3) Dr. Sachin S/o Uttamrao Jadhav,
Aged about 33 years,
Medical Officer, PHC, Karanji,
Tq. Pandharkawda, Distt. Yavatmal.
- 4) Dr. Ajay S/o Trayambakrao Jogdand,
Aged about 34 years,
Medical Officer, PHC, Mukutban,
Tq. Zari Jamin, Distt. Yavatmal.
- 5) Dr. Prashant S/o Chokhaji Telse,
Aged about 38 years, Medical Officer,
PHC, Zari Jamin, Distt. Yavatmal.
- 6) Dr. Umakant S/o Nanasaheb Tatkar,
Aged about 43 years,
Medical Officer, PHC, Ramkhurd,
Tq. Ghatanji, Distt. Yavatmal.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Health, Mantralaya,
Mumbai.

- 2) Director of Health Services,
Arogya Bhavan, St. Gorge Hospital,
Campus, near CST, Mumbai.
- 3) Deputy Director of Health Services,
Akola Circle, Akola.
- 4) District Health Officer,
Zilla Parishad, Yavatmal.

Respondents.

Shri N.R. Saboo & Smt. K.N. Saboo, Advocates for the applicants.

Shri V.A. Kulkarni, learned P.O. for respondent nos. 1 to 3.

Shri D.M. Kale, Advocate for respondent no.4.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J)**

JUDGMENT

(Delivered on this 4th day of May,2018)

Heard Shri N.R. Saboo, learned counsel for the applicants, Shri V.A. Kulkarni, learned P.O. for respondent nos. 1 to 3 and Shri D.M. Kale, learned counsel for respondent no.4.

2. All the applicants responded to the advertisement for the post of Medical Officers and after holding interview, were selected and appointed. After giving initial posting at Public Health Centre under Zilla Parishad, Yavatmal, the services of the applicants were assigned in the Public Health Centres which are situated under naxalite affected area / rural area.

3. According to the applicants, as per the G.R. dated 06/08/2002 the Government servants who are posted in naxalite affected area / rural area are entitled for incentive allowance and one step promotional pay. The applicants in the year 2007 and onwards were being paid intensive allowances and one step promotional pay. However, vide communication dated 20/04/2016 the respondent, the District Health Officer directed his subordinate officer that the applicants who are working on ad-hoc are not entitled for incentive allowance and one step promotional pay w.e.f. April,2011. The applicants were accordingly informed that they are not entitled to monetary claim in the nature of incentive allowance and one step promotional pay. It is stated that the impugned communication dated 20/04/2016 has been issued by the respondent no.4 without hearing the applicants particularly when it's effect is recovery of the amount of incentive allowances paid to the applicants till April,2015. It is stated that the action on the part of respondents is unilateral and against the principles of natural justice. The same respondent, the Zilla Parishad in the case of appointment of Shikshan Sevak in the naxalite affected area and as well as other contractual employees are paid intensive allowance as per the G.R. dated 26/08/2002 and therefore the respondents direction withdrawing such benefits to the applicants is

required to be quashed and set aside. The applicants have prayed following reliefs :-

“(i) Quash and set aside communication dated 20/04/2016 issued by respondent- District Health Officer, Zilla Parishad, Yavatmal at Annex-A-4, whereby the said Authority issued order of recovery of incentive allowance and benefits of pay of one step promotion w.e.f. April,2011 and directed to discontinue to pay said incentive allowance from March,2016 to the applicants.

(ii) By appropriate order be pleased to allow the O.A. and hold that the applicants are entitled for release of incentive allowance of one step promotion pay provided to Government Officers under policy of the Government as provided in G.R. dated 06/08/2002 issued by GAD of State of Maharashtra while posting of Government servant in naxal affected area.”

4. The respondent no.3, the Deputy Director of Health Services, Akola has filed reply-affidavit and submitted that the applicants hold BAMS qualification and their appointments come within the purview of the Deputy Director of Health Services, Akola Circle, Akola. It is stated that all the applicants were appointed for 11 months on Ad-hoc basis. It is admitted that as per the 5th Pay Commission recommendation and as per the communication dated 15/03/2010 issued by the Deputy Director, Technical Accounts and Treasury, Mumbai, the government officers and employees working in naxal affected area and tribal areas, were entitled to 15% of basic pay and maximum upto Rs. 1500/- towards the intensive allowance.

Though the appointment of the applicants was for 11 months and temporary being not part time / casual one, same intensive was made applicable to them. However, as per the G.R. dated 06/08/2002 such intensive can be paid only to regular employee.

5. The respondent no.3 received letter dated 20/04/2011 which was issued by the Joint Director of Accountants and Treasury, Mumbai wherein it was specifically stated that one step ahead pay scale is not available to the temporary employees. In view of the said communication the respondent no.4 was required to issue communication dated 20/04/2016 which was challenged by the applicants before this Tribunal in this O.A. and in view of the interim stay granted by the Tribunal, the recovery is stayed.

6. The respondent no.4, the District Health Officer, Zilla Parishad, Yavatmal has also filed reply-affidavit. According to respondent no.4, the applicants were paid intensive allowances and one step promotional scale, but the guidance was sought from the Director of Health Services as also from District Health Officers, at Chandrapur, Gadchiroli and Gondia and it was intimated to the respondent no.4 that temporary employees were not entitled to intensive and promotional scale and therefore such facility was stopped and the action for recovery of the said amount paid from April to March,2016 has been initiated.

7. The applicants have filed rejoinder. It is submitted that the applicants are working in the department since last more than 10 years and their initial postings were not in naxalite affected area. Their services are being continued from time to time and from last 2 to 6 years they are posted in naxalite affected area. They are being appointed for 11 months by giving technical breaks and therefore they are entitled to all privileges of regular employees. It is stated that the communication dated 20/04/2011 by the Deputy Director is misconceived. The G.R. dated 05/02/1999 exclude only employees of part time or casual one and therefore the communication dated 20/04/2011 cannot override GAD directions as issued in G.R. dated 06/08/2002. It is further reiterated that the applicants were not granted any opportunity before impugned order was passed.

8. The applicants have placed their appointment orders on record which are at P.B. page nos. 24 to 67 (both inclusive) from which it seems that they are initially appointed for 11 months on temporary basis with condition that they will not have right to claim regularisation and they will have to apply for regular post whenever the MPSC publishes the advertisement and will have to appear for such competitive examination and should have been selected. Though it is the fact that the applicants' appointments were temporary, they have been continued from time to time by giving

technical breaks. Right from 2007 their services are being continued with technical breaks. Initially the applicants were appointed in Yavatmal district, it was not naxalite affected area/ rural area, but subsequently they were transferred to naxalite affected / rural areas. The only defence taken by the respondents is that the applicants being temporary employees are not eligible for the benefit of pay and allowances as per the G.R. dated 06/08/2002, the copy of which is placed at P.B. page nos. 16 to 22 (both inclusive) at Annex-A-1. The said G.R. says that the intensive allowances will not be applicable to part time and ad-hoc employees. The specific condition in the G.R. in para-2 (d) (1) is as under :-

*" i k&I kgu HkRrk v&kdkyhu de&pkjh o u&efRrd de&pkjh ; k&uk vu&k&s jkg.kkj ukgh***

9. On the basis of this condition, the facilities which were being granted to the applicants as per the G.R. dated 6/8/2002 are withdrawn vide impugned order dated 20/04/2016. The communication dated 20/04/2016 has been issued by the District Health Officer, Zilla Parishad, Yavatmal (R/4). The said communication is as under :-

^ mijkDr I nfhkz i=kps vu&fk&kus vkjkk; foHkxkrthy v&fnokl h @ u{k&y&Lr Hkxkr dk; j&r vl y&y; k o&skfd; vf/kdk&; k& ; k 11 efgU; kP; k u&.k&ph&fjrk i k&I kgu HkRrk o , dLrj i n&klurhph I k&o/kk ykxqu l Y; k&ckr dGfo.; kr vk&ys& vk&gs o v'kk o&skfd; vf/dk&; k&ps, fi y 2011 efgU; kP; k I knj g&sk&; k oru n& dkr I ekos&k ul Y; kph [kk=h dj.; k&ckr ue& d&ys&svk&gs

*rsgk I nj i=kps vuqkxkus vki .kkd ns; kr ; s vl ysyk i k&l kgu HRRrk o , dLrj
 i nkklturhpk ykHk ekgs ekp] 2016 psoru ns dki kl uu cm dj.; kr ; s vks r l p vki .kkd
 g; k dk; ky; kdMu i k&l kgu HRRrk o , dLrj i nkklturhpkjseks, fiy 2011 rs Qscpljh
 2016 i; r vfrinku >kysh jDde #i; s6]65]230@& %v{kjh #- I gk yk[k i kl "B
 g tkj nku'ks rhl QDr½ ph ol gyh 'kk l u [kkrh rkrDkG tek dj.; kr ; koh] vU; Fkk ekgs
 ekp]2016 psoru ns dkr uu vfrinku >ky; k jdeph ol gyh l # dj.; kr ; bdy ; kph
 vki .k ulm ?; koh***

10. In view of the aforesaid communication, not only the intensive allowances are stopped, but the so called excess amount has been ordered to be recovered and such excess amount is alleged to be Rs.6,65,230/-.

11. From the aforesaid facts, it is clear that the applicants were being paid the intensive allowances as mentioned in the G.R. dated 6/8/2002 and all of a sudden vide impugned letter dated 20/04/2016 (Annex-A-4) the said intensive allowances have been stopped. Admittedly, no show cause notice was given to the applicants before issuing such communication and therefore without giving any opportunity to the applicants, their intensive allowances are stopped and not only that the recovery is ordered. Such action on the part of respondent no.4 is absolutely unilateral and against the principles of natural justice. It is material to note that the applicants are being appointed from time to time on their posts with technical breaks. The appointment orders have been issued by the Deputy

Director, of Health Services, Akola and the condition no.1 of the appointment orders of all the applicants it is stated as under :-

*^ ¼1½ R; kps oru njegk #i ; s¼cM oru #- 9300&34800 xMoru #- 4400½ ; k iæk.ks egljk"Vª o8kfd; vjkK; I ok xV&c ; k oru Jskhe/ky fu; ekud kj vuKs vl yysbrj HkRrs; k iæk.ksfeGrhy-***

12. In my opinion, the respondent authorities must consider the fact that as per the G.R. dated 6/8/2002, intensive allowances are being paid to the employees who are serving in difficult area like naxalite affected / rural area at the cost of their convenience and family problems. Prima facie, I feel that there is no reason as to why such benefit shall not be granted to the employees who are working on the establishment of respondents from more than 10 years continuously except with technical breaks. The point as to whether the applicants' services falls within the ambit of the definition "v¼kdkyhu deþkjho uæfrd deþkjir" will have to be considered by the respondent authorities. In any case, before stopping the allowances and facilities which the applicants were getting as per the G.R. dated 6/8/2002 all of a sudden is not legal and proper. The applicants should have been given opportunity of being heard on this point. The impugned orders issued by the respondent no.4 is against the principles of natural justice and therefore, I pass the following order :-

ORDER

(i) The O.A. is partly allowed. The impugned communication dated 20/04/2016 issued by the District Health Officer, Yavatmal (Annex-A-4) whereby the order of recovery of intensive allowances and benefits of the pay of one step promotion w.e.f. April,2011 is ordered and it has been directed to discontinue to pay such intensive allowances from March, 2016 is quashed and set aside. The respondents are directed not to recover the amount from the applicants as per the impugned order dated 20/04/2016. Before passing any order regarding stoppage of intensive allowances as mentioned in the communication dated 20/04/2016, the respondents shall give an opportunity to the applicants of being heard and after hearing them on the point, necessary orders may be issued. No order as to costs.

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

Dated :- 04/05/2018.

dnk.