

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 642 / 2020 (S.B.)**

Kundan S/o Chandan Tambe,  
Aged about 36 years, Occupation:-Nil,  
R/o Sanjay Nagar,  
Joglekar Ward, Gondia, Tah. and  
District - Gondia (M.S.)

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Health Department,  
Mantralaya, Mumbai- 32.
- 2) Deputy Director of Health Services,  
Nagpur Division, Nagpur.
- 3) Medical Superintendent,  
Rural Hospital, Narkhed,  
Tah. Narkhed, District-Nagpur.

**Respondents**

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**Shri I.N.Choudhari, Id. Advocate for the applicant.**

**Shri V.A.Kulkarni, Id. P.O. for the Respondents.**

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**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

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**JUDGMENT**

**Judgment is reserved on 08<sup>th</sup> March, 2022.**

**Judgment is pronounced on 16<sup>th</sup> March, 2022.**

Heard Shri I.N.Choudhari, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. In this application the applicant has sought following reliefs:-

A. *Quash and set aside the impugned communication no. 2123/2020 dated 23.01.2020 issued by the respondent no. 2- Deputy Director, Health Services, Nagpur Division, Nagpur, and hold the impugned communication bad and illegal;*

B. *Direct the respondents to consider the applicant for appointment under Class-IV category as per Lad Page committee in place of his deceased father;*

C. *Grant any other relief which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of the matter, in the interest of justice.*

Respondent no. 2 has resisted this application principally on the following ground:-

*"3. At the outset the respondent would like to oppose the present original application on the ground of maintainability. It is not out of place to mention here that the applicant had earlier filed the original application no. 491 of 2017 seeking the same reliefs. On 14.01.2019 the applicant filed the pursis on the record and decided to withdraw the original application. The said pursis is for unconditional withdrawal and without liberty to file the subsequent litigation in that respect. The Hon'ble Tribunal pleased to dispose of the original application no. 491 of 2017 at the instance of the applicant by*

*virtue of order dated 17.01.2019. Thus the order reached to the finality and no subsequent original application is now maintainable on the same cause of action for the same reliefs."*

3. Copy of earlier O.A. filed by the applicant bearing O.A. No. 491/2017 is at Annexure-15. In this O.A., the applicant had sought following reliefs:-

*"(i) Direct the respondents to consider the claim of applicant for appointment on compassionate ground under clause-IV category in place of his father who died while in service on 25.05.2003.*

*(ii) Grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case and in the interest of justice."*

4. In O.A. No. 491/2017 the applicant filed withdrawal pursis on 14.01.2019 (A-17). In view of this pursis this Tribunal passed order dated 17.01.2019 (A-18) as follows:-

*"Heard Shri R.M.Wasnik, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.*

*The Ld. counsel for the applicant wants to withdraw the O.A. for this he has filed a pursis on 14.01.2019. In view thereof, he is allowed to withdraw the O.A.. O.A. stands disposed of as withdrawn with no order as to costs."*

5. In the instant application the applicant has sought relief of quashing and setting aside communication dated 23.01.2020 (A-19). Perusal of this communication shows that it was a reply to letter dated 15.09.2018 submitted by the applicant. Thereafter, as mentioned above,

the applicant filed pursis A-17 to withdraw O.A. No. 491/2017 and this Tribunal proceeded to pass the order on 17.01.2019 (A-18).

6. It is apparent that the relief 'X' claimed in O.A. No. 491/2017 and the relief claimed in instant O.A. is the same. Prayer 'A' made in this application which is quoted above and by which the applicant is praying for quashing and setting aside the communication dated 23.01.2020 will not make any difference since communication dated 23.01.2020 was made in response to letter dated 15.09.2018 written by the applicant. This was followed by unconditional withdrawal of O.A. No. 491/2017. In the facts and instances of the case instant application would be barred in view of unconditional withdrawal or earlier application bearing O.A. No. 491/2017. Hence, the order:-

### **ORDER**

1. Application is dismissed.
2. No order as to costs.

**(Shri M.A.Lovekar)**  
**Member (J)**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 16/03/2022.  
and pronounced on

Uploaded on : 17/03/2022.