

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 450 of 2014 (S.B.)**

Dr. Smt. Anita Shridhar Wanjari,  
aged 51 years, Occ. Service, R/o C/o Godhne Hospital,  
Warud, Tah. Warud, District Amravati.

**Applicant.**

**Versus**

- 1) State of Maharashtra, through its Secretary,  
Public Health Department, Mantralaya, Mumbai-32.
- 2) Director of Health Services,  
State of Maharashtra, Arogya Bhawan,  
St. George Hospital Compound, P. Bimelo Road, Mumbai-8.
- 3) Deputy Director of Health Services,  
Akola Division (Mandal), Akola, District Akola.
- 4) District Health Officer, Zilla Parishad, Amravati.

**Respondents.**

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**Shri A.Z. Jibhkate, Advocate for the applicant.**  
**Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 3.**  
**S/Shri S.A. Mohta, S.M. Bhangade, A.P. Gujewar, S. Rokade, A.M.**  
**Meshram, S. Shinde, Advocates for respondent no.4.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

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**Date of Reserving for Judgment : 7<sup>th</sup> September,2023.**

**Date of Pronouncement of Judgment : 27<sup>th</sup>September,2023.**

**JUDGMENT**

**(Delivered on this 27<sup>th</sup> day of September,2023)**

Heard Shri A.Z. Jibhkate, learned counsel for the applicant  
and Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 3. None  
for respondent no.4.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Medical Officer, Class-II as per the order dated 24/11/1987. She was posted at Primary Health Center, Bembad, District Chandrapur. Thereafter, she was transferred in Nagpur District and thereafter she was continuously worked as a Medical Officer at Primary Health Centre, Loni, Tah. Warud, District Amravati. On 11/03/2002, the applicant proceeded on casual leave and thereafter on medical leave w.e.f. 14/03/2002 onwards vide applications dated 11/03/2002 and 14/03/2002 addressed to the respondent no.4. The respondent no.4 who had made up his mind not to continue the applicant in Amravati district as a Medical Officer, relieved her from the post of Medical Officer, Primary Health Centre, Loni, Tah. Warud, District Amravati and directed her to approach respondent no.2 (Director of Health Services, State of Maharashtra, Mumbai) for her further posting.

3. The applicant due to her health, family problems and difficulties could not approach to respondent no.2 for her posting. However, after coming out from the same, she moved application for her posting as a Medical Officer on 26/04/2005. The applicant was informed to submit Medical Fitness Certificate from the Medical Board, as per the letter dated 17/09/2005. The applicant submitted Medical Fitness Certificate on 22/11/2005 to the respondent no.4. The

respondent no.4 forwarded the same to the respondent no.3. In spite of required compliance from the applicant and her continuous persuasion for posting, no steps were being taken by the respondents. Hence, she moved application for the said grievance and requested for posting order, as per the letter dated 22/09/2008. The applicant was again asked to submit Certificate from Taluka Health Officer, Tah. Warud, District Amravati to the effect that she was not engaged in private medical practice or any business in the intervening period and character Certificate from the Police Officer, Police Station, Warud to the effect that no offence is registered against her. She immediately submitted the same on 09/02/2010. The applicant moved the representation to the Health Minister, State of Maharashtra for her posting, as per letter dated 22/03/2010.

4. The respondent no.2 published notice of termination in the Lokmat News paper dated 07/07/2012 against the Medical Officers, who remained absent without any permission and in the said list, the name of the applicant was also included. Though the respondents were aware of the facts that since 2005 the applicant is perusing the matter for her posting and she complied all the requirements.

5. The applicant on coming to know that public notice published in the News paper, immediately submitted her request letter to respondent no.2, in which specifically pointed out her continuous

efforts regarding her posting and requested for posting. The applicant was expecting immediate action from the respondents. The respondents have not given her posting. Therefore, she approached to this Tribunal for direction to the respondents to issue posting order as a Medical Officer as prayed by her in her last representation dated 16/07/2012. She has also prayed to declare that she is entitled to receive her entire unpaid salary for the period from October,2001 till the date of posting as a Medical Officer and regular salary thereafter.

6. She has also prayed for direction to the respondents to extend all the benefits of service, i.e., monetary and continuity of service etc. by suitable and appropriate direction.

7. The O.A. is strongly opposed by the respondent no.3 by filing reply-affidavit. It is submitted that the applicant was working as a Medical Officer at Primary Health Centre, Rajura Bazar, under the respondent no.4. There was a complaint lodged against the applicant by the villagers that she was not living at head quarter as well as remained absent on duties without permission of respondent no.4 and so due to non availability of the applicant, needy patients were not getting medical treatment. The respondent no.4 asked the explanation to the applicant and instructed the applicant to give proper services as a Medical Officer at Primary Health Centre, Rajura Bazar. But, after giving her many chances, the applicant did not improve her

performance and therefore respondent no.4 i.e. the Chief Executive Officer, Zilla Parishad, Amravati relieved the applicant for further posting from respondent nos.2/3 (Director of Health Services, Mumbai / Deputy Director of Health Services, Akola). It is submitted that the letter itself shows that due to misconduct and because of the regular absent of applicant from the duty, the respondent no.4 taken action.

8. It is submitted that as per the letter dated 14/12/2001 directed the applicant to work under respondent no.4 (Zilla Parishad, Amravati). With the intention of giving last chance to the applicant to improve her performance, the the Chief Executive Officer, Zilla Parishad, Amravati (R/4) by order dated 18/01/2002 directed the applicant to join at Primary Health Centre, Loni, Tah. Warud, District Amravati.

9. It is submitted by respondent no.3 that after giving her maximum chances to remain present at head quarter and perform her duties regularly and sincerely, but her duty was not satisfactory. The respondent no.4 had relieved the applicant for her further posting to the Director of Health Services (M.S.) by order dated 16/03/2002. She did not approach to the respondent no.2 for her posting. On 18/07/2005, she was directed for medical examination. The respondent no.2 vide its letter June,2009 had sent to the Government the proposal for posting of the applicant. But as the applicant was

continuously absent from the duty since 2002 and also she had only submitted the medical certificate to the department, but remained physically absent from duties and did not make any correspondence to the department. Thereafter by letter dated 24/02/2012, the respondent no.2 sent proposal of termination of applicant to the Government. The Government has published the notice in News paper Lokmat dated 07/07/2012 in respect of the Medical Officers who were absent since long. The name of the applicant was also published in the said list. It is submitted that the respondents are not at fault for not giving posting to the applicant. The conduct of the applicant shows that she was not doing her work properly. There were complaints against her and therefore she cannot claim relief as prayed.

10. The respondent no.4 (Chief Executive Officer, Zilla Parisahd, Amravati) filed the reply. In the reply, preliminary objection is raised by the respondents. It is submitted that respondent no.4 relieved her on 16/03/2002 directing her to get posting from respondent no.2. The applicant was not diligent about her rights since 16/03/2002. She was continuously absent from 2002. She was not sincere towards her medical profession. Therefore there is no continuous cause of action and hence on the point of limitation, the O.A. is liable to be dismissed. It is submitted by respondent no.4 that there were complaints of the villagers against the applicant. The

applicant was not residing at the head quarter. She was remaining absent from the duty, therefore, patients could not get proper treatment. Hence, respondent no.4 issued first transfer order from Chandur Bazar to Loni. As per the order dated 16/03/2002, she was relieved from the posting at Loni and directed her to get posting from respondent no.2. In the transfer order itself, it is mentioned that she was not residing at head quarter, she was not discharging her duties properly. Because of her absenteeism, some other Officers were deputed to discharge her duties. Therefore, it appears that she was not willing to continue her service. Hence, she was directed to get posting from respondent no.2 (Director of Health Services, M.S., Mumbai). At last submitted that respondent no.4 was not at fault, therefore, the O.A. is liable to be dismissed.

11. Heard learned counsel for the applicant Shri A.Z. Jibhkate. He has pointed out the order passed by this Tribunal dated 29/07/2015. He has also pointed out the order dated 01/09/2015. The learned counsel for applicant has pointed out the correspondence made by the applicant. It is submitted that the applicant had applied for medical leave. Thereafter without any notice to her, she was relieved by respondent no.4 on 16/03/2002 and directed her to get posting from respondent no.2. Because of her problems, she could not pursue for posting. In the year 2005, she made correspondence for

posting as a Medical Officer. She was directed to produce Medical Fitness Certificate of the Medical Board. The applicant had appeared before the Medical Board and produced the Medical Fitness Certificate dated 22/11/2005. Thereafter also posting was not given by the respondents. The list was published in the daily news paper Lokmat dated 07/07/2012. The name of applicant was also shown in the same list in which the names of absent doctors were shown. Thereafter, as per the letter dated 17/01/2014 of Government of Maharashtra, the similarly situated Doctors / Medical Officers were given posting. The applicant was not given posting stating that she was already retired in the year 2013. In fact, the applicant was not retired. Now she is retired in the year 2020. Her date of birth is 05/12/1962. The learned counsel for applicant has submitted that the respondents were at fault for not giving her posting. Therefore, she is entitled for full salary. In support of his submission has pointed out the following decisions –

- (i) *Union of India and Others Vs. K.V. Jankiraman and Others (1991) 4 SCC,109.*
- (ii) *Robert D'Souza Versus Executive Engineer, Southern Railway and Another (1982) 1 SCC,645.*
- (iii) *Jai Shanker Versus State of Rajasthan, AIR 1996 SC,492.*
- (iv) *Manorama (Prof.) Prakash Khandekar Versus State of Maharashtra and others, 2020 (4) Mh.L.J.*



12. Heard learned P.O. Shri A.M. Ghogre. As per his submission, the applicant was at fault. The applicant did not remain present at the head quarter. She was not discharging duties properly. She remained absent for a long time, therefore, respondent no.4 issued relieving order dated 16/03/2002 with direction to her to get posting from respondent no.2. After the order, she did not approach to respondent no.2, she did not make any correspondence till the year 2005. The applicant was not interested to continue her duty as a Medical Officer. List of Medical Officers who remained absent for a considerable long period, was published in daily news papers Lokmat dated 07/07/2012. Thereafter, the decision was taken by the Government to give posting to those Medical Officers, those who are eligible.

13. The learned P.O. has fairly submitted that it was the mistake of respondent nos.1 and 2 treating her retired in the year 2013. When the mistake was noticed, she is given posting. The applicant now joined on 20/11/2015 at Primary Health Centre, Loni, Tah. Warud, District Amravati, as per the order dated 31/10/2015. Hence, she cannot claim full salary of the absent period. She never worked for said period. Hence, the O.A. is liable to be dismissed.

14. There is no dispute that the applicant remained absent from the year 2001-2002. She did not make any correspondence till

2005. In the year 2005, she was directed to produce Medical Fitness Certificate from the Medical Board. She appeared before the Medical Board. The Medical Board issued fitness certificate dated 22/11/2005. Thereafter, it appears from the contention of the applicant that she has produced the Medical Fitness Certificate in the office of respondent no.4, but it is clear from the relieving order of the year 2002 of respondent no.4 that she was already relieved and she was directed to get posting from respondent no.2. Therefore, it was the duty of the applicant to approach to respondent nos.2 and 3 for her posting. Thereafter also the applicant not pursued her matter till 2008. The list was published in the daily Lokmat News paper dated 07/07/2012. Thereafter the respondent nos.1 and 2 taken the decision to give posting to the eligible Medical Officers, but the applicant was wrongly shown as retired in the year 2013 itself. The order of this Tribunal dated 01/09/2015 is reproduced below –

*“ Shri A.Z. Jibhkate, learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondent Nos. 1 to 3. None for the respondent No.4.*

*Read communication dated 30.7.2015 addressed to the CPO, MAT, Nagpur by the Dy. Director of Health Services, Akola. In this, it is stated that by mistake, it was presumed that the applicant has attained the age of superannuation on 31.12.2013. Later on, it was found that her age of superannuation is 31.12.2020. Therefore, for taking further steps, three months' time is sought.*

*Admittedly, because of mistake committed by the office of the Dy. Director of Health Services, Akola, the applicant has been deprived of similar treatment which is meted out to 19 Medical Officers. We, therefore, direct the respondents to take final decision in the matter of appointment as expeditiously as possible and in any event within two weeks from the date of passing of this order.*

*Learned P.O. shall apprise the department with this order. Steno copy be supplied to the P.O.”*

15. Thereafter the following order was passed on 15/09/2015 by this Tribunal –

*“ None for the applicant. Shri P.N. Warjurkar, learned P.O. for respondent nos.1 to 3. None for respondent no.4. The learned P.O. seeks further time to comply the Tribunal’s order dated 1/9/2015. At his request, **S.O. to two weeks.**”*

16. Therefore, it is clear that the respondents should have posted her as like other Medical Officers were posted as per the order / direction of respondent no.1, dated 17/01/2014. The letter issued by respondent no.3, Jt. Director of Health Services, Mumbai to learned P.O. clearly shows that other similarly situated Medical Officers were regularised as per the proposal dated 24/10/2013, but the applicant was shown retired on 31/12/2013.

17. The applicant has produced copy of Service Book issued by the Administrative Officer, Zilla Parishad, Nagpur. It shows that date of birth of applicant is dated 05/12/1962. The learned counsel for

applicant has made a statement that the applicant is retired on 31/12/2020.

18. The learned counsel for applicant has pointed out the decision of the Hon'ble Supreme Court in the case of the *Union of India and Others Vs. K.V. Jankiraman and Others (1991) 4 SCC,109*. The Hon'ble Supreme Court has held that "No work no pay--Rule of, inapplicable where employee, though willing, is not allowed to work without his fault." The learned counsel for applicant has submitted that the applicant was already relieved to work, but she was not given posting. He has pointed out the decision of the Hon'ble Supreme Court in the case of the *Robert D'Souza Versus Executive Engineer, Southern Railway and Another (1982) 1 SCC,645*. The Hon'ble Supreme Court has held that "absence without leave is a misconduct and termination of service on such ground without complying with minimum principles of natural justice would not be justified." This decision is not applicable. The applicant is not terminated by the respondents.

19. In the case of *Jai Shanker Versus State of Rajasthan, AIR 1996 SC,492*, the Hon'ble Supreme Court has held that "Removal from service for overstaying leave – Service Regulations providing that there is automatic termination of service on overstay—Still removal from service without giving opportunity to show cause is

illegal.” In the present case, there is no any termination of the applicant. Hence, decisions are not applicable.

20. The learned counsel for applicant has pointed out the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.5448/2011 in the case of *Manorama (Prof.) Prakash Khandekar Versus State of Maharashtra and others*, decided on 20/03/2020. The Hon'ble Bombay High Court has held that “the principle of no work no pay is not applicable in a situation where employee is willing to discharge duties, but is prevented from doing so.” In the cited decision, the petitioner was willing to discharge duties. She was superannuated at the age of 58 years. Her retirement age was 60 years. In such situation, it was held that “where the employee is willing to discharge, but she was prevented from doing so because of early retirement at the age of 58 years though as per rule she was entitled to continue service till 60 years. Therefore, direction was given to pay salary of two years to the applicant.

21. In the present case, the applicant is entitled for full salary, at the most from the date from which the similarly situated Medical Officers whose names were published in the daily Lokmat news paper dated 07/07/2012, were continued in service. The Hon'ble Bombay High Court, Bench at Nagpur in WP 5983/2010 has observed in para-6 as under –

*“ (6) In the facts of this case, since the petitioner is not at fault and had approached the school at Kesalwada in the month of March, 2010 to join his duties as a Supervisor, the petitioner is entitled to the salary for the period from March, 2010 till the date of joining his duties as a Supervisor in the school at Kesalwada. The post of the Supervisor in the school at Kesalwada is a sanctioned post and in the facts and circumstances of the case, though the petitioner has not actually worked on the post of Supervisor in the school at Kesalwada, by applying *lex non cogit ad impossibilia*, we direct the respondent no.1-Education officer, in the peculiar facts and circumstances of this case, to pay the salary of the petitioner as the respondent no.1 has, admittedly not paid the salary of the post of Supervisor in the school at Kesalwada since March, 2010 till this date, to anyone else.”*

22. The applicant not made any correspondence from the year 2002 till 2005. Thereafter also she was not seriously pursuing her matter. The name of applicant was published in the daily Lokmat news paper dated 07/07/2012 along with other Medical Officers who were continuously remained absent. Thereafter the Government has taken decision to give posting to 19 (23) Medical Officers who are eligible and who were not retired. The applicant was wrongly shown as retired in the year 2013. In fact, the applicant was not retired in the year 2013. Hence, as per the direction of this Tribunal she was given posting and she has joined the duties on 20/11/2015 at Primary Health Centre, Loni, Tah. Warud, District Amravati, as per the order dated 31/10/2015. The applicant was not at fault. She should have given regular posting as like other similarly situated Medical Officers whose

names were published in the daily news paper Lokmat dated 07/07/2012 and those Medical Officers like the applicant were given posting. Therefore, she is entitled for full salary from the date on which other similarly situated Medical Officers were given posting by the respondent nos.1 and 2, as per the proposal dated 24/10/2013. The question in respect of salary and continuity of service from the year 2002 is to be decided by the respondents. There is no dispute that no any action of misconduct was initiated by the respondents. Therefore, it is for the respondents to decide the absent period, as per the rules.

23. The prayer Clause 7 (i) is already satisfied. During the pendency of this O.A., the respondents have given posting to the applicant and she has joined the duties on 20/11/2015 at Primary Health Centre, Loni, Tah. Warud, District Amravati, as per the order dated 31/10/2015. In respect of other prayers, the following order is passed –

### **ORDER**

- (i) The O.A. is partly allowed.
- (ii) It is held that the applicant is entitled for full salary from the date on which other similarly situated cadres Medical Officers, whose names were published in the daily News paper Lokmat dated 07/07/2012 and they were given posting as per the order / proposal dated 24/10/2013.

(iii) The respondents are directed to decide the absent period and continuity of service etc., as per the rules and her entitlement of monetary benefits i.e. salary, pension etc. within a period of four months from the date of receipt of this order.

(iv) No order as to costs.

**Dated** :- 27/09/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

\*dnk.



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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/09/2023.