

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 475 of 2023
With CIVIL APPLICATION No.454 of 2023 (D.B.)

Anil S/o. Jeshiram Rudey,
Age: 58 years, Occ: Service -District Civil Surgeon,
Gadchiroli, Tq. Gadchiroli, Dist: Gadchiroli

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
Government of Maharashtra, Mantralaya, Mumbai-32.
- 2) Commissioner of Health and Mission Director,
National Health Mission, Maharashtra State,
Aarogya Bhavan, St. George Hospital Compound,
Near CST, Mumbai.
- 3) Director of Health Services,
Aarogya Bhavan, St. George Hospital Compound,
Near CST, Mumbai.
- 4) Deputy Director, Health Services,
Nagpur Region, Nagpur.
- 5) Shri Dr. Pramod S/o Bhaiyaji Khandate,
Aged about 57 years, Occ. Civil Surgeon,
District Hospital, R/o Gadchiroli, Dist. Gadchiroli.

Respondents.

S.V. and Dr.Mrs. R.S. Sirpurkar, Advocates for the applicant.
Shri S.A. Deo, learned C.P.O. for respondents.

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

Dated :- 08/09/2023.

J U D G M E N T

Heard Smt. R.S. Sirpurkar, learned counsel for the applicant and Shri S.A. Deo, learned CPO for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally. The matter is heard and decided finally with the consent of learned counsel for parties.

3. This O.A. was filed by the applicant challenging the G.R. / Notification dated 23/02/2022 (P-38). As per the said G.R. / Notification, Medical Officers, District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group-A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group-A (in Pay Band Rs.15600-39100, Grade Pay of Rs.5400 and above as per 6th Pay Commission and in Pay Level in Pay Matrix S-20 and above as per 7th Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years. By proviso, the retirement age was extended upto the age of 62 years. In the last line

of the said G.R./ Notification, it is mentioned that the said G.R. / extension is applicable till 31/05/2023.

4. It is the contention of the applicant that as per the G.R. / Notification dated 23/02/2022, the amendments are made in the rules. The interim relief was granted by the Hon'ble Single Bench of Bombay High Court, Bench at Nagpur on 26/05/2023 (because as per the submission of the applicant, the M.A.T. was not working at Nagpur).

5. As submitted by the learned counsel for the applicant, circulation was not granted by the M.A.T. Principal Bench, Mumbai. The charge of this Tribunal was kept with the M.A.T. Principal Bench, Mumbai. Other matters were heard by the M.A.T. Principal Bench, Mumbai on that date. Whatever it may be, the interim relief was granted by the Hon'ble High Court and service of the applicant was protected by granting stay to the G.R. / Notification dated 23/02/2022.

6. As per the submission of learned counsel for applicant, the present O.A. was not decided by this Tribunal eventhough the applicant was relieved / retired by the respondents illegally. Now, the similar O.As. are decided by the M.A.T., Principal Bench, Mumbai holding that retirement of the applicants (Medical Officers) on 31/05/2023 is perfectly legal and correct and therefore the applicant is also covered by the Judgment of the Division Bench of the M.A.T., Principal Bench, Mumbai.

7. Similar matters were filed before the M.A.T., Principal Bench, Mumbai. The Division Bench of the M.A.T., Principal Bench, Mumbai in O.As. 623, 626,658,1026 and 1066 of 2023, decided on 31/08/2023 has held that the applicants are not entitled for protection of service in view of the specific conditions in the G.R. / Notification dated 23/02/2022. Observations of the M.A.T., Principal Bench, Mumbai is reproduced below –

*“18. We rely on the observations of the Hon'ble Supreme Court in **Civil Appeal No.7580 of 2012 Dr. Prakasan M.P. & Ors. Vs. State of Kerala & Anr. decided on 25.8.2023** in similar set of facts concerning the extension of age of Homeopathic Doctors from 55 to 60 years. The Hon'ble Supreme Court has observed as under:*

11. It is well-settled that the age of retirement is purely a policy matter that lies within the domain of the State Government. It is not for the courts to prescribe a different age of retirement from the one applicable to Government employees under the relevant service Rules and Regulations. Nor can the Court insist that once the State had taken a decision to issue a similar Government Order that would extend the age of retirement of the staff teaching in the Homeopathic Colleges as was issued in respect of different categories of teaching staff belonging to the Dental stream and the Ayurvedic stream, the said G.O. ought to have been made retrospective, as was done when G.O. dated 14th January, 2010 was issued by the State and given retrospective effect from 1st May, 2009. These are all matters of policy that engage the State Government. It may even elect to give the benefit of extension of age to a particular class of Government employees while denying the said benefit to others for valid

considerations that may include financial implications, administrative considerations, exigencies of service, etc."

19. As regards the issue of principles of legitimate expectation Ld. Advocate for the applicant relied on para 19 of the said judgment in *Dr. Prakasan M.P. (supra)* which reads as under:

19. No doubt, the appellants were the first to raise the battle cry when they filed not one, but two writ petitions in the High Court for extending them the benefit of G.O. dated 14th January, 2010. But it is a matter of record that there was no positive order granted in their favour throughout. Even in the present proceedings, no interim order was passed in favour of the appellants who have superannuated in the meantime. The clock cannot be put back for them by reading retrospectivity in the G.O. dated 09th April, 2012, when the State elected not to insert any such clause and evidently intended to apply it with prospective effect. The idea behind extension of retirement age of doctors was to take care of the emergency situation caused by shortage of doctors, which was resulting in affecting the studies or patient care. It was not merely to grant benefits to a particular class. The Doctrine of Legitimate Expectation does not have any role to play in matters that are strictly governed by the service regulations. This is an exercise that is undertaken by the State in discharge of its public duties and should not brook undue interference by the Court."

20. In our considered view, the erstwhile compelling circumstances of 70% vacancies subsequently COVID-19 Pandemic led to the legislature to issue the Notification dated 23.2.2022. On our query, learned C.P.O furnished the information that now the Public Health Department is in the process of filling up the vacancies and now the percentage of vacancies has dropped down and will reduce considerably in future as fresh posts of Medical Officers are advertised.

21. In view of this, we say that no Doctors at the regular age of retirement of 58 years is entitled to get benefits of extended age and can remain in service after 31.5.2023.

22. Hence, we hold that all these Original Applications deserve to be dismissed. All the above Original Applications are dismissed. Interim relief is discharged. No orders as to cost.”

8. The applicant is similarly situated employee as like in above O.As. He was to retire on 31/05/2023, but because of the stay granted by this Tribunal, he was continued in the service. Now the Division Bench of the M.A.T., Principal Bench, Mumbai has dismissed the similar O.As. and held that there is nothing illegal in the Notification dated 23/02/2022 by not extending the services of the Medical Officers as per the Notification on the last day of May, i.e., on 31/05/2023. The applicant is claiming that his age should be extended upto 60 years, but as per the Notification, he was to retire on 31/05/2023. After the Judgment of the M.A.T., Principal Bench, Mumbai, the applicant is retired / relieved from the service as per the letter / order dated 31/08/2023. Hence, nothing survives in this O.A. Hence, O.A. is disposed of. The C.A. is also disposed of. No order as to costs.

Dated :- 08/09/2023.

**(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 : 08/09/2023.