

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.543/2021(S.B.)

Dr. Abhay S/O Abasaheb Shinde,
Age- 40 Years, Occ.- Medical Officer (Group-A)),
Presently working at District Civil Hospital,
Wardha, District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through, Principal Secretary,
Public Health Department, 10th floor,
G.T. Hospital Building,
New Mantralaya, Mumbai-1.
- 2) The Commissioner,
Health Services & Director (N.H.M.) 3rd floor,
Arogya Bhavan, St. Georges Hospital Campus,
Mumbai-1.
- 3) The Deputy Director of Health Services,
Nagpur Circle, Nagpur.
- 4) The District Civil Surgeon,
District Civil Hospital, Wardha,
District Wardha.

Respondents

Shri J.S.Deshmukh, Ld. Counsel for the applicants.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated:- 30th January 2024.

JUDGMENT

Judgment is reserved on 23th January, 2024.

Judgment is pronounced on 30th January, 2024.

Heard Shri J.S.Deshmukh, learned counsel for the applicant,
Shri M.I.Khan, learned P.O. for the respondents.

2. Case of the applicant, as pleaded in paras 6 and 7 of the
O.A. is as follows-

6. Applicant says that, he had discharged his duties as Medical Officer w.e.f.24.01.06 to 04.10.12 on ad-hoc basis by giving one year/ 11 months order for the period 24.01.06 to 23.01.07, 25.01.07 to 24.12.07, 28.12.07 to 27.11.08, 01.12.08 to 31.10.09, 05.11.09 to 04.10.10, 07.10.10 to 06.09.11, 09.09.11 to 08.08.12 and artificial break of one or two days between spell of two orders was given till his regular selection by M.P.S.C. vide order dtd.26.09.2012.

7. Applicant is substantively appointed on the post of Medical Officer Group-A by M.K.C.L. substantially by way of nomination vide order dtd.26.09.2012. He had resumed his duties w.e.f.05.10.12. Copy of substantial appointment order dtd.26.09.12 is annexed herewith and marked as ANNEXTURE-A-2.

3. On the basis of aforesaid pleading the applicant has prayed as under-

b) The respondents may kindly be directed to extend leave benefits as admissible under policy decision dtd.01.03.97 and annual increments for past ad-hoc service rendered by applicant, in the light of law laid down by this Honourable Tribunal, Honourable High Court and Honourable Apex Court.

c) To direct respondents to condone the technical breaks in ad-hoc service given to applicant and service spent on ad-hoc basis may counted for grant of Annual increments as well as earned leaves in the light of law laid down by the Honourable Tribunal.

d) To direct the respondents to grant applicant annual increments by condoning technical breaks in her past service and pay arrears thereof.

4. Stand of the respondents is that since appointment of the applicant was purely ad-hoc, he will not be entitled to any relief. To support this stand the respondents have relied *inter alia* on Judgment of the Hon'ble Bombay High Court dated 07.04.2017 in Writ Petition No.4969/2011.

5. Identical issue had come up for consideration in O.A.Nos.59 and 60 of 2017. It was decided by this Bench on 12.01.2024. After considering legal position laid down in various binding precedents, as well as what was held in Writ Petition No.4969/2011, this Bench held-

8. The applicants have inter alia relied on a judgment dated 14.06.2023 of Principal Bench of this

Tribunal in O.A. Nos. 553 & 554/2022 in which several judgments delivered on the issue have been considered and it is held :-

5. Indeed, the issue posed for consideration in the present O.A. about the entitlement of the Applicant for consideration of their ad-hoc service for the purpose of increments, Earned Leave by condoning technical break is no more *res-integra* in view of several decisions rendered by the Tribunal and upheld by Hon'ble High Court as pointed out by learned Advocate for the Applicant.

6. The learned Advocate for the Applicant has pointed out that the decision rendered by M.A.T, Aurangabad Bench dated 17.07.2015 in O.A.No.678/2014 granting the same relief to the Medical Officer was upheld by Hon'ble High Court in Writ Petition No.798/2016 decided with connected Writ Petitions on 23.11.2017. He has further pointed out that one more decision rendered by this Tribunal in O.A.No.167/2020 decided on 07.10.2021 has also attained finality. Lastly, he made reference to the decision rendered by this Tribunal in O.A.No.1047/2021 decided with connected O.A.Nos.1048 and 1049/2021 on 14.11.2021. The learned P.O. was not in a position to state as to whether the decision rendered by the Tribunal on 14.11.2021 is challenged before higher forum. On the other hand, learned Advocate for the Applicant made statement that it is not challenged and Government is about to implement it.

7. As the issue involved here has already attained finality and implemented by the Respondents, the Applicants being similarly situated persons are entitled to the same benefit on the principles of parity and equality.

8. As regard parity, the Hon'ble Supreme Court in **2015 (1) SCC 347 in State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava** has laid down the said principle as under:-

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution

of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

9. In fact the Government of Maharashtra had also issued Circular dated 28.02.2017 informing all the departments to apply the principle of parity to the similarly situated persons in view of the decision of the Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case.

10. Unfortunately, despite consistent decisions and issuance of Circular dated 28.02.2017, the Respondents neglected and ignored the claim of the Applicants to which they are entitled since the issue is now no more res-integra in the light of various decisions rendered to above.

11. The learned P.O, however, made feeble attempt in reference to decision of Hon'ble Supreme Court in **(2003) AIR SCC 1132 [Dr. Chanchal Goyal Vs. State of Rajasthan]** and Judgment of Hon'ble High Court in **Writ Petition No.4969/2011 [State of Maharashtra Vs. Dr. Jyotsna S. Potpite] decided on 07.04.2017**. The perusal of decision in **Chanchal Goel's** case reveals that it was pertaining to termination from service, since appointment was on purely temporary basis or till the candidate from Rajasthan Public Commission is available. In that case, Appellants were terminated on the ground that the candidate from Public Service Commission was available. Thus, it was a case of termination which was found legal. In that case, there was no such appointment through MKCL or MPSC and appointment was continued on purely temporary basis. This being so, the decision in **Chanchal Goyal's** case is totally distinguishable and it is of no assistance to learned P.O.

12. Insofar as decision in Writ Petition No.4969/2011 is concerned, it reveals that O.A. was filed before MAT, Nagpur Bench which was allowed by granting increment. The matter was challenged before Hon'ble High Court. Hon'ble High Court observed that regular employee only would be entitled to increment and other benefits and set aside the order passed by the

Tribunal. In that case also, there was no such appointment either through MKCL or through MPSC. Whereas in the present case, after initial appointment, appointment on ad-hoc basis, the Applicants were appointed through MKCL and MPSC. This being so, the decision in Writ Petition No.4969/2011 is also quite distinguishable and of no help to the learned P.O..

14. The learned Advocate for the Applicant has further referred to the decision in **Writ Petition No.9427/2022 [State of Maharashtra Vs. Dr. Deepak A Wani] decided with connected Writ Petitions on 14.09.2022** in which decision rendered by the Tribunal in O.A.Nos.821 to 826 of 2019 by order dated 08.01.2020 was challenged wherein Hon'ble High Court in Para No.10 referred the decisions in the matter of **Dr. Jyotsna S. Potpite** as well as **Sangita Phatale**. In Para Nos.10, 11 and 12, Hon'ble High Court held as under :-

"10. That apart, we cannot ignore that the coordinate Bench (Bench at Nagpur) while deciding Dr. Jyotsna Potpite (supra), did not have the occasion to consider the other coordinate Bench decision dated 27th November 2008 of this Court (Bench at Aurangabad) in Writ Petition No.3484 of 2005 (State of Maharashtra Vs. Sangita Raghvir Phatale). We are, therefore, not persuaded to follow the decision in Dr. Jyotsna Potpite (supra) at this stage.

11. Mr. Rajpurohit complains that the Tribunal did not give an opportunity to the State to file reply affidavit. Such a submission is hardly relevant having regard to the fact that the Tribunal has not passed its order on the merits of the rival contentions.

12. In such view of the matter, we are of the opinion that the Government ought to implement the order of the Tribunal. We make it clear that all contentions on merit are left open for being looked into by the State for taking an appropriate decision on the basis of the judgments and orders which are governing the field, within three months from date."

Hon'ble High Court accordingly dismissed the Writ Petition.

15. Suffice to say, the issue about the entitlement of the Applicant to consider ad-hoc service for increment and Earned Leave by condoning technical breaks is

already adjudicated by the Tribunal as well as by Hon'ble High Court and attained finality. These O.As are, therefore, required to be allowed on similar line. Hence, the order.

ORDER

(A) XXX.

(B) XXX.

(C) The Respondents are directed to count ad-hoc services of all the Applicants for grant of increments, Earned Leave by condoning technical breaks in service and for no other purpose.

(D) The Respondents are further directed to issue necessary orders within two months from today.

(E) No order as to costs.

9. *The applicants have placed on record G.R. dated 08.11.2023 heading of which is as under:-*

दि. ०२.०२.२००९ रोजीच्या अधिसूचनेन्वये वैद्यकीय अधिकारी, गट-अ या पदावर समावेशन झालेल्या वैद्यकीय अधिकाऱ्यांना महाराष्ट्र प्रशासकीय न्यायाधिकरणाच्या (मा. मॅट, मुंबई) आदेशानुसार अस्थायी सेवा कालावधीतील लाभ मिळणेबाबत.

6. In view of aforestated legal position the O.A. will have to be allowed. Hence, the order.

ORDER

(A) The Respondents are directed to count ad-hoc services of the Applicant for grant of increments, Earned Leave by condoning technical breaks in service and for no other purpose.

(B) The Respondents are further directed to issue necessary orders within two months from today.

(C) No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 30/01/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 30/01/2024.
and pronounced on
Uploaded on : 30/01/2024.