

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 992/2019**

Dr. Vishnu S/o Shalikram Ingle
Aged about 48 years, Occ.Medical Practitioner,
R/o. Maharana Pratap Chowk, Chikhali,
Tah. Chikhali, Dist.Buldhana.

Applicant.

Versus

- 1) State of Maharashtra, through
The Secretary,
Department of Public Health
Services, Mantralaya, Mumbai-32.
- 2) Director of Health Services,
“Arogya Bhawan”, Saint George
Hospital, P.Demalo Road,
Mumbai.
- 3) Deputy Director,
Health Service, Akola Circle,
Akola.

Respondents

Shri A.M.Tirukh, Ld. counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 14th June 2022

JUDGMENT

Judgment is reserved on 8th June, 2022.

Judgment is pronounced on 14 June, 2022.

Heard Shri A.M.Tirukh, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. The applicant is aggrieved by denial of benefit of one time absorption to him pursuant to Notification dated 11.01.2019 (Annexure A-1) issued by Public Health Department of Government of Maharashtra.

3. Case of the applicant is as follows.

The applicant was appointed as Medical Officer, Group-B (B.A.M.S.) on Ad-hoc basis on 28.12.2007. He continued to work on Ad-hoc basis till the year 2019 by virtue of orders issued from time to time (Annexure A-3 collectively). By order dated 03.04.2018 (at p.p.92/93) he was again given an Ad-hoc appointment and posted at village Selsur, District Buldhana. Duration of this appointment was from 28.03.2018 to 27.02.2019. By order dated 12.06.2018 (Annexure A-4) the applicant was relieved from his post at Selsur. He made a representation dated 14.06.2018 (Annexure A-5) to respondent no.3 to post him at Shendurjan P.H.C.. However, respondent no.3, by order dated 25.06.2018 posted him at Hirabambai, District Amravati (Annexure R-3-I). The applicant could not join there due to medical

reasons. By order dated 21/22.02.2019 (Annexure A-6) D.H.O. Buldhana referred him to Medical Board. The Medical Board, vide communication dated 12.03.2019 (Annexure A-7), certified that the applicant was fit for duty. The applicant submitted representation dated 28.03.2019 to respondent no.2 and prayed that his documents be verified for the purpose of absorption. He then made a representation dated 20.07.2019 (these two representations are collectively marked Annexure A-8). His representation dated 10.06.2019 was forwarded by respondent no.3 to respondent no.2 by letter dated 24.06.2019 (collectively marked Annexure A-9). He then made a representation dated 12.09.2019 (Annexure A-10) to post him on Ad-hoc basis at Amadapur. By representation dated 15.10.2019 (Annexure A-11) made to respondent no.2 the applicant prayed for absorption. In this representation he stated –

दि.१८.०७.२०१९, १९.०७.२०१९ व दि.२०.०७.२०१९ च्या समावेशनाच्या यादीमधील ७२० पैकी जवळपास १९ लोकांच्या सेवा खंडीत असूनसुद्धा त्यांना स्थाई वैद्यकीय अधिकारी म्हणून वैद्यकीय सेवेत समाविष्ट करण्यात आले. परंतु माझी केवळ ७ ते ८ महिने शारिरीक अस्वस्थतेमुळे सेवा खंडीत झाली. त्यासाठी मी मेडीकल बोर्ड चे फिटनेस सादर केले आहे. तरीसुद्धा मला सेवा समावेशनाचा लाभ मिळाला नाही. तरी उपरोक्त सर्व बाबींचा सहानुभुतीपूर्वक विचार करून मला स्थाई वैद्यकीय अधिकारी म्हणून नियुक्ती देण्यात यावी.

On the basis of aforesaid case the applicant has raised following grounds –

- A) Till date, none of the representations of the applicant has been responded in writing so as to let the applicant know the reason for not absorbing him on the post of Medical Officer Group-B, B.A.M.S. The applicant has been told orally by the respondents that his break in service for the period of 7 to 8 months while he was appointed on Ad-hoc basis at village Hirabambai is the reason due to which he is not being absorbed. But the respondents have failed to consider that the break in service occurred due to poor health condition of the applicant. Moreover, the perusal of list of candidates who have been absorbed shows that there is break in service of number of candidates but still those candidates have been absorbed.**
- B) From the year 2007 applicant has served sincerely at different villages. There are no adverse remarks or any departmental enquiry against the applicant. The applicant's break in service cannot be the reason for not absorbing him on the post of Medical Officer Group-B. More particularly when such break occurred due to medical reason.**
- C) The repeated representations on the part of applicant have not been considered seriously by the respondents. Since the year July 2019, the applicant is jobless. The applicant is the sole bread winner of his family. The applicant has worked on Ad-hoc basis for almost 12 years. Therefore applicant is entitled to be absorbed on the post of Medical Officer, Group-B, B.A.M.S.**

The principal relief claimed by the applicant is as follows.

A) Direct the respondents to absorb the applicant on the post of Medical Officer, Group-B, (BAMS) and further direct to give appointment to the applicant as Medical Officer, Group-B, B.A.M.S. at some suitable place;

Statement was made at the bar by learned Advocate for the applicant that relief in clause B was not pressed.

4. Reply of respondent no.3 is at p.p.110 to 118. He has resisted the application on the following grounds. The applicant was appointed on contractual basis. He did not challenge his initial appointment. He would be bound by the terms governing, his appointment which was essentially Ad-hoc. On completion of period of contract, such appointment is liable to be terminated. Contractual appointments are made purely as a stopgap arrangement so that while making regular appointments due weightage can be given to merit and policy of reservation can be implemented. Absorption in regular service cannot be claimed as a matter of right. The Notification which provides for one time absorption was issued on 11.01.2019. By order dated 25.06.2018 (Annexure R-3-I) the applicant was given an appointment from 26.06.2018 to 25.05.2019 and posted at Hirabambai. He did not join and thus disobeyed the order. On account of his failure to join at Hirabambai order of his appointment dated 25.06.2018 was cancelled by

order dated 16.07.2018 (Annexure R-3-IV). Thereafter, by order dated 18.02.2019 (Annexure R-3-V) the applicant was called upon to furnish fitness certificate so that he could join. He produced fitness certificate (Annexure R-3-VI) dated 06.03.2019. By order dated 22.03.2019 (Annexure R-3-II/ Annexure R-3-VII) he was allowed to join at Shendurjan. By order dated 21.05.2019 (Annexure R-3-III) the applicant was again given an Ad-hoc appointment from 19.05.2019 to 28.04.2020.

On the basis of notification dated 11.01.2019 (Annexure A-1/ Annexure R-3-VIII) respondent no.3 has contended-

7. It is submitted that the contention of the applicant is that due to medical reason he did not join at Hirabambai, but in this regard it is seen from the record of the Office of the respondent no.3 he never made communication never got the permission, but the applicant all of a sudden approached the Office of the respondent no.3 and the applicant has made application on 14.02.2019 that due to his ill health he could not join on his duty and kindly grant medical leave at the time of joining he will produce medical certificate. It is further submitted that the respondent no.3 by the letter dated 18.02.2019 has directed District Health Officer, Zilla Parishad, Buldhana that the applicant is illegally absent from duties from 16.07.2018 hence, send him to medical board for whether he is fit for duty or not. The copy of the abovementioned letter dated 18.02.2019 is annexed as Annexure-R3-V and copy of the medical certificate given by the medical board dated 06.03.2019 is annexed as Annexure-R3-VI.

8. It is further submitted that the respondent no.3 by the order dated 22.03.2019 issued posting order to the applicant on purely temporary basis posted him in the Zilla Parishad, Buldhana at Aurvedik Dawakhana Shendurjan with specific mention in order that period of the applicant from 26.06.2018 to join on duty due to this order he will not be entitled. The copy of the abovementioned order is annexed as Annexure-R3-VII. It is submitted that name of the applicant is shown in the seniority list at Serial No.452. It is further submitted that for the verification of the documents of ad-hoc Medical Officer, Group-B under this circle, for the purpose of one time absorption in Government services as per the notification dated 11.01.2019 was issued by the respondent no.2 the applicant is not entitled for absorption in service due to break in services his name is not included in the list of candidates who would be absorbed as the Medical Officer, Group-B which is just and proper. It is mentioned in this Notification that on the commencement of this Notification candidate must be in service on ad-hoc basis. But it's seen and cleared that on date of commencement of this Notification the applicant was not in service. The copy of the abovementioned Notification dated 11.01.2019 is annexed as Annexure-R3-VIII. Hence, the contention of the applicant is vague and has no meaning hence action taken by the respondents 2 is just and proper and legal and as per the policy decision taken by the Government.

5. With pursis at page 134 the applicant has placed on record his four ACR's out of which two are "positively good" and two are "very good".

6. The only issue involved in the matter is whether benefit of one time absorption under Notification dated 11.01.2019 could have been denied to the applicant.

7. Relevant portion of Notification dated 11.01.2019 is as under –

No.SAS.2013/CR 797/SER-1.- In exercise of the powers conferred by the proviso to article 309 of Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules for one time absorption of the Medical Officers appointed on ad-hoc basis on the post of Medical Officers, Group B (B.A.M.S.) in the Maharashtra Medical and Health Services in the Directorate of Health Services under the Public Health Department of the Government of Maharashtra, namely :-

1. These Rules may be called the Medical Officer, Group B (B.A.M.S.) in the Maharashtra Medical and Health Services (One time Absorption of Medical Officers appointed on ad-hoc basis) Rules, 2018.

2. In these rules, unless the context otherwise requires.-

(a)“ad-hoc Medical Officer” means a Medical Officer, who was appointed on ad-hoc basis on the post of Medical Officer, Group B (B.A.M.S.), in the Maharashtra Medical and Health Services under the Directorate and who is in the service, on the date of commencement of these rules ;

(b) “Directorate” means the Directorate of Health Services under Public Health Department of Government ;

(c) **“Government” means the Government of Maharashtra ;**

(d) **“Post” means the post of Medical Officers, Group B (B.A.M.S.), in the Maharashtra Medical and Health Services in the Directorate ;**

(e) **Words and expressions used in these rules but not defined shall have the same meaning respectively assigned to them in the Medical Officer, Group-B in Maharashtra Medical and Health Services (Recruitment) Rules, 2011.**

3. (1) Subject to the provisions of these rules, every ad-hoc Medical Officer, Group B (B.A.M.S.) among 738 ad-hoc Medical Officers, Group B (B.A.M.S.) who is in service on the date of commencement of these rules shall, with effect from such date of commencement, be absorbed on the post of Medical Officer, Group B (B.A.M.S.) in the Maharashtra Medical and Health Services under the Directorate ;

Provided that, no such ad-hoc medical officer shall be absorbed on the said post-

(i) If he does not possess the minimum academic qualifications, specified in the Medical Officer, Group B, in Maharashtra medical and Health Services (Recruitment) Rules, 2011 or is otherwise disqualified for appointment on the post thereunder ;

(ii) If any post reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukt

Jatis), Nomadic Tribes, Special Backward Category or Other Backward Classes to which he was appointed as ad-hoc Medical Officer, if it is found that he is not belonging to such caste, tribe, category or class, as the case may be ;

(iii) Unless his confidential reports are satisfactory.

The primary eligibility for application of this Notification was that the beneficiary must be in service on the date of commencement of said Notification, and none of the sub-clauses in proviso to clause 3(1) should come in the way of extending benefit of absorption.

8. It is not in dispute that from 2007, from time to time Ad-hoc appointment was given to the applicant. Following chronology is also not disputed. By order dated 25.06.2018 (Annexure R-3-I) the applicant was posted at Hirabambai. He did not join there. By order dated 16.07.2018 (Annexure R-3-IV) his appointment / posting at Hirabambai on Ad-hoc basis was cancelled. By letter dated 18.02.2019 (Annexure R-3-V) he was asked to furnish fitness certificate. He furnished fitness certificate dated 06.03.2019 (Annexure R-3-VI). By order dated 22.03.2019 (Annexure R-3-VII) he was allowed to join at Shendurjan. Order dated 22.03.2019 briefly states the chronology as under-

संदर्भिय १ चे आदेशाने डॉ.विष्णु शालीग्राम इंगळे, वैद्यकिय अधिकारी गट.ब यांना दि.२६.०६.२०१८ ते दि.२५.०५.२०१९ या कालावधीत पुनर्नियुक्ती देवून आयु.दवा. हिराबंबई, जि. अमरावती येथे पदस्थापना दिली होती. मात्र ते सदर ठिकाणी रुजू झाले नाही.

त्यांनी संदर्भिय ३ चा अर्ज दिला. त्यान्वये, ते वैद्यकिय कारणास्तव गैरहजर राहिलेत, आता रुजू करून घेण्यास विनंती केल्यावरून, त्यांना वैद्यकिय मंडळाकडे पाठवून रुजू करून घेण्यास पात्र आहेत किंवा कसे या बाबत अहवाल मागविला होता. त्याअनुषंगाने संदर्भिय ४ चा वैद्यकिय मंडळाचा अहवाल प्राप्त झाला असून, त्यानुसार ते कर्तव्यावर रुजू करून घेण्यास पात्र आहेत.

करिता या आदेशाद्वारे त्यांना संदर्भिय १ चे आदेशातील दि.२५.०५.२०१९ पर्यंतचे कालावधी करिता अमरावती जिल्हयाचे मेळघाट विभागात वैद्यकिय अधिकारी गट.ब पद रिक्त असल्याने, त्यांना जिल्हा आरोग्य अधिकारी, बुलढाणा यांचे अधिनस्त आयु.दवाखाना शेंदुरजन जि.बुलढाणा येथे रुजू करून घेण्यात येत आहे. ते दिनांक २६.०६.२०१८ पासून अनधिकृत गैरहजर असल्याने, ते पुनश्च: रुजू होईपर्यंतचे कालावधीचे वेतन व भत्ते त्यांना देय होणार नाहीत. त्यांचे नियुक्ती बाबतचे अटी व शर्ती संदर्भिय १ चे आदेशात नमूद केल्याप्रमाणे कायम राहतील. तसेच, याद्वारे त्यांना रुजू होण्याची अंतीम संधी देण्यात येत असून, ताकिद देण्यात येते की, यापुढे त्या अनधिकृत गैरहजर राहिल्यास, त्यांचे सेवा तात्काळ समाप्त करण्यात येतील.

तरी त्यांनी दिलेल्या पदस्थापनेचे ठिकाणी तात्काळ रुजू व्हावे व रुजू अहवाल सर्व संबंधितास सादर करावा.

9. The aforesaid chronology clearly shows that on the date of Notification dated 11.01.2019 the applicant could be stated to be in service. Contents of order dated 22.03.2019 reinforce this conclusion. This order provides for the only Civil consequence of unauthorised absence of the applicant i.e. he was not to get salary and allowances for the period during which he was absent. This order specifically states that the appointment given thereunder was on the terms and conditions mentioned in order dated 25.06.2018 (which is at Annexure R-3-I). Thus, the effect of order dated 22.03.2019, for purpose of considering

eligibility of the applicant for receiving the benefit of one time absorption under Notification dated 11.01.2019 would relate back to 25.06.2018.

10. The applicant has also relied on the list of Ad-hoc employees who were found eligible for one time absorption under the Notification. This list is attached to the Notification. On page 31 name of the applicant features at Sr.no.452. Heading of the last column of this list is – “सध्या सेवेत आहेत का नाहीत” and the remark against the name of the applicant is – “ आहेत ”. This circumstance further strengthens the conclusion that on the date of commencement of Notification i.e. 11.01.2019 the applicant was in service.

11. Three sub-clauses of proviso to clause 3 (1) of Notification dated 11.01.2019 stipulate three more conditions for becoming eligible for one time absorption. Though it is held that the applicant was in service on the date of commencement of the Notification, he will have to further fulfil the criteria in all three sub-clauses of proviso to clause 3 (1) of the Notification. It may be mentioned that the applicant has placed on record only four ACRs. His remaining ACRs will have to be considered by the concerned authority to find out whether the same taken as a whole are satisfactory.

12. For all these reasons the application is allowed in the following terms. It is held that the applicant was in service on the date of commencement of Notification i.e. 11.01.2019. Benefit of one time

absorption under the said Notification shall be extended to him if the competent authority comes to the conclusion that he fulfils the criteria in all three sub-clauses of proviso to clause 3(1) of the Notification dated 11.01.2019. Verification and assessment for this purpose shall be completed by the competent authority **within 60 days** from the date of this order.

No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 14/06/2022.

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 : 14/06/2022.
and pronounced on
Uploaded on : 14/06/2022.*