

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 59/2017 (S.B.)

- 1) Dr. Umesh S/o Vasant Rao Nichat,
Medical Officer, R/o 'Sai Samruddha' Apartment,
Akoli Road, Sai Nagar, Amravati.
- 2) Dr. Dipak S/o Shridhar Rao Deshmukh,
Medical Officer, R/o Cotton Green Colony,
Shegaon Naka, Amravati.
- 3) Dr. Dipak S/o Suresh Rao Paravi,
Medical Officer, R/o C/o Suresh Rao Paravi,
Nityanand Colony, Kathora Road,
Amravati.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai.
- 2) The Director of Health Services,
Aarogya Bhavan, St. Gorge Hospital,
Campus, Near C.S.T., Mumbai.
- 3) Deputy Director of Health Services,
Akola.
- 4) Zilla Parishad Amravati,
through its Chief Executive Officer.
- 5) Zilla Parishad Yavatmal,
through its Chief Executive Officer.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicants.

Shri A.M.Khadatkar, Id. P.O. for the respondents 1 to 3.

None for the R-4 & 5.

WITH

ORIGINAL APPLICATION No. 60/2017 (S.B.)

- 1) Dr. Premkumar S/o Surajlal Baghele,
Aged about 33 years, R/o Tq. Tirora,
Distt. Gondia.
- 2) Dr. Ashish S/o Dashrathrao Bargat,
Aged about 36 years, R/o Plot No. 5,
Kailash Nagar, Nagpur.
- 3) Dr. Shivkumar S/o Chhotelal Harinkhede,
Aged about 35 years, R/o Shahu Nagar,
At Post & Tq. Tirora, Distt. Gondia.
- 4) Dr. Dhananjay S/o Kashaorao Saurkar,
Aged about 35 years, R/o Bhajibazar,
Tarkheda, Amravati.

Applicants.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Public Health,
Mantralaya, Mumbai.
- 2) The Director of Health Services,
Aarogya Bhavan, St. Gorge Hospital,
Campus, Near C.S.T., Mumbai.

- 3) Deputy Director of Health Services,
Akola.
- 4) Zilla Parishad Amravati,
through its Chief Executive Officer.
- 5) Zilla Parishad Yavatmal,
through its Chief Executive Officer.

Respondents

Shri N.R.Saboo, ld. Advocate for the applicants.

Shri A.M.Khadatkar, ld. P.O. for the respondents 1 to 3.

None for the R-4.

Shri D.A.Sonwane, ld. counsel for the R-5.

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

JUDGMENT

Judgment is reserved on 08th Jan., 2024.

Judgment is pronounced on 12th Jan., 2024.

Heard Shri N.R.Saboo, ld. counsel for the applicants and Shri A.M.Khadatkar, ld. P.O. for the Respondents 1 to 3 in O.A. Nos. 59 & 60/2017. None for the R-4 in O.A. Nos. 59 & 60/2017. None for the R-5 in O.A. No. 59/2017. Shri D.A.Sonwane, ld. counsel for the R-5 in O.A. No. 60/2017.

2. These two connected O.As. are being decided by this common judgment.

3. All the applicants responded to an advertisement and applied for the post of Medical Officer. They were interviewed by a duly constituted committee and were given adhoc appointment as Medical Officer, Group-B. Though they were given technical breaks, their services were continued by issuing appointment orders from time to time. In due course all of them were absorbed as regular employees.

4. According to the applicants, in these facts, technical breaks in their services deserves to be condoned and annual increments for pre absorption period released.

5. Contesting respondents have resisted the O.As. on the grounds that the applicants were not appointed through recruitment process, there cannot be regularisation unless appointment is regular, regularisation cannot be a mode of recruitment and in view of Rule 39 of the Maharashtra Civil Services (Pay) Rules, 1981 increments for pre absorption period cannot be released.

6. Details of appointment orders given to the applicants are as follows:-

Umesh Vasantao Nichat

Sr. Nos.	Date of Order	Period of Appointment	Pay Scale
1.	10.01.2008	05.02.2008 TO 09.12.2009	6500-10500

2.	15.12.2009	09.12.2009 TO 01.11.2010	6500-10500
3.	22.10.2010	11.11.2010 TO 10.10.2011	9300-34800 G.P.4400
4.	11.10.2011	13.10.2011 TO 12.09.2012	9300-34800 G.P.4400
5.	12.10.2012	15.09.2012 TO 14.08.2013	9300-34800 G.P.4400
6.	15.10.2013	19.08.2013 TO 18.07.2014	9300-34800 G.P.4400
7.	17.09.2014	22.07.2014 TO 21.06.2015	9300-34800 G.P.4600
8.	21.08.2015	24.06.2015 TO 23.05.2016	9300-34800 G.P.4600
9.	30.08.2016	26.05.2016 TO 25.04.2017	9300-34800 G.P.4600

Dipak Shridharrao Deshmukh

Sr. Nos.	Date of Order	Period of Appointment	Pay Scale
1.	23.11.2007	26.12.2007 TO 10.11.2008	6500-10500
2.	17.01.2009	13.11.2008 TO 12.10.2009	6500-10500
3.	22.10.2009	15.10.2009 TO 14.09.2010	9300-34800 G.P.4400
4.	26.07.2010	17.09.2010 TO 16.08.2011	9300-34800 G.P.4400
5.	11.10.2011	20.08.2011 TO 19.07.2012	9300-34800 G.P.4400
6.	16.07.2012	23.07.2012 TO 22.06.2013	9300-34800 G.P.4400
7.	28.06.2013	26.06.2013 TO 25.05.2014	9300-34800 G.P.4400
8.	21.05.2014	29.05.2014 TO 28.04.2015	9300-34800 G.P.4600
9.	19.10.2015	01.05.2015 TO 31.03.2016	9300-34800 G.P.4600
10.	27.06.2016	04.03.2016 TO 03.02.2017	9300-34800 G.P.4600

Dipak Sureshrao Paravi

Sr. Nos.	Date of Order	Period of Appointment	Pay Scale
1.	28.08.2007	28.08.2007 TO 28.07.2008	6500-10500
2.	08.09.2008	30.07.2008 TO 29.06.2009	6500-10500
3.	30.06.2009	02.07.2009 TO 01.06.2010	6500-10500
4.	02.06.2010	04.06.2010 TO 03.05.2011	9300-34800 G.P.4400
5.	13.07.2011	06.05.2011 TO 05.04.2012	9300-34800 G.P.4400
6.	29.05.2012	09.04.2012 TO 02.03.2013	9300-34800 G.P.4400
7.	12.03.2013	13.03.2013 TO 12.02.2014	9300-34800 G.P.4400
8.	28.02.2014	15.02.2014 TO 14.01.2015	9300-34800 G.P.4400
9.	15.01.2016	17.01.2015 TO 15.10.2016	9300-34800 G.P.4600
10.	09.11.2016	22.10.2016 TO 21.10.2017	9300-34800 G.P.4600

Premkumar Surajlal Baghele

Sr. Nos.	Date of Order	Period of Appointment
1.	03.10.2007	
2.	18.10.2007	23.10.2007 TO 22.09.2008
3.	24.09.2008	25.09.2008 TO 24.08.2009
5.	22.10.2009	27.08.2009 TO 26.07.2010
6.	26.07.2010	29.07.2010 TO 28.06.2011

7.	19.01.2011	01.07.2011 TO 31.05.2012
8.	02.07.2012	04.06.2012 TO 03.06.2013
	05.07.2013	06.06.2013 TO 05.05.2014
9.	27.06.2014	08.05.2014 TO 07.04.2015
10.	28.05.2015	12.03.2015 TO 11.02.2016
11.	16.03.2016	15.02.2016 TO 14.01.2017
12.	14.12.2016	18.01.2017 TO 17.12.2017

Ashish Dashrathrao Bargat

Sr. Nos.	Date of Order	Period of Appointment
1.	20.09.2007 (Initial Date)	JOINED ON 05.10.2007 TO 04.09.2008
2.	01.11.2008	09.09.2008 TO 08.08.2009
3.	21.10.2009	12.08.2009 TO 11.07.2010
4.	14.07.2010	14.07.2010 TO 13.06.2011
5.	07.07.2011	16.06.2011 TO 15.05.2012
6.		16.05.2012 TO 15.04.2013
7.	15.05.2013	18.04.2013 TO 17.03.2014
8.	17.07.2014	21.03.2014 TO 20.02.2015
9.	23.03.2015	24.02.2015 TO 23.01.2016
10.	16.02.2016	28.01.2016 TO 27.12.2016

Shivkumar Chhotelal Hosinkhede

Sr. Nos.	Date of Order	Period of Appointment
1.	11.09.2007 (ORDER DATE)	01.10.2007 TO 31.08.2008
2.	28.09.2008	04.09.2008 TO 03.08.2009
3.	22.10.2009	06.08.2009 TO 07.07.2010
4.	28.07.2010	08.07.2010 TO 07.06.2011
5.	17.06.2011	10.06.2011 TO 09.05.2012
6.	19.05.2012	14.05.2012 TO 13.04.2013
7.	02.05.2013	17.04.2013 TO 16.03.2014
8.	04.04.2014	21.03.2014 TO 22.02.2015
9.	20.03.2015	25.02.2015 TO 24.01.2016
10.	25.02.2016	28.01.2016 TO 27.12.2016
11.	14.12.2016	30.12.2016 TO 29.11.2017

Dhananjay Kesharao Saurkar

Sr. Nos.	Date of Order	Period of Appointment
1.	25.09.2007	15.10.2007 TO 14.09.2008
2.	03.10.2008	17.09.2008 TO 16.08.2009
3.	22.10.2009	20.08.2009 TO 19.07.2010

4.	18.09.2010	22.07.2010 TO 21.06.2011
5.	23.06.2011	24.06.2011 TO 23.05.2012
6.	19.05.2012	28.05.2012 TO 27.04.2013
7.	09.07.2013	02.05.2013 TO 01.04.2014
8.	12.06.2014	04.04.2014 TO 03.03.2015
9.	20.03.2015	07.03.2015 TO 06.02.2016
10.	16.02.2016	09.02.2016 TO 08.01.2017

7. Details of initial appointment and date of absorption of the applicants are as follows:-

Sr. Nos.	O.A. No.	Name of Employee	Date of Adhoc appointment	Order of Regular Absorption as filed with Pursis
1.	59/2017	Dr. Umesh Nichat	05.02.2008	18.07.2019
		Dr. Dipak Deshmukh	26.12.2007	18.07.2019
		Dr. Dipak Parvi	28.08.2007	19.07.2019
2.	60/2017	Dr. Premkumar Baghele	03.10.2007	19.07.2019
		Dr. Ashish Bargat	20.09.2007	19.07.2019
		Dr. Shivkumar Hosinkhede	01.09.2007	19.07.2019
		Dr. Dhanjay Saurkar	25.09.2007	19.07.2021

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.

The applicants before this Bench are absorbed as Medical Officer, Group-B. However, what is held in aboveresferred judgment of Principal Bench dated 14.06.2023 will be applicable to them as well.

10. Contesting respondents sought to rely on “**Ram Naresh Rawat Vs. Ashwini Ray & Ors. 2017 (4) Mh.L.J.**”. In this case, on facts, it was held:-

The petitioners were initially engaged on daily wage basis. Their engagement was also done without following any selection procedure nor the initial engagement of these petitioners was against regular vacancies. The Labour Court classified them as "permanent employee" and held entitled to pay scale of permanent posts from the dates specified in the award given by the Labour Court. It is, somewhat puzzling as to whether the employee, on getting the designation of "permanent employee" can be treated as "regular" employee. Supreme Court has drawn a distinction between "permanent employee" and "regular employee". A workman would be entitled to classification as permanent or temporary employee if the conditions precedent are satisfied. However, permanent classification does not amount to regularisation. Even if principle of "equal pay for equal work" is applicable and the pay in the regular pay scale is admissible to such employees, they would be entitled to minimum of regular pay scale and not the increments. It is only the regularisation in service which would entail grant of increments.

These facts are clearly distinguishable. In the present cases the applicants were selected by a committee after they responded to an advertisement and thereafter they were absorbed as regular employees. This Tribunal has decided the issue in favour of the employees. In the result, the O.As. are allowed in the following terms:-

(A) 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.

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

(C) No order as to costs.

Member (J)

Dated :- 12/01/2024
aps

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 : 12/01/2024
and pronounced on

Uploaded on : 15/01/2024