

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 545 / 2018 (S.B.)**

Dr. Vikas S/o Prahlad Meshram,
Age : 53 yrs., Occ. Service,
R/o Plot No. 1, Rajaswa Vihar,
Bhaiyyaji Nagar, Khat Road,
Bhandara-441904.

Applicant.**Versus**

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Campus
Building, Fort Mumbai- 400001.
- 2) Director of Health Services,
Maharashtra State Aryogya Bhawan,
St. Georges Hospital Campus,
P.Dmello Road, C.S.T., Mumbai-01.
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri,
Compound, Sraddhanand Peth,
Nagpur-440022.
- 4) Zilla Parishad, Bhandara,
through its Chief Executive Officer,
Bhandara.

Respondents

Shri N.D.Thombre, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the Respondent nos. 1 to 3.

Shri R.S.Khobragade, the Id. counsel for the Respondent no. 4.

ORIGINAL APPLICATION NO. 546 / 2018 (S.B.)

Dr. Milind S/o Pralhad Mothghare,
Aged : 52 yrs., Occ. Service,
R/o Plot No. 15, Balaji Nagar, behind Bhaiyyaji Nagar,
Khat Road, Bhandara-441904.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
10th Floor, G.T., Hospital Campus,
Building, Fort Mumbai- 400001.
- 2) Director of Health Services,
Maharashtra State Aryogya Bhawan,
St. Georges Hospital Campus,
P.Dmello Road, C.S.T., Mumbai-01.
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri
Compound, Sraddhanand Peth,
Nagpur-440022.
- 4) Zilla Parisad, Bhandara,
through its Chief Executive Officer,
Bhandara.

Respondents

Shri N.D.Thombre, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the Respondent nos. 1 to 3.

Shri R.S.Khobragade, the Id. counsel for the Respondent no. 4.

ORIGINAL APPLICATION NO. 600 / 2018 (S.B.)

Dr. Rakesh S/o Tarachand Nandeshwar,
Age : 48 yrs., Occ. Service,
R/o House of Dr. Gaidhane Pragati Colony at
Post, Tah. Sakoli, Dist. Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
10th Floor, G.T., Hospital Campus Building,
Fort Mumbai- 400001.
- 2) Director of Health Services,
Maharashtra State Aryogya Bhawan,
St. Georges Hospital Campus,
P.Dmello Road, C.S.T., Mumbai-01.
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth,
Nagpur-440022.
- 4) Zilla Parishad, Bhandara,
through its Chief Executive Officer,
Bhandara.

Respondents

Shri N.D.Thombre, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the Respondent nos. 1 to 3.

Shri R.S.Khobragade, the Id. counsel for the Respondent no. 4.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 04th December, 2019.

Judgment is pronounced on 03rd January, 2020.

Heard Shri N.D.Thombre, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the respondent nos. 1 to 3, Shri R.S.Khobragade, the Id. counsel for the respondent no. 4.

2. That, the Applicant in O.A. No. 545/2018 is M.B.B.S. after completion of his M.B.B.S. course, the applicant was appointed by the Respondents vide order dated 05.04.1992 as a Medical Officer under the Maharashtra Medical and Health Services, Class-II, initially for a period of 2 years. Thereafter completion of 2 years bound period, the applicant was again appointed by order dated 18/10/1994 as Medical Officer on temporary basis. The applicant was continued by the Respondent by giving one day technical break till he was made permanent. The last order which was issued by the respondents to the applicant on the post of Medical Officer, Maharashtra Medical Health Services, Group-A was issued on 08/07/2008. Thereafter, applicant approached to this Tribunal for regular increment his Original Application was allowed by this Tribunal, applicants increments were released from 01.04.1992. thereafter, the services of the applicant were regularized along with other Medical Officers by order dated 09.02.2009. Though the applicant was absorbed in the service as a Medical Officer, Maharashtra Medical and Health Services, Group-A by order dated 09/02/2009, the Respondents have not regularized their services from their initial dated of appointment i.e. 07/04/1992 by condoning the technical break. So

also it is reliably learnt that the respondents are trying to put the applicant under the new pension scheme as their services have been regularised by order dated 09/02/2009. Hence the applicant is approaching before this Tribunal for suitable direction to the respondents to condone the technical break as per rules, the applicant be treated as an employee appointed since, 1994 and the old pension scheme be made applicable to them.

3. That, the Applicant in O.A. No. 546/2018 is M.B.B.S. after completion of his M.B.B.S. course, the applicant was appointed by the Respondents vide order dated 21.07.1995 as a Taluka Health Officer under the Maharashtra Medical and Health Services, Class-II, initially for a period of 2 years. Thereafter completion of 2 years bound period, the applicant was again appointed as Medical Officer on temporary basis. The applicant was continued by the Respondent by giving one day technical break till he was made permanent. The last order which was issued by the respondents to the applicant on the post of Taluka Health Officer, Maharashtra Medical Health Services, Group-A was issued on 08/07/2008. Thereafter, applicant approached to this Tribunal for regular increment his Original Application was allowed by this Tribunal, applicants increments were released from 01.01.1996. Thereafter, the services of the applicant were regularized along with other Medical Officers by order dated 09.02.2009. Though the applicant was absorbed

in the service as a Medical Officer, Maharashtra Medical and Health Services, Group-A by order dated 09/02/2009, the Respondents have not regularized their services from their initial dated of appointment i.e. 28/07/1995 by condoning the technical break. So also it is reliably learnt that the respondents are trying to put the applicant under the new pension scheme as their services have been regularised by order dated 09/02/2009. Hence the applicant is approaching before this Tribunal for suitable direction to the respondents to condone the technical break as per rules, the applicant be treated as an employee appointed since, 1995 and the old pension scheme be made applicable to them.

4. That, the Applicant in O.A. No. 600/2018 is M.B.B.S. after completion of his M.B.B.S. course, the applicant was appointed by the Respondents vide order dated 08.08.1996 as a Medical Officer under the Maharashtra Medical and Health Services, Class-II, initially for a period of 2 years. Thereafter completion of 2 years bound period, the applicant was again appointed as Medical Officer on temporary basis. The applicant was continued by the Respondent by giving one day technical break and also without break till he was made permanent. The last order which was issued by the respondents to the applicant on the post of Medical Officer, Maharashtra Medical Health Services, Group-A was issued on 05/03/2008. Thereafter, applicant approached to this Tribunal for regular increments his Original Application was allowed by

this Tribunal, applicants increments were released from 06.01.2002. Thereafter, the services of the applicant were regularized along with other Medical Officers by order dated 09.02.2009. Though the applicant was absorbed in the service as a Medical Officer, Maharashtra Medical and Health Services, Group-A by order dated 09/02/2009, the Respondents have not regularized their services from their initial dated of appointment i.e. 08/08/1996 by condoning the technical break. So also it is reliably learnt that the respondents are trying to put the applicant under the new pension scheme as their services have been regularised by order dated 09/02/2009. Hence the applicant is approaching before this Tribunal for suitable direction to the respondents to condone the technical break as per rules, the applicant be treated as an employee appointed since, 1994 and the old pension scheme be made applicable to them.

5. The respondents are mainly relying on the two paras of their reply, which are below:-

7. *The applicant was absorbed in the Government employment according to Government Resolution dated 02nd Feb., 2009. It is specifically mentioned in the said "NOTIFICATION" that Public Health Department, Mantralaya Mumbai dated 02nd Feb., 2009 in exercise of the powers conferred by the proviso to article 309 of Constitution of India and the Hon'ble Governor of Maharashtra has framed the rules for one time absorption of Medical Officers working on adhoc basis in the Maharashtra Medical and Health Services of the Government of Maharashtra, Group-A in the Directorate of Health Services.*

10. *The contents of this para are denied in to. It is submitted that the applicant is absorbed in services as per one time absorption rule 2009 vide Notification dated 02.02.2009. It is submitted that the old pension scheme is applicable as per the G.R. dated 31.10.2005 issued by the Finance Department only for those government employees who were appointed before 1st November, 2005 and applicant was absorbed on 09.02.2009. Hence, old pension scheme is not applicable to the applicant.*

6. As per the Tribunal order dated 04.12.2019, it was observed:-

2. As submitted by Id. counsel for the applicant, the applicants are:-

O.A.Nos.	Applicant Name	Date of Appointment
545/2018	Dr.V.P.Meshram	05/04/1992
546/2018	Dr.M.P.Mothghare	21/07/1995
600/2018	Dr.R.T.Nandeshwar	08/08/1996

The applicants were given technical breaks and because of that they are not entitled for pensionary benefits by length of service. Aggrieved by this, the applicants have filed these O.As.. On record they were regularized by Government notification dated 02/02/2009 at P.B., Pg. No. 59 of the O.A. in O.A. No. 545/2018 in para no. 4 (V) and following condition is mentioned:-

"While making absorption, an undertaking from the ad-hoc Medical Officers regarding the acceptance of terms and conditions laid down by the Government shall not be considered for absorption."

3. *The Id. counsel for the respondent no. 4 i.e. Z.P., Bhandara submits that notification has been issued under power of Article 309 of Constitution of India and hence its conditions cannot be replaced by any General Order. The Id. counsel for the applicant is directed to file appointment copy of O.A. No. 546 and 600/2018 order passed by Tribunal for the applicant in O.A. Nos. 545 & 546/2018 and file on record and supply the copy to the Id. P.O..*

4. *In O.A. No. 545/2018 vide (Annexure-A-3, P.B., Pg. No. 39) applicant was absorbed and in that letter was also mentioned that the temporary Doctors who completed three years service till 31/12/2007 those were absorbed by Special Rule, dated 09.02.2009, the pay scale of Rs. 8000-13500/- of Group-A in Scheduled Caste Category subject to verification of certificate. No-where in the letter it is mentioned about Technical Break of the applicant between 1992 to 2009. In*

notification dated 02/02/2009, the service rendered by adhoc Doctors shall not be considered for Pension Rule and grant of promotion as a Specialist or Assured Progressive Scheme. The Id. P.O. submits that those who undertakes to appointed by notification condition dated 02/02/2009 they were only absorbed as per 02/02/2009 notification. Ideally they should, if they were aggrieved with this, they should have filed O.A. before the Tribunal in 2010 only.

5. As pointed out by Id. counsel for the respondent no. 4 in notification dated 02/02/2009 at P.B., Pg. No. 60 in O.A. No. 545/2018 in para no. 4 is mentioned like:-

“(ii) As regards pension and other retirement benefits they shall be governed by the terms and conditions as stipulated in the new defined contribution pension scheme of the Government.”

6. Regarding applicants some details are below:-

O.A. Nos.	Annexures with Pg. Nos.	Date of absorption.
545/2018	(Annexure-A-3, P.B., Pg. No. 39)	09/02/2009
546/2018	(Annexure-A-3, P.B., Pg. No. 28)	09/02/2009
600/2018	(Annexure-A-3, P.B., Pg. No. 53)	09/02/2009

In all the O.As., it is clear that applicants were absorbed as per the conditions laid down in notification dated 02/02/2009 as per the P.B., Pg. No. 57 in O.A. No. 545/2018.

7. As per the discussions in foregoing paras, there is no substance in the relief clause of the applicants after acceptance of conditions mentioned in G.R. dated 02.02.2009. Hence, following order:-

ORDER

The O.As. are dismissed with no order as to costs.

(Shri Shree Bhagwan)
Vice Chairman

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 Vice Chairman.

Judgment signed on : 03/01/2020.
and pronounced on

Uploaded on : 04/01/2020.