

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 592/2011**

Dr. Sachin S/o Rameshwarao Gole,  
Aged about 32 years, Occupation : Service,  
R/o Prof. R.P. Gole, 32, Mahatma Fule Colony,  
Rathi Nagar, VMV Road, Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Public Health Department,  
Mantralaya, Mumbai through its Secretary.
- 2) The Director of Public Health Services,  
Mantralaya, St. George Hospital, V.T. ,  
Mumbai.
- 3) Dy. Director of Public Health Services,  
Akola Circle, Akola.
- 4) Chief Executive Officer, Zilla Parishad,  
Amravati.

**Respondents**

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**Ku. K.K. Pathak, S.A.Pathak, Advocates for the applicant.**

**Shri A.M. Ghogre, P.O. for the respondent nos.1 to 3.**

**None for respondent no.4.**

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**WITH**

**ORIGINAL APPLICATION NO. 636/2011**

Dr. Archana D/o Yashwantrao Gawande,  
(After marriage her name is changed to Dr.  
Archana W/o Sachin Gole), aged about  
31 years, Occupation : Service, R/o Prof.  
R.P. Gole, 32, Mahatma Fule Colony,  
Rathi Nagar, VMV Road, Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Public Health Department,  
Mantralaya, Mumbai through its Secretary.
- 2) The Director of Public Health Services,  
Mantralaya, St. George Hospital, V.T. ,  
Mumbai.
- 3) Dy. Director of Public Health Services,  
Akola Circle, Akola.
- 4) Chief Executive Officer, Zilla Parishad,  
Amravati.

**Respondents**

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**Ku. K.K. Pathak, S.A.Pathak, Advocates for the applicant.**

**Shri A.M. Ghogre, P.O. for the respondent nos.1 to 3.**

**None for respondent no.4.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**COMMON JUDGEMENT**

**(Delivered on this 7<sup>th</sup> day of April,2017)**

Heard Ku.K.K.Pathak, Id. Counsel for the applicants, Shri A.M. Ghogre, Id. P.O. for respondent nos. 1 to 3. None for respondent no.4.

2. The applicant in O.A. No. 592 of 2011, Dr. Sachin R. Gole came to be appointed by respondent no.4 in the capacity of Medical Officer Group-D in the pay scale of Rs.6500-10500 vide order dated 29/12/2003, whereas the applicant in O.A.No. 636 of 2011 Dr.

Archana Y. Gawande was appointed on the same post vide order dated 22/08/2003.

3. Initially the Ayurvedic Medical Officers and Medical Officers in Alopathy were not treated at par and therefore they were given different pay scales. However vide Circular dated 27/02/2006 the Government of Maharashtra has removed the anomaly in the pay scale and in pursuance thereof on 10/07/2006 the District Health Officer, Zilla Parishad, Gondia issued a letter in pursuance of the G.R. dated 27/02/2006 removing the anomaly in the pay scale w.e.f. 1/1/1996.

4. The services of the applicants were regularised by the respondents vide order dated 12/02/2009 on the post of Medical Officer (Group-A) in the pay scale of Rs. 8000-13,500/-. According to the applicants, as per the said G.R. those who were working on temporary basis and have completed three years' service as on 31/12/2007 and those who were in service at the time of issuance of communication dated 12/02/2009 were to be absorbed and their services were to be regularised. Accordingly, the services of the applicants were regularised. The services of the applicants upto 31/12/2007 have been taken into consideration by respondents while granting benefits of regularisation under one time major (Special)

Rules,2009. However while considering the required service of three years, increments for the period from 2004 to 2007, i.e., for three years of services have not been released by the respondents.

5. According to applicants, the similarly situated Medical Officers like applicants who approached the Tribunal by filing O.As. were granted reliefs, but the applicants have not been granted such reliefs. The applicants have claimed a direction to the respondents to extend the benefit of yearly increments to the applicants from the date of their initial appointments, i.e., from 29/12/2003 and 22/08/2003 respectively to the applicants till the date of their regularisation in the year 2009 and upon releasing such increments their salary be re-fixed and the arrears of pay shall be paid to them alongwith interest. The applicants have also claimed that the respondents be directed to count the services rendered by them on temporary basis, i.e., 2003-2009 on year to year basis as a regular service and grant them seniority accordingly.

6. In both the O.As., the reply-affidavit has been filed by the respondent nos. 1 to 3. The defence taken is almost similar. The respondents have admitted the fact that the applicants were absorbed and the anomaly in the pay scale of the officers like the applicants and other Medical Officers have been removed. It is also admitted facts

that the applicants have been absorbed in the services under Special Rules of 2009. According to the respondents, Rule 4 (i) of the Rules of 2009 makes it crystal clear that the initial basic pay of Ad-hoc Medical Officer shall be fixed at the minimum pay scale applicable to the category of post to which the employees were absorbed under Rule 3 and while making absorption an undertaking from the Ad-hoc Medical Officers regarding acceptance of terms and conditions laid down by the Government was to be obtained. It was specifically stated that Ad-hoc Medical Officer to whom the terms and conditions were not acceptable, they shall not be considered for absorption as per para 4 (vi). It was specifically mentioned that the Ad-hoc Medical Officer shall be entitled to seniority from the date of their initial appointment as Ad-hoc officer, but they will not be entitled to pay, promotion, leave, pension etc. from the date of initial appointment. The applicants have accepted the terms and conditions under the Act of 2009. Those rules were framed under Article 309 of the Constitution of India.

7. It is further stated that for granting benefit of regularisation under one time absorption scheme under Special Rules of 2009, the terms and conditions was that the officers must have completed three years Ad-hoc services on the date i.e. 31/12/2007. However, three

years service period should not be considered for release of annual increments.

8. From the argument put forth by the learned counsel for the respective parties, it will be clear that the anomaly in the pay scale of the Medical Officers in different discipline have been removed and all the Medical Officers including the applicants were absorbed as per order dated 12/02/2009. The said order is placed on record in both the O.As. The copy of the order in O.A.No.592/2011 is at P.B. of page- 44 to 48 (Annex-A-3), whereas the copy of the order in O.A.No. 636 of 2011 is at P.B. of page nos.41 to 45.

9. The learned P.O. has invited our attention to the rules under which the services of the applicants were absorbed. The said rules have been notified vide notification dated 02/02/2009 and are called. "The Medical Officers in the Maharashtra Medical and Health Services Group-A (one time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra ) (Special) Rules,2009" (hereinafter referred to as "Rules,2009"). The copy of the said notification is placed on record in O.A.592/2011 at P.B. of page nos. 104 to 106 (both the pages inclusive) (Annex-R-3) .

10. Rules 3 and 4 of the Rules of 2009 are very useful material and the said read as under: -

*“(3) (1) Notwithstanding anything contained in these rules, every such ad-hoc Medical Officer who is continued as such on the date of commencement of these rules shall with effect from such date of commencement be absorbed on post of Medical Officer with a pay scale specified for the post in Maharashtra Medical and Health Services;*

*Provided that no such person shall be absorbed.*

*i) If he was disqualified for appointment under Maharashtra Medical and Health Services, Group A (Recruitment) Rules, 2000, as Medical Officer,*

*ii) If he does not possess the minimum academic qualification, specified in the rules of recruitment applicable for recruitment to the said post.*

*iii) in any post reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes or other categories of Backward Classes to which he was appointed as ad-hoc Medical Officer, if he found to be not belonging to such castes, tribes or classes, as the case may be.*

*(2) The ad-hoc Medical Officers who are absorbed under these rules, shall after absorption, work at least for the period of ten years from the date of commencement of these rules at first, in tribal and rural areas. They shall not be eligible to be deputed for higher studies for period of six years from the date of absorption.*

*(4) Notwithstanding anything contained in the Maharashtra Medical and Health Services Group A (Recruitment) Rules, 2000 –*

*(i) The initial basic pay of ad-hoc Medical Officer shall be fixed at the minimum of the pay scale applicable to the category of post to which he is absorbed under rule 3,*

*(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 Government.*

*(iii) Before making an absorption of the ad-hoc Medical Officers the confidential reports and enquiry, if any, against him shall be verified. However, the decision on the enquiry report shall be taken after absorption and such decision shall be binding on the ad-hoc Medical Officer.*

*(iv) After absorption the ad-hoc Medical Officer shall be posted as per the priority in the areas specified below viz;*

*(i) The Primary Health Centres in Tribal areas,*

*(ii) The primary Health Centres in non-tribal areas,*

*(iii) The Rural Hospitals, Sub-District Hospitals, Women Hospitals and Mental Hospitals;*

*(iv) District Hospitals;*

*(v) While making absorption, an undertaking from the ad-hoc Medical Officers regarding the acceptance of terms and conditions laid down by the Government shall be obtained. The ad-hoc Medical Officers to whom the said terms and conditions are not acceptable, they should not be considered for absorption;*

*(vi) The inter-se seniority of the ad-hoc Medical Officers shall be fixed from their date of initial appointments as ad-hoc Medical Officers;*

*(vii) The service rendered by the ad-hoc Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme;*

*(viii) While making absorption of the ad-hoc Medical Officers if any backlog is noticed in particular category of the caste, the same shall be adjusted in future recruitment”.*

11. Plain reading of the aforesaid rules makes it crystal clear that the ad-hoc Medical Officers to be absorbed must have completed three years service as ad-hoc Medical Officer on 31/12/2007 and such Medical Officer shall be in service on the date of commencement of the rules i.e. on 02/02/2009. The Clause-3 makes it crystal clear that the effect of the rules of absorption was to be given on the date of commencement of the rules i.e. on 02/02/2009.

12. The Rule 4 (v), (vi) & (vii) of the Rules of 2009 makes it crystal clear that the services rendered by the Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme. Though the inter-se seniority of the Medical Officers shall be fixed from the date of their initial appointments as ad-hoc Medical Officers. It was clearly stated that the Medical Officers to be absorbed will have to give undertaking regarding the acceptance of terms and conditions of the G.R. and

further that those who do not accept the terms and conditions, will not be entitled to absorption. Since the applicants have accepted the terms and conditions of absorption they cannot go beyond the terms and conditions of the absorption.

13. The learned counsel for the applicants has placed reliance on the Judgment delivered by this Tribunal in a Group O.A. Nos. 242/09,243/09,244/09,246/09,247/09,248/09,249/09,250/09,251/09, 252/09,253/09,254/09,255/09,256/09,257/09,258/09,259/09,260/09, 261/09,262/09,263/09,264/09,265/09,266/09,267/09,268/09,269/09, 270/09,271/09,272/09,273/09,274/09,277/09,278/09,279/09,280/09, 281/09,282/09,283/09,349/09 with R.A. 38/15 in O.A. No.64/13 delivered on 02/05/2016 by the Division Bench of this Tribunal Bench at Mumbai. I have carefully gone through the said Judgment. The Judgement is regarding condonation of technical breaks in the services. The learned P.O., on the contrary, has placed reliance on the Judgment delivered by this Tribunal, Bench at Mumbai in O.A.No.240/2009 in the case of **Dr. Rajesh A. Gaikwad & Ors. Vs. State of Maharashtra & Ors.** delivered by the Full Bench on 30/03/2010. In the said Judgment the issue as to whether the ad-hoc employees who have been absorbed as per the Government notification dated 02/02/2009 are entitled to claim the service benefits such as leave, annual increments, seniority and pension by including

the ad-hoc services rendered by them, prior to absorption was considered by the Full Bench. The Hon'ble Tribunal has observed in para nos.(xx) to (xxviii) as under :-

*(xx) Once the applicants opting for absorption voluntarily under the aforesaid Rules as per Government Notification dated 02/02/2009, then they are fully governed by those rules. In fact Rule 4 (vii) in no uncertain terms makes it clear that the service rendered by such Ad-hoc medical officers, prior to the date of absorption shall not be considered for pay, pension, leave and of promotion (i.e. seniority).*

*(xxi) In the light of the above, the benefits of various Maharashtra Civil Services Rules, will apply to the applicants only from and after their date of absorption.*

*(xxii) If the benefits of Maharashtra Civil Services Rules are extended to the applicants for the service rendered by them prior to their absorption, the same would be clearly violative of the above notification dated 02/02/2009, under which they were absorbed.*

*(xxiii) The applicants once having voluntarily given an undertaking to abide by the terms and conditions in Government notification dated 02/02/2009 and on that basis obtaining absorption, are now clearly precluded from resiling from the above Rule 4 (vii).*

*(xxiv) If the applicants are allowed to resile from the above Rule 4 (vii), then their very absorption will have to be cancelled.*

*(xxv) In fact if the applicants are allowed to resile from Rule 4 (vii) and all the benefits are granted for their ad-hoc service prior to absorption, then it would be clearly violative of Articles 14 and 16 of the Constitution of India, towards the regularly selected Medical Officers.*

*(xxvi) Hence the claim of the applicants for increments, earned leave, pension and seniority based on their ad-hoc service prior to absorption, on the basis of various Maharashtra Civil Services Rules must fail as the said claim is totally unsustainable in law.*

*(xxvii) If such a claim is allowed, it would be clearly violative of the Judgment of the Hon'ble Supreme Court in M.P. **Palaniswamy's** case.*

*(xxviii) Hence the applicants claim for increments, pension, earned leave and seniority based on their ad-hoc service prior to absorption, is clearly unsustainable i law and would be also violative of Articles 14 & 16 of the Constitution of India.”*

14. The learned counsel for the applicants have relied upon the same Judgments whereby the benefit of condonation of technical breaks was given to various applicants. The respondent no.3 in reply-affidavit in para-5 of O.A.No.592 of 2011 has referred to all these pronouncement and has stated in para-5 as under :-

*“It is not disputed that in various matter Hon'ble Tribunal directed to the respondent department to condone the*

*technical beak and to release the annual increments to the applicants after completion of one year service and grant the same to them till they are continued in services. In this connections it is submitted that in such a similar matter in 22/06,07/07,51/07, 86/07,87/07, 88/07,89/07, 118/07, 119/07,123/07 & 128/07 and in other cases consolidated order passed by this Hon'ble Tribunal on dated 05/04/2010 challenged by Govt. Before Hon'ble High Court Nagpur vide Writ Petition No.6072/2011 & Hon'ble Apex Court granted interim stay to the order dated 05/04/2010 passed by this Hon'ble Tribunal and now the stay is continued and Writ Petition is admitted by the Hon'ble Apex Court copy of the stay order as well as writ petition admitted by the Apex Court is enclosed as an Annexure-R-4 and so as alleged by the applicant in this para is denied."*

15. On a conspectus of discussion in foregoing paras, it will be thus crystal clear that since the applicants have accepted the terms and conditions of the absorption which clearly states that they will not be entitled to claim annual increments and other benefits, I do not find any merits in the O.As. Hence, the following order :-

**ORDER**

The O.A.Nos. 592/2011 and 636/2011 stand dismissed with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**