

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 863 of 2021 (S.B.)**

Dr. Suchitra D/o Gopalrao Manurkar,  
Aged about 45 yrs.; Occ: Service,  
R/o. Plot No. 13/14,  
Damodar Apartment, Near Hudkeshwar Police Station,  
Corporation Colony, Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Public Health Department, 10th Floor,  
GT Hospital Campus Building,  
New Mantralaya, Fort, Mumbai-01.
- 2) Commissioner of Public Health,  
Aarogya Bhavan, St. Georges  
Hospital Compound, P.D'Mello Road,  
CST, Mumbai-01.
- 3) Director of Health Services,  
Aarogya Bhavan, St. Georges Hospital Compound,  
P.D'Mello Road, CST, Mumbai-01.

**Respondents.**

---

**S/Shri N.D. and T.N. Thombre, Advocates for the applicant.**  
**Shri A.M. Ghogre, learned P.O. for respondents.**

---

**WITH**  
**ORIGINAL APPLICATION No. 864 of 2021 (S.B.)**

Dr. Pravin S/o Prabhakarrrao Umargekar,  
Aged about 48 yrs.; Occ: Service,  
R/o. Plot No. 13/14, Damodar Apartment,  
Near Hudkeshwar Police Station, Corporation Colony,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Public Health Department, 10th Floor,  
GT Hospital Campus Building,  
New Mantralaya, Fort, Mumbai-01.

- 2) Commissioner of Public Health,  
Aarogya Bhavan, St. Georges  
Hospital Compound, P.D'Mello Road,  
CST, Mumbai-01.
- 3) Director of Health Services,  
Aarogya Bhavan, St. Georges Hospital Compound,  
P.D'Mello Road, CST, Mumbai-01.
- 4) Zilla Parishad Nagpur,  
Through its, Chief Executive Officer,  
Nagpur.
- 5) District Health Officer,  
Zilla Parishad, Nagpur.

**Respondents.**

---

**S/Shri N.D. and T.N. Thombre, Advocates for the applicant.  
Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 3.  
Shri S.N. Gaikwad, learned counsel for respondent nos.4 and 5.**

---

**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

---

**Date of Reserving for Judgment : 10<sup>th</sup> March, 2023.**

**Date of Pronouncement of Judgment : 17<sup>th</sup> March, 2023.**

**COMMON JUDGMENT**

**(Delivered on this 17<sup>th</sup> day of March,2023)**

Heard Shri N.D. Thombre, Id. counsel for the applicant and  
Shri A.M. Ghogre, Id. P.O. for the respondents (in O.A.863/2021).

2. Heard Shri N.D. Thombre, Id. counsel for applicant, Shri  
A.M. Ghogre, Id. P.O. for respondent nos.1 to 3 and Shri S.N.  
Gaikwad, Id. counsel for respondent nos.4 and 5 (in O.A.864/2021).

3. Both the applicants are similarly situated and praying similar reliefs. Therefore, both the O.As. are decided by this common Judgment.

4. The case of the applicant Dr. Suchitra Manurkar in O.A.No. 863/2021 in short is as under –

5. The applicant is working with the respondents on the post of Medical Officer, Group-A under MM and HS, initially on ad-hoc basis from 27/06/2005. The services of the applicant were regularised by the respondents by G.R. dated 22/2/2010.

6. The applicant was appointed initially on ad-hoc basis by order dated 23/06/2005. She was continued in service by giving one day technical break. The services of applicant were regularised as per Notification issued by respondents dated 02/02/2009 by way of one time absorption. The applicant was given regular increments from 2010. The respondent has not given her benefit of annual increments from the date of initial appointment on ad-hoc basis. Therefore, the applicant approached to this Tribunal for the following reliefs –

*“(i) Direct the respondents to implement the various orders passed by this Tribunal in various Original Applications;*

*(ii) Direct the respondents to grant 1<sup>st</sup> increment to the applicant after completion of 1 year of ad-hoc service i.e. from 27/06/2006 and further increments thereafter by fixing pay of applicant accordingly till date;*

*(iii) After granting increments as above grant all other consequential benefits arising out of it including arrears of pay and allowances;*

*(iv) Direct the respondents to complete the whole exercise within time bound frame.”*

7. In O.A.No. 864/2021, the case of the applicant Dr. Pravin Umargekar in short is as under –

8. The applicant was appointed as a bonded candidate on the post of Medical Officer, Group-A under MM and HS, initially from 21/06/2000. The services of the applicant were regularised by the respondents by G.R. dated 22/02/2010. Though the applicant was initially appointed as a bonded candidate by order dated 13/06/2000, he was continued in service by giving one day technical break. The services of the applicant were regularised as per the Notification issued by the respondents dated 02/02/2009 by way of one time absorption. The applicant was given regular increments from the year 2010. The respondents had not granted the increments from initial date of appointment as an ad-hoc employee/ bonded candidate from 13/06/2000. Therefore, he approached to this Tribunal for the following reliefs –

*“(i) Direct the respondents to implement the various orders passed by this Tribunal in various Original Applications;*

- (ii) Direct the respondents to grant 1<sup>st</sup> increment to the applicant after completion of 1 year of ad-hoc service i.e. from 20/06/2001 and further increments thereafter by fixing pay of applicant accordingly till date;*
- (iii) After granting increments as above grant all other consequential benefits arising out of it including arrears of pay and allowances;*
- (iv) Direct the respondents to complete the whole exercise within time bound frame.”*

9. Both the O.As. are strongly opposed by the respondents by filing their reply. The respondents have made preliminary objection regarding maintainability of the O.As. The present O.As. are time barred as the applicants are praying for grant of increments w.e.f. 2001 and 2006 respectively by filing the present O.As. in the year 2021. There is no continuous cause of action. Hence, the O.As. are liable to be dismissed.

10. The applicants were initially appointed as a bonded candidate in the year 2000 and 2005 respectively. As a onetime settlement, the Government of Maharashtra framed the rules / Notification dated 02/02/2009. Those rules were framed as per the proviso to Article 309 of the Constitution of India. There are specific conditions in the Notification / Rules. The applicants have given undertaking that they will not claim any benefit of past service etc. They are bound by the undertaking. Those who had given undertaking, they were regularised and those who had not given any

undertaking, they were not regularised. As per the undertaking as provided in Rule 4 of the Notification, the applicants are not entitled for the benefit of past service as an ad-hoc Medical Officer and therefore they cannot claim the increments of the tenure of ad-hoc post till their regularisation. Hence, the O.As. are liable to be dismissed.

11. Heard Shri N.D. Thombre, learned counsel for the applicants. He has submitted that similarly situated employees were granted reliefs by this Tribunal in O.A.No. 824/2016, decided by the M.A.T., Aurangabad Bench on 25/09/2018. The learned counsel has pointed out the Judgment in O.A.No.192/2005, decided by the M.A.T., Nagpur Bench on 07/12/2006. He has also pointed out the decision of M.A.T., Nagpur Bench in O.A.No.191/2005, decided on 04/05/2007.

12. The learned counsel for the applicants has pointed out the Government Circular issued by the Government of Maharashtra dated 28/02/2017 and submitted that as per this Circular, when the relief is granted to the similarly situated employees, those reliefs should have been granted to the similarly situated employees. The learned counsel for applicants has submitted that the applicants were working as an ad-hoc employees / Medical Officer from 2000 and 2005 respectively. They were regularised as per the G.R. dated 22/02/2010. At last, submitted that both the applicants are entitled to

get increments from the date of initial appointment as an ad-hoc employee. At last, prayed to allow the O.A. as per prayer clause.

13. Heard learned P.O. Shri A.M.Ghogre. He has submitted that the Judgment of Single Bench of M.A.T., Aurangabad Bench in O.A.No.824 of 2016 has not considered the Judgment of Full Bench, M.A.T., Mumbai Bench in O.A.240/2009. Specific issues were referred to the Full Bench and those issues were answered by the Full Bench holding that ad-hoc Medical Officers who were regularised as per the Notification / Rules of 2009, cannot claim earlier service benefits before their regularisation. They cannot claim increments, seniority etc.

14. The learned P.O. has pointed out the Judgment of Bombay High Court, Bench at Nagpur in Writ Petition No.3480/2020, decided on 10/02/2021. The Hon'ble Bombay High Court, Bench at Nagpur has held that Notification / Rules framed on 02/02/2009 for onetime absorption of Medical Officers appointed on ad-hoc basis in Maharashtra, Special Rules were framed. The petitioners / ad-hoc Medical Officers were accordingly regularised. The Rules are very specific and as per the Rules, ad-hoc Medical Officers who are regularised cannot claim the benefits of past service as of ad-hoc Medical Officer. The learned P.O. has submitted that in view of the Judgment of Full Bench of M.A.T., Mumbai Bench and the Judgment

of Bombay High Court, Nagpur Bench in Writ Petition No.3480/2020, the applicants are not entitled for the reliefs prayed in the O.As.

15. There is no dispute that both the applicants were working as an ad-hoc Medical Officers for a particular period. After giving some breaks, their services were continued.

16. The applicant namely Dr. Pravin Umargekar was initially appointed as an ad-hoc Medical Officer for a particular period in the year 2000. He was given extension after some breaks.

17. The applicant namely Dr. Suchitra Manurkar was appointed as ad-hoc Medical Officer on 27/06/2005. She was given break in the service. But she was continued on the said post as an ad-hoc Medical Officer. In the year 2009, the Government of Maharashtra has framed Special Rules as per the powers confirmed by the proviso to article 309 of the Constitution of India. Material part of Rules are reproduced below -

**NOTIFICATION**

*Public Health Department  
Mantralaya, Mumbai 400 032  
Dated 2nd February, 2009.*

**Constitution of  
India**

*No. MMO1008/204/CR-116/SEVA-3 - In exercise of the powers conferred by the proviso to article 309 of Constitution of India, the Governor of Maharashtra hereby makes the following rules for one time absorption of the Medical Officers working on ad-hoc basis in the Maharashtra Medical and Health Services of the Government of*



*Maharashtra, Group-A in the Directorate of Health Services of the Government of Maharashtra, namely –*

*1. These Rules may be called the Medical Officer 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.*

*2 (1) In these rules, unless the context otherwise requires. -*

*"ad-hoc Medical Officer" means a Medical Officer, who was appointed in the Department of Public Health on ad-hoc basis and completed 3 years on 31" December 2007 and who is in the service, on the date of commencement of these rules.*

*(2) Words and expressions used in these rules but not defined, shall have the same meaning respectively assigned to them in the Maharashtra Medical and Health Services, Group A (Recruitment) Rules, 2000.*

*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 is 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 & 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 the Government;*

*(iii) Before making 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 & 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;*

*5. The provisions of the Maharashtra Medical and Health Services Group A (Recruitment) Rules, 2000 and all other rules regulating the conditions of services of Government Servants in so far as they are not inconsistent with the provisions of these rules, shall apply to persons absorbed under these rules;*

*By order and in the name of the Governor of Maharashtra,*

18. As per the Rules dated 02/02/2009, ad-hoc Medical Officers were to be regularised as a onetime settlement. Rule 3 provides the eligibility criteria for the regularisation of ad-hoc Medical Officers. In Rule 4, the conditions are given for regularisation of ad-hoc Medical Officers.

19. Both the applicants were regularised as a Medical Officer as per the Rules framed on 02/02/2009 by issuing Notification dated 22/02/2010. The decision in the G.R. / Notification reads as under –

“ निणय :-

भारताचे संविधानाच्या अनुच्छेद ३०९ च्या परंतुकाव्दारा प्रदान करण्यात आलेल्या अधिकारांचा वापर करून महाराष्ट्राचे राज्यपाल यांनी महाराष्ट्र शासनाच्या आरोग्य सेवा संचालनालयातील महाराष्ट्र वैद्यकाय व आरोग्य सेवा, गट-अ (वेतन बँड रु. १५६००-३९१०० + ग्रेड वेतन रु.५४००) (असुधारात वेतनश्रेणी रु. ८०००-१३५००) मधील अस्थायी स्वरूपात कायरात असलेल्या ज्या वैद्यकाय अधिकार्यांनी दि.३१.१२.२००७ रोजी ३ वर्षाची सेवा पूण केलेला आहे व जे संदभाधीन अधिसूचनेच्या दिनांकास सेवेत आहेत अशा अस्थायी वैद्यकाय अधिकार्यांचे एक वेळचे रामावेशन करण्यासाठी महाराष्ट्र वैद्यकाय व आरोग्य सेवा गट-अ मधील वैद्यकाय अधिकारी (महाराष्ट्रात अस्थायी म्हणून नियुक्त केलेल्या वैद्यकाय अधिकार्यांचे एक वेळचे समावेशन) (विशेष) नियम, २००९ केले आहे.

२. त्यानुसार फेब्रुवारी, २००९ मध्ये समावेशनाची प्रक्रिया पार पाडून पात्र वैद्यकाय अधिकार्यांना समावेशनाचे आदेश शासनातर्फे देण्यात आले आहेत. यावेळी ज्या वैद्यकाय अधिकार्यांच्या अस्थायी सेवेत दोन महिन्यांपेक्षा जास्त कालावधीचा सेवाखंड होता आणि अन्य अर्टाची पूतता करत आहेत. अशा वैद्यकाय अधिकार्यांची प्रकरणे प्रलंबित ठेवण्यात आली होती अशा वैद्यकाय अधिकार्यांचे सुध्दा त्यांचे अस्थायी सेवेतील सेवाखंड विचारात न घेता समावेशन करण्याचा शासनाने निणय घेतला आहे.”

20. As per para-2, of the G.R. / Notification such ad-hoc Medical Officers cannot claim service benefits of ad-hoc Medical Officers for any other service benefits. The Rule 4 (vii) reads as under-  
*“(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.”*

21. In respect of the Judgments cited by the learned counsel for the applicant in O.A.No.824/2016. This Judgment was delivered on 25/09/2018. In this Judgment, the Judgment of Full Bench of M.A.T., Mumbai Bench was not pointed out. The Judgment of Full Bench in O.A.No.240/2009, delivered on 30/03/2010. It is binding on the Single Bench as well as Division Bench of M.A.Ts. This Judgment of Single Bench of M.A.T. Aurangabad Bench is not legal and proper in view of the Judgment of Full Bench of M.A.T., Mumbai Bench. Full Bench after examining the issues recorded its findings that ad-hoc Medical Officers who were regularised as per Special Rules of 2009 cannot claim the service benefit of ad-hoc appointee from their initial date of appointments. The learned Single Bench granted the relief holding that ad-hoc Medical Officer is entitled to get annual increments of her earlier services on ad-hoc basis and the respondents were directed to grant benefit of annual increments to her from the date of her initial appointment from 06/10/2001. On the contrary, the Judgment which was delivered prior to this Judgment by the Full Bench of M.A.T., Mumbai clearly shows that ad-hoc Medical Officers who were regularised as per the Notification / Rules dated 02/02/2009 cannot claim the benefits of their earlier services as ad-hoc Medical Officers. They are not entitled to get increments and other benefits of their services as ad-hoc Medical Officers.

22. There is no dispute that both the applicants are getting their regular increments and other service benefits from the date of their regularisation.

23. Before the Full Bench, M.A.T. Mumbai Bench following issues were referred for the decision –

*“1. All the above matters have been referred to our Larger Bench, to decide the following questions of law.*

*1. Can an Ad hoc employee seek condonation in technical breaks of two or three days in between two such spells of ad hoc appointment and also seek release of yearly increments after completion of one year service, and go on seeking release of increments for successive years and for grant of consequential benefits including leave benefits?*

*2. Can an ad hoc employee claim the benefit of continuity and not to be replaced by another ad hoc employee or a temporary employee, but should such an ad hoc employee be replaced by a regularly selected candidate?*

*3. Whether ad hoc employees, even if absorbed as per Government Notification dated 2.2.2009 are entitled to claim service benefits, such as leave, annual increments, seniority and pension by including the ad hoc service rendered by them, prior to absorption?*

*4. Validity of Government Notification dated 2.2.2009?*

24. The Full Bench of M.A.T., Mumbai Bench has recorded their decisions as under –

*(viii) The abovementioned Government Notification dated 02/02/2009 clearly mentions that “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 were*

*framed by the Governor of Maharashtra under Article 309 of the Constitution of India.*

*ix) Rules framed under Article 309 of the Constitution of India will always prevail over other rules and Government Resolutions issued under Article 162 of the Constitution of India.*

*x) The Applicants being ad hoc employees cannot claim the benefit of increments under G.R. dated 01.03.1997 and G.R. dated 29.08.2001, in as much as they have not been appointed in the public post in accordance with the Constitutional Scheme and as per the prescribed recruitment rules on the recommendation of Maharashtra Public Service Commission, hence they cannot claim such service benefits.*

*xi) In any event the aforesaid Government Notification in Rule 4 (vii) very clearly mentions that the service rendered prior to absorption shall not be considered for the benefit of pay, pension, leave and grant of promotion (i.e. Seniority).*

*xii) The above Government Notification dated 02.02.2009, has been framed under Article 309 of the Constitution of India, hence it prevails over the above Government Resolution.*

*xiii) The above notification dated 02.02.2009, in Rule 4 (ii) clearly mentions that the absorbed employees will be entitled to the new defined contribution Pension scheme of the Government.*

*xiv) Similarly, in the above notification, in Rule 4 (i) it clearly mentions that those absorbed doctors will get only initial basic pay and fixed at the minimum pay scale, hence they cannot claim any increment.*

*xv) It is very vital note that in the above notification, in Rule 4 (v) all ad hoc employees had to give an undertaking to abide by those rules prior to absorption and absorption was granted only after such an acceptance and undertaking. The said rule also clearly states that if the above terms and conditions are not acceptable to Ad hoc medical officers, then they will not be considered for absorption.*

xvi) *The Applicants after giving such an undertaking and being absorbed, cannot turn around and resile from the same and challenge.*

xv) *The Applicants after being absorbed under the Rules as notified by Government Notification dated 02.02.2009, are clearly precluded from challenging the same, after having voluntarily accepted such absorption.*

xvi) *Applicants claim to be treated on par with the regularly selected candidates, as far as pay, increments, leave, seniority and pension is clearly in violation of Articles 14 and 16 of the Constitution of India and the Constitutional Scheme.*

xvii) *The Applicants challenge to the validity of the above notification dated 02.02.2009, in the light of Article 14 and 16 of the Constitution of India, especially with regard to being not treated on par with the regularly selected doctors regarding pay, earned leave, seniority and pension, must fail, because the Applicants form a class by themselves.. The Applicants never competed with others before being selected, as there was no selection process involved before they were appointed, and no recruitment rules were followed.*

xviii) *The Applicants who belong to the "back door entry" category can never claim parity with the regularly selected employees, hence there is no violation of Articles 14 and 16 of the Constitution of India.*

xix) *The Applicants appointments were fortuitous, without any competition, selection process and no recruitment rules were applied, hence they can never be compared with the regularly selected doctors, so **also** claim the benefit of Articles 14 and 16 of the Constitution of India.*

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 the **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 in law and would be also violative of Articles 14 and 16 of the Constitution of India.*

25. In the recent Judgment, the Hon'ble Division Bench of Bombay High Court, Nagpur Bench in Writ Petition No. 3480/2020, decided on 10/02/2021 has held that " the petitioner was originally appointed as a Medical Officer, Class-II on temporary basis for a period of two years, sometime in the year 1992. Thereafter by notification in exercise of powers under Article 309 of the constitution of India, the Public Health Department of State of Maharashtra on 2<sup>nd</sup> February, 2009, enacted the Maharashtra Medical and Health Services Group-A (Onetime absorption of the Medical Officer appointed on ad-hoc basis in Maharashtra) (Special) Rules, 2009. The petitioner was accordingly given order of absorption under the said Rules in February, 2009."

26. As per the Rules of 2009, the petitioner is not entitled to avail the benefit of old pension scheme. The claim of the petitioner is that he should be granted the benefits of old pension scheme. It is held that the Rule 4 (iv) of the Rules of 2009 is very specific. It stipulates that services rendered by an ad-hoc Medical Officers prior to their date of absorption shall not be considered for pension, leave and other benefits. The absorption order issued to the petitioner was in pursuant to the Rules in the year 2009 itself. The Tribunal was right in observing that the Petitioner accepted this condition in the year 2009, and sought to raise a challenge in the year 2018, which is

grossly delayed.----- .The Petitioner duly gave an undertaking without protest and did not object for a period of ten years. The Petitioner was required to give the undertaking which is a precondition of absorption. The fact that the Petitioner accepted the order of absorption, means that the Petitioner has accepted the conditions laid down therein ----- Therefore, the applicants / ad-hoc medical officers cannot claim that he should be given service benefits i.e. old pension scheme etc. is not proper.”

27. The Rule 4 dated 02/02/2009 is very clear. Ad-hoc Medical Officers who had given undertaking stating that he shall not claim the earlier service benefits, were regularised. Both the applicants had given their undertakings as per the G.R. /Notification dated 22/02/2010. Once they had given the undertaking to regularise their services, they cannot resile from their undertakings and now they cannot claim that they are entitled to get increments from the date of their initial appointment as ad-hoc Medical Officers. The Judgment of Single Bench of M.A.T., Bench at Aurangabad is not helpful to the applicants. The Judgment delivered by the Single Bench M.A.T., Aurangabad Bench in O.A.No.824/2016 is not proper / legal, because, the Judgment of Full Bench of M.A.T., Mumbai Bench dated 30/03/2010 was not pointed out and it is not discussed in the Judgment. The other two Judgments of Single Bench of M.A.T.,

Bench at Nagpur Bench in O.A. Nos.192/2005 and 191/2005 are earlier to the Judgment of Full Bench of M.A.T., Mumbai Bench. Hence, those Judgments are not helpful to the applicants.

28. The Judgment of Full Bench of M.A.T., Mumbai Bench in O.A. No.240/2009 is very specific. The issues in respect of the ad-hoc Medical Officers were decided by the Full Bench of M.A.T., Mumbai Bench holding that ad-hoc Medical Officers who were regularised as per the Rules framed in the year 2009, cannot claim their benefits of earlier services as ad-hoc Medical Officers. The Judgment of Division Bench of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.3480/2020 shows that ad-hoc Medical Officers who were regularised cannot resile from their undertakings given as per the Rule 4 (v) of the year 2009. They cannot claim the benefits of old pension scheme.

29. In view of the above discussions, ad-hoc Medical Officers who were working years together as ad-hoc Medical Officers for a specific period, their services were continued by giving break. Those Medical Officers who were regularised as per the Special Rules framed by the Public Health Department, Government of Maharashtra, dated 02/02/2009 are not entitled to claim the benefit of earlier services as ad-hoc Medical Officers.

30. Both the applicants were appointed as ad-hoc Medical Officers in the year 2000 and 2005 respectively. They were continued as ad-hoc Medical Officers by giving break in their services. They were regularised as per the Special Rules framed on 02/02/2009. The Rules are very specific. As per the Rule 4 of 2009, both the applicants are not entitled to get increments in respect of their earlier services as ad-hoc Medical Officers. There is no dispute that they are getting regular increments from the year 2010. Hence, both the applicants are not entitled for the relief as claimed in the O.As. Hence, the following order –

**ORDER**

- (i) Both the O.A.No.863/2021 and O.A.No.864/2021 are dismissed.
- (ii) No order as to costs.

**Dated** :- 17/03/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

\*dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 17/03/2023.