

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.392 OF 2016
WITH
ORIGINAL APPLICATION NO.1208 OF 2016

DISTRICT : SATARA

ORIGINAL APPLICATION NO.392 OF 2016

Shri Dilip Dinkar Kamble.)
Age : 58 Yrs, Occu.: Service, R/at Gayatri)
Apartment, Flat No.S-5, Near Circuit House,)
Satara.)...Applicant

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400 032.)
2. Director of Health Services.)
Arogya Bhavan, St. Georges Hospital)
Campus, Near CST, Mumbai.)
3. The Chief Executive officer.)
Zilla Parishad, Satara.)
4. District Health Officer.)
Zilla Parishad, Satara.)...Respondents

WITH

ORIGINAL APPLICATION NO.1208 OF 2016

Dr. Pramod Raghunath Pandit.)
Age : 58 Yrs, Occu.: Service, R/at Plot No.8,)
Ramchandra Nagar, Station Road, Tal. Ravel,)
District : Jalgaon.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400 032.)
2. Director of Health Services.)
Arogya Bhavan, St. Georges Hospital)
Campus, Near CST, Mumbai.)
3. Director, Dadasaheb Chaudhari)
Forest Traing Santha Pal, Tal. Ravel,)
District : Jalgaon.)
4. Deputy Director.)
Nashik Civil Hospital Campus,)
Nashik Circle, Nashik.)
5. Civil Surgeon.)
General Hospital, Near Bus Stand)
Jalgaon, Tal. & Dist.: Jalgaon.)...**Respondents**

Mr. Balasaheb Deshmukh, Advocate for Applicants.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.03.2019

JUDGMENT

1. Heard Shri Balasaheb Deshmukh, learned Advocate for the Applicants and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. The only issue posed for consideration in both these O.As is whether the Applicants (Medical Officers) are entitled to the benefit of G.R. dated 3rd September, 2015 issued by Government of Maharashtra, whereby the retirement age of the Medical Officers, Group 'A' has been extended from 58 to 60 years.
3. Both the Applicants hold the degree of B.A.M.S. and were appointed as Medical Officers. The Applicant in O.A.392/2016 stands retired on 30th April, 2016 and the Applicant in O.A.1208/2016 stands retired on 31st December, 2016. However, they are claiming the benefit of G.R. dated 3rd September, 2015 for grant of service benefits. The learned Advocate for the Applicants Shri Deshmukh fairly stated that the Applicants are not claiming back-wages in monetary terms but seeking the relief of benefit of G.R. dated 3rd September, 2015 for grant of pensionary benefits only. He has also pointed out that the issue involved in the present matter is now no more open to debate in view of various decisions rendered by the Tribunal and confirmed upto Hon'ble Supreme Court. He has tendered the copies of orders passed by Tribunal and Hon'ble High Court in this behalf. He, therefore, prayed that the Applicants being similarly situated retired employees, are entitled to the pensionary benefits in terms of G.R. dated 3rd September, 2015.
4. Whereas, Shri A.J. Chougule, learned Advocate for the Applicant sought to contend that the G.R. dated 3rd September, 2015 is not applicable to the Applicants on the ground that it is applicable to only Group 'A' Officers drawing pay scale of Rs.15600-39100 + G.P.5400. He tried to contend that the Applicant was placed in the said pay scale only because of benefit of Assured Career Progression Scheme, and therefore, not entitled to extension of age. He does not

dispute about the decisions rendered by the Tribunal and confirmed by Hon'ble High Court.

5. As stated above, the issue involved in the present matter is no more *res-integra* in view of various decisions pointed out by the learned Advocate for the Applicants. In this respect, reference may be made to the decision rendered by the Tribunal at Nagpur Bench in ***O.A.No.42/2016 (Dr. Narayan S. Farkade Vs. The State of Maharashtra & Ors.) decided on 27th October, 2016, O.A.No.798/2016 (Dr. Rahul K. Talware Vs. The State of Maharashtra & Ors.) decided on 5th May, 2018 and O.A.No.483/2018 (Dr. Balasaheb Deshmukh) decided by Aurangabad Bench on 08.02.2019.***

6. The Judgment in O.A.42/2016 has been confirmed by Hon'ble High Court, Nagpur Bench in ***Writ Petition No.6757/2017 decided on 5th March, 2018.*** It is also pointed out by the learned Advocate for the Applicants that the SLP filed by State Government against the decision of Hon'ble High Court has been dismissed. It was further pointed out that in terms of order passed by this Tribunal in above O.A. and other O.As, the monetary benefits had been released to the Applicant therein.

7. Suffice to say the decisions referred to above has attained the finality. Admittedly, the Applicants at the time of retirement were in the pay scale of Rs.15600-39100 + G.P. 5400. Whereas, as per G.R. dated 3rd September, 2015, the benefit of extension of age from 58 to 68 years has been extended to the Medical Officers drawing the pay scale of Rs.15600-39100 + G.P. 5400 serving with Director of Medical Services and State Insurance Employees Scheme (Group 'A' Medical Officers).

8. The issue whether the Applicants on the basis of their pay scale of Rs.15600-39100 + G.P. 5400 can be termed as Group 'A' Medical Officers for the benefit of G.R. dated 3rd September, 2015 has been specifically dealt with by

Hon'ble High Court in Writ Petition No.6757/2017 in reference to G.R. dated 2nd July, 2002. As per classification of cadre and grouping, the Government employees who are drawing basic pay not less than 11500 falls in Group 'A'.

9. The contention raised by the learned P.O. that the Applicants' pay scale has been increased because of benefit of ACRs and it was not their initial pay scale, and therefore, they are not entitled to G.R. dated 3rd September, 2015 is obviously not acceptable as there are no such distinction is made in G.R. dated 3rd September, 2015 as canvassed by the learned Presenting Officer. All that G.R. states that the Medical Officers falling in pay scale of Rs.15600-39100 + G.P. 5400, the Medical Officers Group 'A' are entitled to the benefit of extension of age. This being the position, the criteria is pay scale of the employee.

10. At this juncture, it would be apposite to reproduce the observations made by Hon'ble High Court in Writ Petition No.6757/2017, decided on 5th March, 2018 which are as follows :

"On hearing the learned counsel for the parties and on a perusal of the Government Resolutions dated 30.05.2015 and 2nd July 2002 it appears that that the Tribunal was justified in declaring that the respondent was entitled to continue in service till he completed the age of 60years. The respondent was admittedly a Medical Officer drawing the pay scale of Rs.15600 39100/ with grade pay of Rs. 5400/ at the relevant time when the petitioners sought to retire him on attaining the age of 58years. On a reading of the Government Resolution dated 2nd July 2002, it appears that every Government employee drawing the pay scale of Rs. 11500/ and above, is a group "A" employee. If that is so, the respondent was also a Group "A" employee, as he was drawing a pay scale of Rs. 15600 39100/ with grade pay of Rs. 5400/.While granting similar benefit to several other Medical Officers it appears that the petitioners had wrongfully denied the same benefit to the respondent. On a consideration of the Government Resolutions, the Tribunal rightly directed the petitioners to consider that the age of retirement of the respondent was 60 years and to fix his pay accordingly.

Though the Tribunal was justified in directing that the respondent was entitled to continue in service till the age of 60 years, the Tribunal was not justified in directing the petitioners to grant the monetary benefits flowing from the said declaration. Admittedly, after the respondent was relieved from service after

attaining the age of 58 years, he had not worked with the petitioners since then. The respondent stood retired from service at the age of 58 years. Since the respondent did not work with the petitioners after the age of 58 years, the Tribunal could not have fastened the liability of payment of monetary benefits viz. the salary and the other allowances to the respondent for the period during which he did not work. It would be necessary to modify the order of the Tribunal only to that extent, more so when a statement is made by the learned counsel for the respondent that 6the respondent is ready to give up his claim to the actual monetary benefits till the date of impugned order.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. The impugned order of the Tribunal is modified. The part of the order that declares that the age of retirement of the respondent would be 60 years is confirmed. The part of the order that directs the petitioners to release the actual monetary benefits flowing from the declaration in respect of the age of retirement, is hereby quashed and set aside. It is held that the respondent would be entitled to receive the monetary benefits in view of the refixation of his salary from the date of the impugned judgment.”

11. Suffice to say, the issue involved in the present matter has attained the finality, this Tribunal is bound to follow the decision of Hon'ble High Court in view of doctrine of precedent and judicial propriety. The Applicants are, therefore, entitled to the relief of service benefits in terms of G.R. dated 3rd September, 2015.

12. The totality of aforesaid discussion leads me to sum-up that the O.A. deserves to be allowed partly. Hence, the following order.

ORDER

- (A) Both the Original Applications are allowed partly.
- (B) The Applicants in both the O.As are entitled to service benefits in terms of G.R. dated 3rd September, 2015 for the purposes of pensionary benefits.

- (C) They are not entitled to actual monetary benefits for the extension of age from 58 to 60 and are entitled to receive monetary benefits on account of re-fixation of their salary for retiral benefits only.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 28.03.2019

Dictation taken by :

S.K. Wamanse.

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