

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.553 & 554 OF 2022

DISTRICT : NASHIK/SOLAPUR

**Sub.:- Continuation of
Service/Regularization/Leave
Benefits & Increments.**

ORIGINAL APPLICATION NO.553 OF 2022

Dr. Rutwik R. Patil.)
Age : 45 Yrs, Occu.: Medical Officer)
(Group-A), Presently working at District)
Hospital, Nashik and permanently residing)
at Plot No.4, Mayureshwar Niwas,)
Opp. Aware Hospital, Govind Nagar,)
Nashik – 422 009.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
10th Floor, G.T. Hospital Building,)
New Mantralaya, Mumbai – 1.)
2. The Commissioner of Health)
Services & Director (N.H.M), 3rd)
Floor, Arogya Bhavan, St. Georges)
Hospital Campus, Mumbai – 1.)
3. The Deputy Director of Health)
Services, Shalimar Chowk, Trimbak)
Road, Nashik.)
4. The District Civil Surgeon.)
District Civil Hospital, Dist : Nashik.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.554 OF 2022**

Dr. Pralhad P. Gaikwad.)
Age : 57 Yrs, Occu.: Medical Officer)
(Group-A), Presently working at Rural)
Hospital, Mohol, Tal. : Mohol,)
District Solapur and permanently residing)
at Flat No.C-310, Heritage Apartment,)
Opp. Modern High Court, Gandhi Nagar,)
Solapur – 413 003.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
10th Floor, G.T. Hospital Building,)
New Mantralaya, Mumbai – 1.)
2. The Commissioner of Health)
Services & Director (N.H.M), 3rd)
Floor, Arogya Bhavan, St. Georges)
Hospital Campus, Mumbai – 1.)
3. The Deputy Director of Health)
Services, Pune Circle, Near Sasoon)
Hospital, Pune.)
4. The District Civil Surgeon.)
District Civil Hospital, Dist : Solapur.)...**Respondents**

Shri J.S. Deshmukh, Advocate for Applicants.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.06.2023

JUDGMENT

1. These two Original Applications are filed by Medical Officers for counting their *ad-hoc* service for increment and Earned Leave by condoning technical break in service.
2. The Applicants were initially appointed on *ad-hoc* basis and thereafter, they were appointed on regular basis. In O.A.No.553/2022, the Applicant was appointed on *ad-hoc* basis by order dated 19.05.2019 and later he was appointed through Maharashtra Knowledge Corporation Limited (MKCL) by order dated 22.06.2013. He made representation to count his *ad-hoc* service for the purpose of increment, Earned Leave by condoning technical break in service. However, it came to be rejected by communication dated 21.09.2021 which is challenged by the Applicant in the present O.A.
3. Insofar as O.A.No.554/2022 is concerned, Applicant was appointed on *ad-hoc* basis by order dated 18.09.1992 and later he was regularly appointed through Maharashtra Public Service Commission (MPSC) by order dated 15.04.1999. He made representation for counting previous *ad-hoc* service for the purpose of increments, Earned Leave by condoning technical break. His proposal was forwarded to the Government, but no decision is taken yet.
4. It is on the above background, these O.As are filed and issue being common are decided by common order.
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.

13. Indeed, it appears that another Judgment of Hon'ble High Court Bench at Nagpur (Coordinate Bench) delivered in **Writ Petition No.3484/2005 [State of Maharashtra Vs. Sangita Phatale]** decided on 27.11.2008 which was holding the field was not brought to the notice of Hon'ble High Court while deciding Writ Petition No.4969/2011.

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) Both these Original Applications are allowed.
- (B) The impugned order dated 21.09.2021 in O.A.No.553/2022 is quashed and set aside.
- (C) The Respondents are directed to count *ad-hoc* services of both 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.

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

Mumbai
Date : 14.06.2023
Dictation taken by :
S.K. Wamanse.

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