

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.267 OF 2016

DISTRICT : SOLAPUR

1. Dr. Shivashree M. Nilange,)
 2. Dr. Ganpat A. More,)
 3. Dr. Nupur G. Borgaonkar,)
 4. Dr. Nutan S. Bhandari,)
 5. Dr. Vijaya P. Bhagat,)
 6. Dr. Jyoti H. Bodkas,)
 7. Dr. Anjali A. Bansod,)
 8. Dr. Sayeed Ahmed Deshmukh,)
 9. Dr. Jagruti D. Singhavi,)
 10. Dr. Apurva A. Pattewar,)
 11. Dr. Deepak S. Jadhav,)
 12. Dr. Manisha S. Mete,)
 13. Dr. Vijay V. Muglikar,)
 14. Dr. Prasad R. Nandimath,)
 15. Dr. Smita Sachin Parkhe,)
 16. Dr. Sultan S. Merani,)
 17. Dr. Shashank A. Basangar,)
 18. Dr. Balaji B. Satpute,)
 19. Dr. Nanda A. Patil,)
 20. Dr. Sangita N. Shinde,)
 21. Dr. Sarita U. Gujarathi)
- All working as Medical Officers,)
C/o. Smt. Punam Mahajan, Advocate,)
M.A.T. Mumbai)..Applicants

Versus

1. The State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400032)
2. The Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai)
3. The Principal Secretary,)
Finance Department,)
Mantralaya, Mumbai)
4. The Commissioner,)
Employees Insurance Scheme,)
Panchdeep Bhavan, 6th floor, N.M. Joshi Marg,)
Lower Parel, Mumbai 400013)
5. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)..Respondents

Smt. Punam Mahajan– Advocate for the Applicants

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 19th April, 2023

PRONOUNCED ON: 26th April, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. In this matter the applicants who have been working as Medical Officers in the Maharashtra Medical Insurance Services Group A and Group B challenge Rule 3(i), 3(ii) and 3(vii) of the Medical Officers in the Maharashtra Medical Insurance Services Group-A and Group-B (Gazetted) (One time Absorption of Medical Officers appointed on ad hoc basis in Maharashtra) (Special) Rules, 2014 published in the notification dated 18.3.2015 by which their services were regularized after a cabinet decision.

2. The applicants have been appointed on ad hoc basis as Group A Medical Officer between the period from 1990 till 2000 and all of them have put in more than 15 years of service. Their services were regularized vide notification dated 18.3.2015. Rule 3(i), 3(ii) and 3(vii) of the said Rules reads as under:

“3. Notwithstanding anything contained in the, Medical Officers in the Maharashtra Medical Insurance Services, Class-II (Recruitment) Rules, 1985 for Group-A and Medical Officers in the Commissionerate of Employees State Insurance Scheme, (Recruitment) Rules, 1998 for Group-B,-

(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 rule3;

(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;

(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.”

3. Ld. Advocate for the applicants pointed out that applicants were initially appointed on ad hoc basis and subsequently continued in service without break. She pointed out that as per notification dated 2.2.2009 some Medical Officers working on ad hoc basis were absorbed. The Government did not hold selection through MPSC for a period of more than 24 years for the post of Medical Officer. The last selection was in the year 1998 where 20 Medical Officers, Group-B were appointed from Open Category. She pointed out that applicants are appointed only irregularly and not illegally. On regularization the applicants are entitled for pay protection, regular pension and counting of past service for the purpose of service benefits.

4 Ld. Advocate for the applicants submits that no recruitment has taken place of Medical Officer in the ESIS and these applicants have been continued on ad hoc basis for years together.

5. Ld. Advocate for the applicants relied on the following judgments:

(i) Bhadei Rai Vs. Union of India, (2005) 11 SCC 298. (Para 10)

(ii) Union of India Vs. Central Administrative Tribunal, (2019) 4 SCC 290. (Para24)

(iii) Sheo Narain Nagar Vs. State of U.P., (2018) 13 SCC 432. (Para 9)

(iv) Sanjay Gharu Vs. State of Himachal Pradesh, 2014 SCC OnLine HP 4924. (Para 8 & 10)

(v) Dr. Dhason Simon Vs. The State of Maharashtra & Ors. OA No.905 of 2017 decided by this Tribunal on 3.11.2020.

6. Ld. Advocate for the applicants, therefore, pray that Rule 3(i), 3(ii) and 3(vii) of the Rules of 2014 be set aside.

7. Ld. PO refers to affidavit in reply dated 10.2.2020 filed by Dnyandev Shrirang Bhagat, Director (Admn.) in the office of Commissioner, ESIS, Mumbai. Ld. PO submitted that mere continuity in service does not confer any right in favor of the employees. Therefore the clauses/conditions provided under Medical Officers in the Maharashtra Medical Insurance Service Group-A and Group-B (Gazetted) (One time Absorption of Medical Officers appointed on ad hoc basis in Maharashtra) (Special) Rules, 2014 dated 18.3.2015 are legal and just.

8. Ld. PO submits that applicants have not been appointed regularly through MPSC but continued through orders of the Tribunal and Hon'ble High Court.

9. Ld. PO submits that this is backdoor entry and applicants are not entitled to the benefits claimed by them. Ld. PO submits that applicants have given undertaking to Govt. accepting the terms of their regularisation. Ld. PO relies on 5 judgments referred in affidavit dated 10.2.2020.

10. Ld. PO submits that applicants were appointed on ad hoc basis between 1990 and 2000 and as per order of the Hon'ble High Court and Tribunal they were continued till a candidate duly selected by MPSC is available. Ld. PO prays that OA may be dismissed.

11. We have considered the arguments of both the sides. In this case it is a fact that the applicants have not been appointed on the basis of regular selection procedure but have been appointed on ad hoc basis and their appointments have been continued from time to time on the basis of Court orders till a candidate selected by MPSC is made available.

12. In view of the ratio laid down by the Hon'ble Supreme Court in (i) State of M.P. & Ors. Vs. Lalit Kumar Verma, Appeal (Civil) No.5185 of 2006, (ii) State of Karnataka & Ors. Vs. M.L. Kesari & Ors., SLP No.15774 of 2006, (iii) Secretary, State of Karnataka Vs. Umadevi & Ors. Civil Appeal No.3595-3612 of 1999, (iv) Nihal Singh & Ors. Vs. State of Punjab & Ors. Civil Appeal No.1059 of 2005, (v) A. Umarani Vs. Registrar, Cooperative Societies & Ors. Civil Appeal No.1413 of 2003, the applicants are not entitled to the relief prayed for.

13. It is thus seen that in this case a conscious decision was taken by the Government for one time absorption of medical officers. The applicant accepted the conditions laid down in this notification dated 18.3.2015 and more particularly Rule 3(i), 3(ii) and 3(vii) and they have given undertaking. It is clear that mere continuity in service does not confer any right in favour of such employees.

14. In view of the facts and circumstances of the case and as a conscious decision was taken by the Government in this matter, on the basis of a cabinet decision; we are unable to grant relief as prayed for. However, in view of long service rendered by these applicants, we hold that

the applicants are entitled for the protection of their pay and will be entitled for the same pay, as on the date of absorption. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
26.4.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
26.4.2023

Dictation taken by: S.G. Jawalkar.

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