

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI  
BENCH AT AURANGABAD  
ORIGINAL APPLICATION NO.613 OF 2013**

**DISTRICT : LATUR**

Dr. Vijaykumar Ganpatrao Nimbalkar, )  
Age 58 years, Retired Medical Officer, )  
R/o Bank Colony, Nilanga, Tal. Nilanga, District Latur )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Secretary, )  
Public Health Department, Mantralaya, Mumbai )
2. The Director, )  
Public Health Department, )  
Directorate of Health Services, Arogya Bhavan, )  
Mumbai -1 )
3. The Deputy Director, )  
Health Services, Latur Division, Latur )
4. The District Health Officer, )  
Zilla Parishad, Latur )..Respondents

Shri A.D. Sugdare – Advocate for the Applicant

Smt. Risha S. Deshmukh – Presenting Officer for Respondents No.1 to 3

Shri P.R. Tandale – Advocate for Respondent No.4

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri B.P. Patil, Member (J)

DATE : 16 August, 2017

PER : Shri Rajiv Agarwal, Vice-Chairman

### **J U D G M E N T**

1. Heard Shri A.D. Sugdare, learned Advocate for the Applicant, Smt. Risha S. Deshmukh, learned Presenting Officer for Respondents No.1 to 3 and Shri P.R. Tandale, learned Advocate for Respondent No.4.

2. This OA has been filed by the Applicant seeking condonation of break in service during his ad hoc appointment as Medical Officer, before he was selected by the Maharashtra Public Service Commission (MPSC), on regular basis.

3. Learned counsel for the Applicant argued that the Applicant retired from service as Taluka Health Officer, Nilanga on 31.1.2012. The Applicant was initially appointed as Medical Officer by order dated 12.1.1987 as a bonded candidate for two years or till a candidate selected through MPSC was appointed, whichever was earlier. The Applicant was selected through MPSC by order dated 11.7.1995. The Applicant is seeking condonation of break in service on 3.7.1994, 4.7.1994 and 5.7.1994, which will make his service continues from 12.1.1987. Learned

counsel for the Applicant argued that condonation of breaks in service is permissible under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982. Temporary service from 12.1.1987 till regular appointment through MPSC by order dated 11.7.1995 can be treated as qualifying service under Rule 33 of MCS (Pension) Rules, 1982. Learned counsel for the Applicant prayed that technical breaks in the Applicant's service may be condoned and the Applicant may be directed to be paid his full pensionary benefits.

4. Learned Presenting Officer (PO) argued on behalf of the Respondents No.1 to 3 that the Applicant was appointed, as a bonded candidate initially and not after following due procedure. He was selected on regular basis through MPSC and appointed as Medical Officer by order dated 11.7.1995. Learned PO argued that Rule 33 of MCS (Pension) Rules, 1982 does not apply to service of an employee, which is not regular i.e. when the appointment was not in accordance with the Recruitment Rules. Government of Maharashtra has issued Circular dated 3.11.2008 under Rule 3 of MCS (Pension) Rules, 1982. Under Rule 3, Govt. has reserved right to interpret Pension Rules. Circular dated 3.11.2008 interprets Rule 33 and clarified that temporary service referred to in the rule must be as a result of appointment after following due procedure. A person who is appointed on ad hoc basis without following due procedure is not eligible to count his ad hoc service under Rule 33. Learned PO relied on a number of Supreme Court judgments including in Direct Recruits Class II Engineering Officers Associations Versus State of Maharashtra & Ors. where Hon'ble Supreme Court has held that if the initial appointment was in accordance with rules, such period cannot be considered for seniority. The corollary is when initial appointment was not in accordance with rules, such service cannot be treated as qualifying service. Govt. Circular dated 3.11.2008 makes it clear in so many words.

5. Learned PO relied on the judgment dated 29.9.2015 of this Tribunal (Mumbai Bench) in OA Nos.568 and 569 of 2013 etc. It was held that ad hoc service before regular appointment cannot be counted as qualifying service under Rule 33 of MCS (Pension) Rules. Rule 48 of MCS (Pension) Rules is also not applicable for breaks in irregular service. It was however held that during ad hoc irregular service, an incumbent would be eligible to get annual increments and earned leave. To enable them to get these benefits in terms of relevant GRs, technical breaks can be condoned on the basis of equity. However, on selection by MPSC, pay will be fixed as if it was a new appointment.

6. Learned PO also relied on the judgment dated 10.12.2014 of this Tribunal in OA No.510 of 2013 etc. wherein a similar view has been taken. This judgment was upheld by Hon'ble High Court by judgment dated 23.3.2016 in W.P. No.11611 of 2015.

7. We find that this issue of treating ad hoc service as qualifying service for pensionary benefits has been discussed by Mumbai Bench of this Tribunal in OA No.568 and 569 of 2013. It has been held that service, which was not as a result of appointment after following due procedure is not covered by Rule 33 of MCS (Pension) Rules. Exercising power under Rule 3, Govt. has issued circular dated 3.11.2008 clarifying this position. Similarly, Rule 48 cannot be invoked to condone breaks in service, which is not in accordance with the Recruitment Rules. At the most, it can be done on the basis of equity, to enable such employees to get benefit of annual increments and earned leave, which are available to even ad hoc employees in terms of relevant GRs.

8. The Applicant's prayer is to condone breaks in service and to treat ad hoc service as qualifying service for pensionary benefits. That is not

possible in view of judgments of this Tribunal cited above and including judgment in a group of OAs. No.510/2013, which is upheld by Hon'ble High Court. As a result, this OA must fail. We dismiss this OA with no order as to costs.

Sd/-

**(B.P. Patil)**  
**Member (J)**  
**16.8.2017**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**16.8.2017**

Dictation taken by: S.G. Jawalkar.

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