

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.96 OF 2021

WITH

MISC. APPLICATION NO.7 OF 2023

DISTRICT : SANGLI

1. Dr. Manoj Mohan Mahind)
 2. Dr. Rahul Marutirao Davane)
 3. Dr. Pradip Digambar Myakalwar)
 4. Dr. Prashant Prakash Mehetre,)
 5. Dr. Santosh Balasaheb Padamwar,)
 6. Dr. Yogesh Gajendra Fegde,)
 7. Dr. Jayesh Rupchand Tambe,)
 8. Dr. Koshor Kiran Wani,)
 9. Dr. Nagesh Tulsiram Shevare,)
 10. Dr. Prafulla Hirchand Patil,)
- All are Dental Surgeon working in)
National Health Mission Programme,)
Government of Maharashtra)
C/o Shri Kranti L.C., Advocate, MAT, Mumbai ..Applicants

Versus

1. Additional Mission Directorate,)
National Health Mission, Arogya Bhavan,)
7th Floor, St. George's Hospital Compound,)
P. D'Mello Road, Mumbai-1)

2. The State of Maharashtra,)
Through its Secretary, Public Health Department)
G.T. Hospital, 10th Floor, New Mantralaya,)
Mumbai 400001)..Respondents

Shri Kranti L.C. – 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 : 1st August, 2023
PRONOUNCED ON: 5th September, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri Kranti L.C., learned Advocate for the Applicants and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicants are challenging the order dated 5.1.2021 and their individual transfer orders. They also sought remuneration as per rationalized pay scale dated 5.10.2020 as per order dated 28.2.2023 passed by the Hon'ble High Court in W.P. No.2402 of 2021 Dr. Ravi K. Tale & Ors. Vs. The State of Maharashtra & Ors. wherein it is directed that:

“6. Be that as it may, in the earlier round of litigation, the order is already passed by this Court directing that the petitioners cannot be replaced by other contractual employees. The said order holds the filed and has become final. Respondents shall pay the salary to the petitioners in tune with the policy as is communicated under order

dated 5.10.2020 (page 233) from the date the petitioners are reinstated. Arrears be paid within a period of four months.”

3. The applicants are Dental Surgeons who have been appointed on a temporary basis in National Health Mission Programme. These applicants had sought regularization of their service with the State Government by filing OA No.1091/2015 & other group matters in this Tribunal. This Tribunal by its order dated 21.12.2015 directed that the applicants should be considered for recruitment process after they were prevented from competing with other candidates in the recruitment through MPSC to the post of Dental Surgeon in the State of Maharashtra.

4. The applicants have filed MA No.7 of 2023 in the above OA wherein it is prayed that final disposal of this OA, this Tribunal may grant interim relief and the applicants may not be relieved. This Tribunal by order dated 16.1.2023 protected the services of the applicants.

5. The applicants had participated in the selection process to the post of Dental Surgeon issued by MPSC in the year 2015. The recruitment process was challenged by these applicants in OA No.1091/2015 and other connected matters which were finally decided by this Tribunal on 8.5.2019 and following order was passed:

“30. Justice can be attained by directing MPSC to revise the list of selected candidates and send additional names by including therein such of the names of applicants who, to MPSC on scrutiny stands to eligibility based on minimum qualification. Until this procedure is completed, none of the applicant should be terminated.

33. MPSC is directed to complete the process of scrutinizing and furnish fresh additional list of candidates to the State Government

within one month from today and State Government shall carry out further steps by issuing orders of appointment in favour of those eligible applicants within one month thereafter.”

6. This order dated 8.5.2019 was challenged by the MPSC in the Hon'ble High Court by filing W.P. No.1153 of 2020 and other connected matters. W.P. St. No.9195 of 2021 was also filed by the applicants in the Hon'ble High Court on the issue of accepting experience in private practice. Both the above W.Ps. along with connected matters were disposed off by order dated 20.3.2023.

7. Ld. PO opposes the averments made by the Ld. Advocate for the applicants. Ld. PO states that the Dental Surgeons were appointed under the National Health Mission Programme. Wherever Dental Chairs were available and regular Dental Surgeons were not posted these posts were filled up on contract basis till regularly selected Dental Surgeon were appointed by MPSC. He stated that the Central Government instructed the State Government to fill up the sanctioned regular cadre Dental Surgeon Group-B post and reduce the post and budget for 44 Dental Surgeons. Therefore, the State Government discontinued the services of the remaining candidates.

8. Ld. PO stated that in the meanwhile 63 Dental Surgeons approached this Tribunal against their discontinuation and as per order dated 18.5.2019 passed by this Tribunal in OA No.1091 of 2015 the services of these 63 Dental Surgeons were continued. He stated that since budget for this National Health Mission Programme came from the Central Government the department initiated the process of accommodating 75 Dental Surgeons considering the budget available for these posts.

9. Ld. PO further stated that when some regular Dental Surgeons joined hospital by appointment or transfer the National Health Mission Programme has to discontinue contractual Dental Surgeon and give posting at other location where the Dental Surgeon post was vacant and Dental Chair was available. Ld. PO stated that this does not amount to transfer but was merely to accommodate the Dental Surgeons at the place where there is service gap. He further pointed out that the Dental Surgeons were appointed temporary under the National Health Mission Programme on contractual basis and were not entitled for regularisation of their services in the State Government. Ld. PO further stated that it was a settled policy of the National Health Mission Programme that whenever posts are disapproved by the Government of India in Project Implementation Plan (PIP) the candidate of the concerned post are relieved because of the unavailability of the post and budget. He stated that it has come to the notice of the department that in some hospitals both regular Dental Surgeon and Contractual Dental Surgeons were working on one Dental Chair. The appointment of two Dental Surgeons at one place where only one Dental Chair is available amounts to wastage of human resource and budget. That is why it was necessary to give posting of contractual Dental Surgeon at some other location.

10. In the meanwhile some of the Dental Surgeons whose services were dispensed approached the Hon'ble High Court by way of filing W.P. No.2402 of 2021 Dr. Ravi K. Tale & Ors. Vs. The State of Maharashtra & Ors. wherein the following order was passed on 28.2.2023 as quoted above:

“6. Be that as it may, in the earlier round of litigation, the order is already passed by this Court directing that the petitioners cannot be replaced by other contractual employees. The said order holds the filed and has become final. Respondents shall pay the salary to the

petitioners in tune with the policy as is communicated under order dated 5.10.2020 (page 233) from the date the petitioners are reinstated. Arrears be paid within a period of four months.”

11. In view of the above and the order dated 28.2.2023 passed by the Hon'ble High Court in W.P. No.2402 of 2021 (supra) and the order dated 20.3.2023 passed by the Hon'ble High Court in W.P. St. No.9195/2021 filed by the applicants and W.P. St. No.1153/2020 & other connected matters we pass the following order.

12. The Original Application and Misc. Application are allowed and the impugned order dated 5.1.2021 and individual transfer orders are quashed and set aside. The respondents are directed to continue the applicants at their posting and pay monthly remuneration to the applicants as per rationalized scales dated 5.10.2020 along with arrears. Liberty is granted to the applicants to file fresh OA on the parity of pay scale, if not granted. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
5.9.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
5.9.2023

Dictation taken by: S.G. Jawalkar.