

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.96 OF 2023

DISTRICT : MUMBAI

Dr. Neetin Pralhad Mahajan,)
Age 45 years, occ. Associate Professor-cum-Professor)
(Academic promotion) Orthopedics,)
R/at Room No.12, Panchsheel Building No.5, Sir. J.J)
Hospital Compound, J.J. Road, Byculla, Mumbai 8)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Medical Education and Drugs Department,)
9th floor, New Mantralaya, GT Hospital Premises)
Lokmanya Tilak Road, Mumbai 400 001)
2. The Commissioner,)
Medical Education & Research, Mumbai,)
Govt. Dental College Building, 4th floor,)
Saint Georges Hospital, P.D'Mello Road,)
Mumbai 400 009)
3. The Director,)
Medical Education & Research,)
4th floor, Govt. Dental College Building,)
Fort, Mumbai 400 001)

4. The Dean, Grant Govt. Medical College,)
 Sir J. J. Hospital Compound, J.J. Road,)
 Byculla, Mumbai 400 008)
5. The Dean, Govt. Medical College,)
 Baramati, Dist. Pune)....Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Smt. Archana B. K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
 Smt. Medha Gadgil, Member (A)

RESERVED ON : 2nd August, 2023

PRONOUNCED ON: 24th August, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Smt .Punam Mahajan, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. The Applicant has filed the present O.A. to quash and set aside the order dated 06.12.2022 whereby his request for conversion of the post of Professor in Gastroenterology or any other vacant post of Professor so as to accommodate him on promotional post either at Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai, is rejected. The Applicant is Orthopaedic Surgeon working as Associate Professor in Orthopaedic in the Grant Medical College. He was given ad-hoc promotion to the post of Professor and was posted at Government Medical College, Baramati by order dated 11.10.2022.

3. Learned Advocate for the Applicant stated that Applicant is sole earning member of the family and has only one brother who is mentally disabled and he is fully dependent on the Applicant both financially and emotionally. The Applicant has been taking care of his brother since last 15 years after his parent's death. His mentally disabled brother is receiving treatment and rehabilitation care at Sir. J. J. Hospital, B.Y.L. Nair Hospital and other hospitals in Mumbai for his multiple disabling ailments of Chronic Schizophrenia, Spastic Hemiparesis, Bilateral Sensorineural Deafness, Exfoliative Dermatitis, Diabetes Mellitus, Labile Hypertension and Cerebrovascular Stroke and Autonomic Dysfunction. The Applicant, therefore, challenges his ad-hoc promotion and posting at Government Medical College, Baramati.

4. Smt. Punam Mahajan, learned Advocate for the Applicant has pointed out that number of posts of Professor which were lying vacant were converted by Respondent No.1 to accommodate Professors and Associate Professors when sanctioned posts are not available. Learned Advocate, therefore, prayed that Respondents be directed to consider the conversion of posts of Professors of Gastroenterology to the post of Professor of Orthopaedics. Secondly, he be allowed to retain the Government accommodation in J.J. Hospital for continual treatment and rehabilitation of his severely disabled brother with multiple medical ailments. Learned Advocate, therefore, stated that Applicant's request was rejected without fair consideration of the principles of Rights of Persons with Disabilities Act, 2016 and without looking into the fact that he was the sole legal guardian of his disabled brother who requires a higher level of medical attention which is available in Mumbai with constant mental and physical care.

5. Ld. Advocate for the applicant submits that the applicant by his representations dated 15.6.2022 and 17.6.2022 had requested the respondent no.1 for conversion of the post of Professor in Gastroenterology to the post of Professor in Orthopaedic in Grant Government Medical College and retain the applicant on the same post as a direct candidate recommended by MPSC as Professor in Orthopaedic.

6. This Tribunal by order dated 20.02.2023 had granted interim relief to the Applicant and allowed him to retain the Government accommodation in J.J. Group of Hospital.

7. Smt. Archana B. K., learned P.O. opposes the submissions made by learned Advocate for the Applicant. She relied on the Affidavit filed by Dr. Deelip G. Mhaisekar, Director at Directorate of Medical Education & Research, Mumbai, dated 28.04.2023. In Affidavit, she pointed out that as per the office memorandum dated 06.06.2014 issued by Central Government, Department of Personnel and Training, a Government employee who is primary caregiver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to administrative constraints. She also pointed out that the office memorandum specifically mentions caregiver of disabled child but in the present case, the Applicant wants relief on the ground of being caregiver of his disabled brother. She further stated that this was not a case of transfer but the Applicant has been given posting on promotion. She also stated that Government Medical College, Baramati is newly started and there is necessity to appoint a Professor as per Medical Council of India (MCI) norms.

8. While conceding that in the past the post of Professors which were vacant for considerable period of time were converted to other subjects but

now a days, the Government has taken various measures to fill the vacant posts by way of nomination and promotion as well as on contract basis. She further pointed out that meeting of Civil Services Board (CSB) held on 26.08.2022 under the Chairmanship of Secretary, Medical Education considered the directions of this Tribunal in O.A. No.581/2022. The CSB took a conscious decision in view of guidelines given in office memorandum of Central Government dated 06.06.2014 and posted the Applicant as Professor, Orthopaedics at Government Medical College, Baramati by way of nomination. Learned P.O. further prayed that interim relief should not be granted to the Applicant.

9. This matter relies on interpretation of office memorandum of Central Government dated 06.06.2014.

10. Learned Advocate for the Applicant relied on the decision dated 28.2.2023 of the Hon'ble High Court in **W.P. No.4300 of 2021 (Leena Sachin Pawar V/s State of Maharashtra & Ors.)**. Para 4 of the said judgment is relevant which is as under:-

"4. We have considered the submissions. This court under order dated 18.08.2021 had directed the respondents not to give effect to the order of transfer. The said interim order is operating since then. Naturally, the Respondents have to consider all the relevant aspects of the matter. As it is submitted that the place where the Petitioner is transferred does not have school for special child in its nearby vicinity and considering the fact that interim order is operating for more than 1 ½ year, we set aside the order of transfer."

11. Learned Advocate further referred to decision in **Jeeja Ghosh & Anr. v. Union of India & Ors. (2016) 7 SCC 761** wherein it was held that, instead of traditional approach of sympathy and help based on

medical/ welfare model, disabled persons need to be treated with dignity like normal persons based on human rights perspective.

12. The entire dispute in this matter revolves around the fact whether the brother who is appointed as legal guardian of disabled person is exempted from routine transfer as per Clause 3(iii) of memorandum dated 08.10.2018. Clause 3 of memorandum dated 08.10.2018 reads as under:-

"3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (I) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell- disease and (x) Multiple disabilities (more than

one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents /spouse/brother/ sister as stated in Para 3(i) above.

13. In this case, it is clearly seen that Applicant is the sole legal guardian of his disabled brother after his parent's death. A careful perusal of memorandum dated 08.10.2018 shows that a Government employee who is the care-giver of a dependent daughter/son/parent/spouse/brother/sister is exempted from routine transfer/rational transfer.

14. It is noted that the respondents have retained some candidates and given them appropriate posting in Grant Government Medical College. It is also noted that the Director, Medical Education & Research, Mumbai had sent a proposal dated 26.7.2022 to the Secretary, Medical Education & Drugs Department, Mumbai for conversion of the vacant post of Professor in Gastroenterology to the post of Professor in Orthopaedic in Grant Government Medical College & Sir J.J. Group of Hospitals, Mumbai. The applicant has produced various orders regarding the post of Professor which were vacant for considerable time and were converted to other subjects. Hence, it is clearly feasible for the Government to take a decision in the said matter. It is evident from the past record that such conversions of post have been done.

15. In view of above, we pass the following order:-

ORDER

- (A) The order dated 06.12.2022 by which request for modification of the posting order was rejected is quashed and set aside.
- (B) The issue of care-givers of disabled persons needs to be considered sympathetically.
- (C) The Respondents are directed to retain the Applicant by conversion of the post of Professor in Gastroenterology or any other vacant post of Professor either in the Grant Medical College or Sir J.J. Group of Hospitals, Mumbai.
- (D) This order of conversion is to be issued within three weeks from the date of order.
- (E) We had granted interim relief to the applicant allowing him to retain Government accommodation in Sir J.J. Group of Hospitals, Mumbai vide order dated 20.2.2023. Interim order is made absolute. The Applicant is hereby allowed to retain the Government accommodation in Sir J.J. Group of Hospitals, Mumbai.
- (F) No orders as to cost.

Sd/-**(Medha Gadgil)
Member (A)
24.8.2023****Sd/-****(Mridula Bhatkar, J.)
Chairperson
24.8.2023**

Dictation taken by: SGJawalkar & VSMane