

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATIONS NO.623, 626, 658, 1026 & 1066 OF 2023**

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**(1) ORIGINAL APPLICATION NO.623 OF 2023**

**DISTRICT : MUMBAI**

1. Dr. Vijay N. Dekate, )
  2. Dr. Humkumchand A. Patole, )
  3. Dr. Mahendra V. Phalke, )
  4. Dr. Tate Ramdas Dashrath, )
  5. Dr. Gunaji D. Nalawade, )
  6. Dr. Pramod Patil, )
  7. Dr. Rajesh S. More, )
- All are Medical Officers in State of Maharashtra )  
C/o Shri A.A. Desai, Advocate, MAT, Mumbai )..Applicants

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Public Health Department, 10<sup>th</sup> Floor, )  
G.T. Hospital Compound, Mumbai )
2. The State of Maharashtra, )  
Through its Secretary, Public Health Department )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
3. The Commissioner of Health & Mission Director, )  
National Health Mission, Arogya Bhawan, )  
St. George Hospital Compound, CST, Mumbai )

4. The Director of Health Services, )  
Arogya Bhawan, St. George Hospital Compound, )  
Near CST, Mumbai )
5. The Under Secretary, Public Health Department, )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )..Respondents

**WITH**

**(2) ORIGINAL APPLICATION NO.626 OF 2023**

**DISTRICT : MUMBAI**

1. Dr. Avinash H. Dhanawade, )
  2. Dr. Sunil P. Pokharna )
  3. Dr. Dnyandeo S. Sabale )
  4. Dr. Ashok C. Sashane, )
  5. Dr. Ranjeet P. Kamble, )
  6. Dr. Avinash D. Shivsharan, )
  7. Dr. Makarand P. Patil, )
  8. Dr. Shobhana R. Chavan, )
  9. Dr. Vijay G. Rokade, )
  10. Dr. Vikasini N. Chavan, )
  11. Ushadevi R. Kumbhar, )
  12. Dr. Moulana G. Jamadar, )
  13. Dr. Sunil P. Bhamre, )
- All are Medical Officers in State of Maharashtra )  
C/o Shri A.A. Desai, Advocate, MAT, Mumbai )..Applicants

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Public Health Department, 10<sup>th</sup> Floor, )  
G.T. Hospital Compound, Mumbai )
2. The State of Maharashtra, )  
Through its Secretary, Public Health Department )  
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3. The Commissioner of Health & Mission Director, )  
National Health Mission, Arogya Bhawan, )  
St. George Hospital Compound, CST, Mumbai )
4. The Director of Health Services, )  
Arogya Bhawan, St. George Hospital Compound, )  
Near CST, Mumbai )
5. The Under Secretary, Public Health Department, )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )..Respondents

**WITH**

**(3) ORIGINAL APPLICATION NO.658 OF 2023**

**DISTRICT : MUMBAI**

Dr. Meera Chincholikar, )  
Age 58 years, Medical Superintendent, )  
Rural Hospital, Babhalgaon, District Latur )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Public Health Department, 10<sup>th</sup> Floor, )  
G.T. Hospital Compound, Mumbai )
2. The State of Maharashtra, )  
Through its Secretary, Public Health Department )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
3. The Commissioner of Health & Mission Director, )  
National Health Mission, Arogya Bhawan, )  
St. George Hospital Compound, CST, Mumbai )
4. The Director of Health Services, )  
Arogya Bhawan, St. George Hospital Compound, )  
Near CST, Mumbai )
5. The Under Secretary, Public Health Department, )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )..Respondents

**WITH**

**(4) ORIGINAL APPLICATION NO.1026 OF 2023**

**DISTRICT : MUMBAI**

1. Rajkumar B. Gaikwad, )
2. Alka Mahendra Kamble, )

3. Dr. Vidya Sharma, )
  4. Dr. Nutan Sawant, )
  5. Dr. Avinash Kulkarni, )
  6. Sunil Kasodekar, )
  7. Ganesh Jadhav, )
  8. Rajkaran Singh, )
  9. Vilas Patil, )
  10. Balkrishna Kamble, )
  11. Sharatsing G. Pardeshi, )
  12. Prasad R. Nandimath )
- All are Medical Officers in State of Maharashtra )  
C/o Shri A.A. Desai, Advocate, MAT, Mumbai )..Applicants

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Public Health Department, 10<sup>th</sup> Floor, )  
G.T. Hospital Compound, Mumbai )
2. The State of Maharashtra, )  
Through its Secretary, Public Health Department )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
3. The Commissioner of Health & Mission Director, )  
National Health Mission, Arogya Bhawan, )  
St. George Hospital Compound, CST, Mumbai )
4. The Director of Health Services, )  
Arogya Bhawan, St. George Hospital Compound, )  
Near CST, Mumbai )

5. The Under Secretary, Public Health Department, )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
6. The Finance Department, )  
Through its Secretary, 5<sup>th</sup> Floor, Mantralaya, )  
Mumbai 400032 )..Respondents

**WITH**

**(5) ORIGINAL APPLICATION NO.1066 OF 2023**

**DISTRICT : MUMBAI**

Dr. Ujwala Subhash Tajale, )  
Class-I Medical Superintendent, Viraj Row Bungalow, )  
Gandhkuti Bungalow, Sr. No.899/01, Nagare Mala, )  
Near Samrat Symphony, Nashik 422009 )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Public Health Department, 10<sup>th</sup> Floor, )  
G.T. Hospital Compound, Mumbai )
2. The State of Maharashtra, )  
Through its Secretary, Public Health Department )  
10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
3. The Commissioner of Health & Mission Director, )

- National Health Mission, Arogya Bhawan, )  
 St. George Hospital Compound, CST, Mumbai )
4. The Director of Health Services, )  
 Arogya Bhawan, St. George Hospital Compound, )  
 Near CST, Mumbai )
5. The Under Secretary, Public Health Department, )  
 10<sup>th</sup> Floor, G.T. Hospital Compound, Mumbai )
6. The Finance Department, )  
 Through its Secretary, 5<sup>th</sup> Floor, Mantralaya, )  
 Mumbai 400032 )..Respondents

Shri Abhijeet Desai with Shri Karan Gajra & Shri Vijay Singh – Advocates  
 for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

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

RESERVED ON : 24<sup>th</sup> August, 2023

PRONOUNCED ON: 31<sup>st</sup> August, 2023

PER : Smt. Medha Gadgil, Member (A)

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

1. The applicants who were working in the cadre of Medical Officers (Doctors) have filed the present OAs for continuation in service till they attain the age of 60 years in view of amendment to Rule 10 of MCS (Pension) Rules, 1982 by notification dated 23.2.2022.

2. In OA No.623/2023 Ld. Advocate for the applicants prayed for interim relief that these applicants should not be retired on 31.5.2023 and in this behalf he placed reliance on the order dated 26.5.2023 passed by the Hon'ble Bombay High Court, Bench at Nagpur in **W.P. No.3345 of 2023 Anil J. Rudey Vs. The State of Maharashtra & Ors.** After hearing both the sides Single Bench of this Tribunal by order dated 1.6.2023 granted interim relief to the applicants and respondents were directed to continue the services of the applicants if they have not crossed 60 years of age, on the ground that the last proviso stating the amendment was in force till 31.5.2023, is much debatable.

3. However, in OA No.626/2023 Hon'ble Chairperson sitting singly declined to grant interim relief to another batch of Medical Officers on 5.6.2023 on the ground that applicants are no longer in service on 5.6.2023.

4. The Government in the Public Health Department from time to time has extended the age of retirement of the Medical Officers from 58 years to 60 years. The GRs dated 30.5.2015, 30.6.2015 and 3.9.2015 were issued in this respect.

5. Since the decision to extend the date of retirement was by way of executive decision the same was quashed and set aside by the Hon'ble High Court, Bench at Aurangabad by its order dated 20.3.2020 passed in **W.P. No.5402 of 2018 Dr. Sanjay R. Kadam & Ors. Vs. The State of Maharashtra & Ors.** wherein in para 55 it is observed that:

*“55. Accordingly, we declare that the impugned Government Resolutions dated 30th May, 2015, 30th June, 2015 and 3rd September, 2015 are illegal and are hereby set aside. However, we are not inclined to unsettle the Medical Officers, Civil Surgeons and*



*Superior Officers in Public Health Department who are benefited by the said Government Resolutions, in view of the fact that they are not party before us and in view of present situation which has arisen because of COVID-19. However, we make it clear that the State Government shall not grant further extension by way of executive instruction without the authority and power under the statute.”*

6. The State Government issued appropriate clarification to overcome the anomaly and GR dated 29.8.2018 was issued whereby the age of retirement was increased from 58 to 60 years with appropriate amendment to the MCS (Pension) Rules, 1982. Further GR dated 1.7.2019 was issued for increasing age of retirement from 60 to 62 years in order to have experienced hands in the field of Medical Services. However, this extension was operational till 31.5.2021.

7. Subsequently, GR dated 9.8.2021 was issued confirming that the age of retirement to that of 62 years is under consideration. This was in the backdrop of situation created by COVID-19 Pandemic as it was not possible for the State Government to appoint new officers to address the emergency like situation created by COVID-19. This extension upto 62 years was operation from 31.5.2019 to 31.5.2022.

8. All these GRs were finally incorporated by way of amendment to Rule 10(1) of MCS (Pension) Rules, 1982 vide amendment dated 23.2.2022. We quote Section 10(1):

*“(iv) for both the provisos as so added, the following provisos shall be substituted and shall be deemed to have been substituted with effect from the 1<sup>st</sup> June 2022, namely:-*

*“Provided that, the Officers in District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group A (In Pay Level in Pay Matrix S-20 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years.*

*Provided further that, .....*

*Provided also that, the above provisos shall be in force till the 31<sup>st</sup> May 2023.”*

9. Ld. Advocate for the applicants argued that Public Health Department had erroneously interpreted the GR. Ld. Advocate for the applicants also made submissions regarding the principles of legitimate expectation and promissory estoppel.

10. Ld. Advocate for the applicants challenges the constitutional validity of amended Rule 10(1) of the MCS (Pension) Rules, 1982 to the extent that it raises the age of retirement only till 31.5.2023. He submits that there is no rationale behind this provision. He also submits that there is no intelligible differentia in excluding the employees due for retirement beyond 31.5.2023 from the extension of this retirement age of 60 years. The action and intention of the Legislature to restrict the extension of retirement only till 31.5.2023 is unreasonable, irrational and violative of the fundamental rights of the applicant under Article 14, 19 and 21 of the Constitution of India.

11. Ld. Advocate for the applicants relied on the affidavit dated 24.7.2023 filed by Shri Ashish Kumar Singh, Additional Chief Secretary (Treasury & Accounts), Finance Department, Mantralaya, Mumbai in

compliance of the order dated 15.6.2023 passed by this Tribunal. In the said affidavit in para 8 it is stated as under:

*“8. Hence, Medical Officers who do not attain the age of 60 years during the period from 1.6.2022 to 31.5.2023 shall be deemed to retire on the last date of the month in which the Medical Officers attains the age of 60 years e.g. Medical Officers who will complete 58 years of age on 24.4.2023 will retire on 30.4.2025 instead of retiring on 31.5.2023 as per the above provision. Also Medical Officers who will complete 58 years of age on 24.6.2023 will however retire on 30.6.2023 as per original provision of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982.”*

12. The Chief Secretary concurred with the stand taken by the Public Health Department. This fact was brought on record by affidavit dated 21.8.2023 filed by Shri Deepak Nivratti Kendre, Deputy Secretary, Public Health Department, Mantralaya, Mumbai.

13. Another **order dated 27.4.2023 was passed by this Tribunal at Nagpur Bench in OA No.335/2023**, para 4 of which reads as under:

*“4. The notification dated 23.2.2022 show that the same is in force till 31.5.2023. The applicant has been completing 58 years on 31.5.2023. Therefore, the retirement of the applicant can only be extended upto 31.5.2023. In view of the GR the OA is disposed of with direction to the respondents to continue the service of the applicant till 31.5.2023 as per notification.”*

14. The learned C.P.O as we found was put in a very difficult situation while submitting her arguments. She relied initially on the affidavit in reply of the Public Health Department and then subsequently also relied

on the affidavit in reply of Shri Ashish Kumar Singh, Additional Chief Secretary, Finance Department and also the opinion given by the Chief Secretary. So initially she opposed the submissions of the learned Advocate for the applicants, however, after receiving the say of the Finance Department and the opinion of the Chief Secretary, she submitted to the decision of the Court. However, the learned C.P.O vigilantly answered our queries and gave assistance by producing the Cabinet Note prepared by the then Principal Secretary, Public Health Department, Mr Pradeep Vyas, when the Notification dated 23.2.2022 was issued.

15. Ld. CPO initially relied on the affidavit dated 7.6.2023 filed by Karuna Bhikaji Surwade, Chief Administrative Officer in the office of Commissioner, Health Services, Mumbai wherein para 13 and 23 reads as under:

*“13. With reference to contents of paragraph No.VII(4), I say that Finance Department has made amendment in rule 10 of MCS (Pension) Rules, 1982 vide notification dated 23.2.2022 and as per the said notification the various provisos of extending the age of superannuation till the age of 60 years shall be in force till 31.5.2023. Beyond the date 31.5.2023 the date of superannuation will be 58 years of age.*

*23. .... That means no Medical Officers having completed the age of 58 years and above and 60 and below 60 years will be remain in service beyond 31.5.2023 and the Rule 10(1) of MCS (Pension) Rules, 1982 prescribed the age of 58 years will be in force again beyond 31.5.2023. As the applicants have attained the age of 58 years they could not be continued in service after 31.5.2023. Hence, the department has retired and relieved the applicants from service on 31.5.2023.”*

16. Careful perusal of the facts reveals that Medical Officers have been given extension from time to time on the basis of GR. However, judgment and order dated 20.3.2020 passed Hon'ble High Court, Bench at Aurangabad in *W.P. No.5402 of 2018 Dr. Sanjay R. Kadam & Ors. Vs. The State of Maharashtra & Ors.* (supra) made it clear that State Government shall not grant further extension by way of executive instructions without the authority and power under the statute. After perusal of amendment in Rule 10 of MCS (Pension) Rules, 1982 by notification dated 23.2.2022 it is clear that as per the said notification the various provisos of extending the age of superannuation till the age of 60 years shall be in force till 31.5.2023. Beyond the date 31.5.2023 the date of superannuation will be 58 years of age.

17. The only issue in these matters is the interpretation of the last proviso of the Notification dated 23.2.2022. In the Cabinet Note, we find it is specifically mentioned that the reason and the purpose of Notification is to meet a peculiar situation when the Public Health Department has come across 70% vacancies in the post of Medical Officers at different levels. Hence, originally in the year 2015 the age of retirement was extended from 58 year to 60 years. Thereafter, it was extended from 60 to 62 years so that there should not be insufficiency of medical help. We also took judicial note that in the years 2020, 2021 and 2022 we all were affected by COVID-19 Pandemic and therefore with a view to support and meet the need of the time, the age of retirement was increased by Notification dated 23.2.2022. However, this Notification has specifically mentioned the proviso in the last line, which is very important. The Single Bench in its order dated 1.6.2023 in O.A 623/2023 has also observed that all these provisions will be in force till 31.5.2023, is much debatable. Thus, it is a matter of interpretation of that proviso. The affidavit in reply of Shri Ashish Kumar Singh, Additional Chief Secretary, Finance

Department and the opinion of the Chief Secretary is ultimately an interpretation of the said proviso of the Notification dated 23.2.2022, by the executive. We are of the view that the said interpretation is not correct as it is not in consonance with the Cabinet Note which was placed before us and which was taken into account while issuing the Notification dated 23.2.2022.

18. We rely on the observations of the Hon'ble Supreme Court in **Civil Appeal No.7580 of 2012 Dr. Prakasan M.P. & Ors. Vs. State of Kerala & Anr. decided on 25.8.2023** in similar set of facts concerning the extension of age of Homeopathic Doctors from 55 to 60 years. The Hon'ble Supreme Court has observed as under:

*“11. It is well-settled that the age of retirement is purely a policy matter that lies within the domain of the State Government. It is not for the courts to prescribe a different age of retirement from the one applicable to Government employees under the relevant service Rules and Regulations. Nor can the Court insist that once the State had taken a decision to issue a similar Government Order that would extend the age of retirement of the staff teaching in the Homeopathic Colleges as was issued in respect of different categories of teaching staff belonging to the Dental stream and the Ayurvedic stream, the said G.O. ought to have been made retrospective, as was done when G.O. dated 14th January, 2010 was issued by the State and given retrospective effect from 1st May, 2009. These are all matters of policy that engage the State Government. It may even elect to give the benefit of extension of age to a particular class of Government employees while denying the said benefit to others for valid considerations that may include financial implications, administrative considerations, exigencies of service, etc.”*

19. As regards the issue of principles of legitimate expectation Ld. Advocate for the applicant relied on para 19 of the said judgment in *Dr. Prakasan M.P.* (supra) which reads as under:

*19. No doubt, the appellants were the first to raise the battle cry when they filed not one, but two writ petitions in the High Court for extending them the benefit of G.O. dated 14th January, 2010. But it is a matter of record that there was no positive order granted in their favour throughout. Even in the present proceedings, no interim order was passed in favour of the appellants who have superannuated in the meantime. The clock cannot be put back for them by reading retrospectivity in the G.O. dated 09th April, 2012, when the State elected not to insert any such clause and evidently intended to apply it with prospective effect. The idea behind extension of retirement age of doctors was to take care of the emergency situation caused by shortage of doctors, which was resulting in affecting the studies or patient care. It was not merely to grant benefits to a particular class. The Doctrine of Legitimate Expectation does not have any role to play in matters that are strictly governed by the service regulations. This is an exercise that is undertaken by the State in discharge of its public duties and should not brook undue interference by the Court.”*

20. In our considered view, the erstwhile compelling circumstances of 70% vacancies subsequently COVID-19 Pandemic led to the legislature to issue the Notification dated 23.2.2022. On our query, learned C.P.O furnished the information that now the Public Health Department is in the process of filling up the vacancies and now the percentage of vacancies has dropped down and will reduce considerably in future as fresh posts of Medical Officers are advertised.

21. In view of this, we say that no Doctors at the regular age of retirement of 58 years is entitled to get benefits of extended age and can remain in service after 31.5.2023.

22. Hence, we hold that all these Original Applications deserve to be dismissed. All the above Original Applications are dismissed. Interim relief is discharged. No orders as to cost.

**Sd/-**

**(Medha Gadgil)**  
**Member (A)**  
**31.8.2023**

**Sd/-**

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**31.8.2023**

Dictation taken by: S.G. Jawalkar.



**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATIONS NO.623, 626, 658, 1026 & 1066 OF 2023**

**31.8.2023**

1. After pronouncement of the order, the learned counsel for the applicant prayed that the interim relief be continued so that the applicants can approach the Hon'ble High Court.

2. Learned counsel for the applicants has submitted that the applicants in O.A 623/2023 were directed to be continued and reinstated by interim of this Tribunal by order dated 1.6.2023. However, the interim order was not obeyed by the Respondent-State and therefore Contempt Application No. 64/2023 in O.A 623/2023 was filed and by order dated 2.8.2023, the Single Bench of the Tribunal upon the undertaking given by the Respondents have reinstated the applicants in O.A 623/2023. Learned counsel has submitted that the said interim order is to be continued as the applicants are in service as on today and if their services are not protected then they will be removed from service as they have right to continue in service till the age of 60 years. The said protection be given so that the applicants can avail of the remedy to approach the Hon'ble High Court.

2. Learned C.P.O while opposing this application, has submitted that the applicants were already retired on 31.5.2023. Although interim order was passed on 1.6.2023 with observation that the applicants are still in service and in Contempt Application the Tribunal was about to frame charges on 2.8.2023, and therefore on 2.8.2023 undertaking was given by the Respondent-State and they were reinstated in service.

3. Considered the submissions of learned counsel for the applicant and the learned C.P.O. In view of the reasoning given by us about the last proviso in the Notification dated 23.2.2022, we are of the view that there is no reason to continue the interim relief. Further, no interim relief was granted in other Original Application Nos 626, 658, 1026 & 1066 OF 2023. Hence, the prayer for interim relief is rejected.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**31.8.2023**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**  
**31.8.2023**

Dictation taken by: S.G. Jawalkar.