

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 158 OF 2017
(Subject – Direction/Joining)**

DISTRICT: LATUR

Dr. Surekha Vyankatrao More,)
Age: 47 years, Occu. : Service,)
(as Medical Officer, Trauma Care,)
Unit, Murud, Tal. & Dist. Latur),)
R/o C/o Dr. Vinod Deshmukh,)
204, B-Wing, Omkar Residency,)
Ganesh Nagar, Ambajogai Road,)
Latur, Dist. Latur.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Principal Secretary,)
Public Health Department,)
M.S., Mantralaya, Mumbai- 32.)
- 2) **The Principal Secretary,**)
Medical Education & Drugs Dept.,)
M.S., Mantralaya, Mumbai-32.)
- 3) **The Director of Health Services,**)
Maharashtra State, Mumbai.)
- 4) **The Deputy Director of Health**)
Services, Latur Region, Latur.)

.. **RESPONDENTS**

APPEARANCE : Shri A.S. Deshmukh, Advocate for the
Applicant.

: Shri D.R. Patil, Presenting Officer for the
Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

DATE : 31.05.2018.

ORDER

1. By filing the present Original Application, the applicant has sought direction against the respondent Nos. 1, 3 and 4 to relieve her from the post of Medical Officer in order to join on the post of Assistant Professor in Anesthesiology in S.R.T.R. Government Medical College, Ambajogai, District Beed in pursuance to the appointment order dated 13.06.2016 issued by the respondent No. 2.

2. The applicant has acquired qualifications of MBBS and DA (Diploma in Anesthesia) in the year 1995 and 1998 respectively. She is from Open category. She entered in the service of the respondent Nos. 1 and 3 i.e. Public Health Department of the State Government on 14.10.2002 as a Medical Officer, Group-A on due selection by the MPSC vide letter dated 18.09.2002. She was confirmed as Medical Officer in the service by order dated 13.07.2006 issued by the respondent No. 1, on completion of probation period w.e.f. 12.02.2005.

3. It is contention of the applicant that her husband viz. Dr. Vinod Shivajirao Deshmukh is also serving as an Associate Professor in Pharmacology with the State Government.

4. In the mid of the year 2010, she was selected for P.G. Course of M.D. (Anesthesia) as an in service candidate, when she

was serving as a Medical Officer at Rural Hospital, Renapur in Latur District and accordingly, she was relieved from the post of Medical Officer on 01.07.2010 by the Medical Superintendent of Rural Hospital, Renapur. At the time of joining of P.G. course, she was required to execute a bond in favour of the respondent No. 3 that upon completion of her P.G. course, she would serve the State Government for a period of six years failing which she would be liable to pay an amount of Rs. 10,000,00/- to the State Government. Accordingly, she executed bond on 02.07.2010 and undertook to serve the State Government for a period of six years on completion of P.G. Course. She completed her P.G. Course and acquired qualification of M.D. (Anesthesia) at Indira Gandhi Government Medical College, Nagpur in the year 2012. Thereafter, she joined on the post as Medical Officer and started discharging duties. In the first week of March 2014, she was constrained to proceed on Medical Leave from 06.03.2014 to 30.04.2014 when she was working at Rural Hospital, Murud, Dist. Latur. She had submitted an application to the Medical Superintendent of Rural Hospital, Murud, Dist. Latur in that regard. When she was on leave, the MPSC issued an advertisement for filling up 50 posts of Assistant Professor/Lecturer in Anesthesiology in the Maharashtra Medical Education and Research Service, Group-B. The applicant had submitted an application dated 23.03.2014 by post to the respondent No. 3 through the Civil Surgeon, Latur

seeking permission to submit her application in response to the advertisement issued by the MPSC on 20.03.2014, but she had not received any response from the respondents in that regard. Therefore, she was constrained to submit her application for the post of Assistant Professor in Anesthesiology online on 04.04.2014.

5. She had proceeded on leave w.e.f. 06.03.2014. But she was unable to report back to the duties after leave period and therefore, she submitted an application to the Medical Superintendent of Murud, on 25.11.2014 and conveyed him that she was unable to join duty due to ill-health and she would join the duty upon her recovery. She had informed to the Medical Superintendent, Rural Hospital, Murud that she had not received salary for the month of February 2014 that she was on duty till 03.03.2014. The applicant could not be able to report duty for a prolonged period. Several other Medical Officers in the Maharashtra State were absent on duty for long period and therefore, the respondent No. 1 took a policy decision by G.R. dated 07.06.2016 and permitted such Medical Officers to join back duty subject to certain terms and conditions. The name of the applicant had also appeared in the said list and she was posted at Rural Hospital, Murud, Dist. Latur. In pursuance of the said G.R., the applicant had executed a bond on 17.06.2016 and

undertook to serve the State of Government for a period of 5 years and stated that she would not seek voluntary retirement or tender resignation. Thereafter, she joined the duties as Medical Officer in Rural Hospital, Murud Dist. Latur and started discharging the duties.

6. Meanwhile, respondent No. 2 issued an appointment order in her favour on the post of Assistant Professor in Anesthesiology in pursuance of her selection and recommendation by MPSC on 13.06.2016. It has been mentioned in paragraph No. 12 of the said appointment order that she should join her duties at the Government Medical College, Ambajogai within a period of 30 days, failing which her appointment would be cancelled.

7. The applicant requested the respondent Nos. 1, 3 and 4 to relieve her to join her new posting, but she had not been relieved. Therefore, she requested respondent No. 2 to extend time for joining on her new posting. The respondent No. 2 extended the time for further period of two months. She submitted an application with the respondent No. 1 and sent copy of it to the respondent No. 3 and other concerned officials with a request to relieve her from the post of Medical Officer to join on new posting as Assistant Professor in Anesthesiology under the Medical

Education and Drugs Department of State Government, but there was no response from them. Therefore, she submitted another application dated 03.11.2016 to the said authorities with the same request. Meanwhile, respondent No. 2 issued a communication dated 20.8.2016 to the respondent No. 1 and requested to relieve the applicant from her present post for joining on a post under the Medical Education and Drugs Department, but she had not been relieved. On 05.01.2017 and 06.01.2017 she had submitted applications to the respondent No. 1 and to the Hon'ble Minister of Public Health Department with the same request, to which the respondents had not replied. However, by the communication dated 30.01.2017 the respondent No. 3 convey to his subordinates that in view of the suggestion given by the Hon'ble Chief Minister the Doctors with specialized qualifications working in the Public Health Department could work as Honorary Assistant Professor or higher teaching posts. It is her contention that in spite of that the respondents had not taken decision on her applications, though there is no legal impediment.

8. It is her contention that this Tribunal has passed the orders in cases of similarly situated persons and directed the respondent No. 1 to relieve the similarly situated Medical Officers from their post to join their new posing under the Medical

Education and Drugs Department on the post of Assistant Professor. Therefore, she approached this Tribunal and prayed to issue direction to the respondent Nos. 1, 3 and 4 to relieve her immediately to join her on the post of Assistant Professor in Anesthesiology in S.R.T.R. Government Medical College, Ambajogai, District Beed.

9. The respondent Nos. 1, 3 and 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant has not followed the due procedure laid down in the G.R. dated 02.12.1997 for applying the post, when she was in service and therefore, her application has been rejected by the respondent No. 2 by communication dated 22.03.2017. It is their contention that the applicant has not fulfilled the terms and conditions mentioned in the bond and has not rendered service for 6 years with the Public Health Department after completion of P.G. course. It is their contention that as she has not complied the terms and conditions mentioned in the bond, she is not entitled to be relieved from the Public Health Department. It is their contentions that the office of Civil Surgeon, Latur had not received the application dated 20.03.2014 of the applicant for granting permission to file application for the post of Assistant Professor in Anesthesiology. It is their contentions that the applicant had applied to the MPSC without

following the due procedure and therefore, she cannot be relieved. It is their contention that the applicant has to render service to the State Government for a period of six years after completion of P.G. course. But she remained absent on duty thereafter. In view of the G.R. dated 22.03.2017, she was allowed to join duty on executing bond by which she undertook to serve the State Government for a period of 5 years. It is their contention that the applicant had not rendered service as per the undertaking given by her by executing the bonds and therefore, she cannot be relieved. Therefore, they prayed to reject the present Original Application.

10. The applicant has filed rejoinder affidavit and contended that there is no breach of terms and conditions of the bonds on her part and therefore, she prayed to allow the present Original Application.

11. The respondent Nos. 1, 3 and 4 have filed sur-rejoinder and raised the similar contention to that of the contentions raised in the affidavit in reply.

12. I have heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

13. Admittedly, the applicant passed MBBS and D.A. (Diploma in Anesthesia) in the year 1995 and 1998 respectively. Admittedly, she was selected and recommended by the MPSC on the post of Medical Officer, Maharashtra Medical and Health Services, Group –A by its order dated 18.9.2002 and on the basis of it, the respondent Nos. 1 and 3 appointed her as Medical Officer by the order dated 14.10.2002. Accordingly, she joined the duties and she was regularized in the service on the post of Medical Officer on completion of her probation period w.e.f. 12.02.2005 by order dated 13.07.2006.

14. Admittedly, in the year 2010, the applicant was working as Medical Officer, Rural Officer, Renapur, Dist. Latur and that time she was selected for P.G. course in M.D. Anesthesia as an in service candidate and accordingly, she was relieved from her post on 01.07.2010. Thereafter, she joined the P.G. course w.e.f. 02.07.2010 by executing a bond to the State Government and undertook to serve the State Government for a period of six years on completion of P.G. course, failing which she would be liable to pay an amount of Rs. 10,00,000/- to the State Government. She completed her P.G. Course in the year 2012 from Indira Gandhi Government Medical College, Nagpur and thereafter, she joined on the post of Medical Officer and started working as Medical Officer, Rural Hospital, Murud, Dist. Latur.

Admittedly, she went on leave w.e.f. 06.03.2014 to 30.04.2014. When she was on leave, in pursuance of the advertisement issued by the MPSC dated 20.03.2014, she filed online application for the post of Assistant Professor/Lecturer in Anesthesiology in the Maharashtra Medical Education and Research Services Group B. Admittedly, she could not be able to join her duties thereafter due to her ill health and she remained absent for long period. Admittedly, the State Government issued G.R. dated 07.06.2016 and permitted the Medical Officers including the applicant who remained absent from duty for long period to join the duty subject to certain terms and conditions. Admittedly, in pursuance of the G.R. dated 07.06.2016, the applicant was posted as Medical Officer at Rural Hospital, Murud. She executed a bond on 17.06.2016 and thereby undertook to serve the State Government for a period of five years. Admittedly, the respondent No. 2 in pursuance of the selection and recommendation of the MPSC issued an appointment order dated 13.06.2016 to the applicant on the post of Assistant Professor /Lecturer in Anesthesiology in S.R.T.R. Government Medical College, Ambajogai, District Beed and directed her to join new posting within 30 days, failing which her appointment will be cancelled.

15. Admittedly, the applicant made request to the respondent Nos. 1, 3 and 4 to relieve her, but her request had not

been considered and therefore, she sought extension of the period to join her new posting and the period had been extended by the respondent No. 2 for further two months. Admittedly, meanwhile the respondent No. 2 issued letter to the respondent No. 1 on 20.08.2016 with a request to relieve the applicant to join her new post. Admittedly, thereafter, applicant had made several representations to the respondent Nos. 1, 3 and 4 with a request to relieve her from the present post, but her request was not considered by the respondents. Admittedly, her representations came to be rejected by the respondent No. 1 by communication dated 22.03.2017.

16. Learned Advocate for the applicant has submitted that the applicant is ready to abide by the terms and conditions incorporated in the bonds executed by her in favour of the Government on 02.07.2010 and 17.06.2016. He has submitted that the applicant is ready to render service to the State Government in view of the undertaking given by her in the said bonds and therefore, no question of breach of bonds executed by the applicant arises. He has submitted that the Public Health Department and Medical Education and Drugs Department are the departments of the State Government. The applicant intends to render services to the Medical Education and Drugs Department in view of her new appointment and she is ready to

undertake to serve the State Government in view of the earlier bonds executed by her and therefore, there is no legal impediment in relieving her by the respondent Nos. 1, 3 and 4. He has submitted that Nagpur Bench of this Tribunal has granted relief to the similarly placed persons in O.A. No. 29/2016 in case of **Dr. Anup Ashokrao Wakodkar Vs. The State of Maharashtra and Others** on 18.02.2016 and O.A. No. 30/2016 in case of **Dr. Sunita Murlidhar Zanwar Vs. The State of Maharashtra & Others** decided on 18.02.2016. He has submitted that the case of the present applicant is squarely covered by the said decisions and therefore, in view of the said decision, the present O.A. requires to be allowed.

17. Learned Presenting Officer has submitted that the applicant had not filed an application for the appointment on the post of Assistant Professor/Lecturer in Anesthesiology by obtaining prior permission of the respondent Nos. 1, 3 and 4. She had not moved an application through proper channel and therefore, her application to relieve her from the present post has been rejected by the respondents. He has submitted that it is mandatory on the part of the applicant to obtain prior permission of the higher authority before applying for another post. But no such permission has been obtained by the applicant and therefore, her application to relieve from the present post has

been rejected by the respondent No. 3. He therefore, supported the order of rejection passed by the respondent No. 3.

18. He has submitted that the applicant had executed two bonds in favour of the Public Health Department and thereby agreed to serve the State Government for a period of six years and five years respectively. He has submitted that the said period has not been completed and therefore, the applicant cannot be relieved from present post and therefore, he prayed to reject the Original Application.

19. On going through the record it reveals that the applicant has come with a case that she moved an application dated 23.03.2014 to the respondent No. 3 through Civil Surgeon, Latur and sought permission to file application for appointment on the post of Assistant Professor/Lecturer in Anesthesiology in pursuance of the advertisement issued by the M.P.S.C. on 20.03.2014. The respondents had denied the said fact and they produced the copy of inward and outward register maintained by the office of Civil Surgeon, Latur. It has been brought to my notice that on 23.3.2014 it was Sunday and there was no entry of the said application moved by the applicant either on 23.03.2014 or on subsequent dates. Therefore, it cannot be said that the applicant had moved an application for seeking permission of the

competent authority before filing the application to the MPSC. However, after selection and recommendation made by the MPSC and on receiving the appointment letter issued by the respondent No. 2, she moved an application with the respondent No. 1 with a request to relieve her to join new posting. That application came to be rejected during pendency of the O.A. by the respondent No. 3 on 22.03.2017 on the ground that due procedure has not been followed by the applicant before filing the application to the M.P.S.C., but neither the respondents nor the P.O. representing for them explained what is the due procedure for filing the application. Therefore, in the absence of any rule or G.Rs. it is difficult to accept the contentions of the respondents that due procedure has not been followed by the applicant before filing the application with M.P.S.C.

20. The applicant has executed two bonds in favour of the respondents on 02.07.2010 and 17.06.2016 and thereby undertook to render services to the State Government for a period of six years and five years respectively. On perusal of the said bonds which are produced by the applicant at paper book page nos. 29 and 45, it reveals that in none of the bonds it has been mentioned that the applicant has to render services to a particular department i.e. Public Health Department. Therefore, it cannot be said that by executing the said bonds, the applicant

undertook to render services to the respondent Nos. 1 and 3. But by the said bonds, she undertook to render services to the State Government, therefore, it cannot be said that there is breach of terms and conditions of the bond on the part of the applicant. The said issue has been considered by this Tribunal at Nagpur Bench in O.A. Nos. 29/16 and 30/16 decided on 18.02.2016 while deciding the case of similarly placed employees, in which similar issue was involved, the Tribunal has considered the terms and conditions incorporated in both the bonds as well as provisions of G.R. dated 03.05.2011 and arrived at conclusion that there was no any breach of bond on the part of those applicants and therefore, allowed the O.As. and directed the Public Health Department i.e. respondent No. 1 to relieve those applicants.

21. The facts in this case are identical with the facts in the above cited decisions. The present case is squarely covered by the said decisions. Therefore, I am bound by the said decisions. IN view of the terms and conditions in the bond it is mandatory and obligatory on the part of the applicant to serve the State Government and not a specific Department. Therefore, in my opinion there is no breach of bond by the applicant, if he decides to join another department of Government. Even on relieving the applicant from the post of Medical Officer in Public Health

Department and joining her on the post of Assistant Professor/Lecturer in Medical Education and Drugs Department, she will be continued in Government service and she will continue to render services to the State Government. Therefore, it cannot be said that there is a breach of terms and conditions of bonds executed by the applicant. Not only this, but in view of the submissions made by the learned Advocate for the applicant, the applicant is ready to render her services for the period mentioned in both the bonds on joining her services in the Medical Education and Drugs Department as Assistant Professor/Lecturer in Anesthesiology and she will serve accordingly in the rural and tribal area also. Therefore, in my opinion, there is no legal impediment in reliving the applicant from the present post of Medical Officer in Public Health Department. Therefore, the present Original Application deserves to be allowed.

22. In view of the above discussions in foregoing paragraphs, the Original Application is allowed. The respondent Nos. 1 and 3 are directed to relieve the applicant immediately from her present post as Medical Officer to enable her to join her new post of Assistant Professor/Lecturer in Anesthesiology in S.R.T.R. Government Medical College, Ambajogai, District Beed under the Medical Education and Drugs Department. The applicant shall undertake to serve the State Government in view

of the terms and conditions mentioned in the bonds earlier executed by her on 02.07.2010 and 17.06.2016. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 31.05.2018.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 158 of 2017 BPP 2018 Direction/Joining