

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 22 OF 2016**

**DISTRICT: NANDED**

**Dr. Ganesh Ganpatrao Deglookar,**  
Age: 61 years, Occu. : Medical Superintendent  
(Class-I), Rural Hospital, Mukhed,  
Dist. Nanded (Now retired and presently  
Residing at Gaulipura, Nanded.)

.. **APPLICANT**

**V E R S U S**

1) **The State of Maharashtra.**

Copy to be served on Presenting Officer,  
Maharashtra Administrative Tribunal Mumbai,  
Bench at Aurangabad, AURANGABAD.

2) **The State of Maharashtra,**  
to the Secretary,  
Health Department,  
Mantralaya, Mumbai-400 032.

3) **The Director,**  
Health Services, Mumbai.

4) **The Dy. Director of Health Services,**  
Latur.

5) **The Civil Surgeon,**  
Civil Hospital,  
Nanded.

.. **RESPONDENTS**

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APPEARANCE : Shri J.B. Choudhary, learned Advocate for the  
Applicant.

: Shri S.K. Shirse, learned Presenting  
Officer for Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**  
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**ORDER****(Delivered on this 4<sup>th</sup> day of July, 2017.)**

1. The applicant has challenged the order/communication dated 13.08.2015 received from the respondent no. 2 rejecting his prayer for grant of pension and pensionary benefits and to regularize his absenteeism period from 23.04.1990 to 24.08.2009 and also to grant regular pension and pensionary benefits, as he completed the qualifying service on the post.

2. It is contention of the applicant that he was initially appointed as a Medical Officer on 27.08.1979 and posted at Government Medical College, Aurangabad by the respondent no. 3 and accordingly, he joined duties on 12.10.1979. Thereafter, he was transferred as Medical Officer at various places. In the year 1989, he was transferred to Pusad from Umardhed and accordingly, he joined duties at Pusad. He discharged his duties up to 22.04.1990. He remained absent on the duties from 23.04.1990.

3. On 13.01.2008, the respondent no. 3 issued show cause notice to the applicant calling his explanation as to why his services should not be terminated, as he remained absent from his duties. It was mentioned in the notice that, if he fails to give

explanation for reply, the respondent no. 3 will take proper action against him. The notice was received by the applicant on 22.04.2008. The respondent no. 3 had published a notice in the daily Lokmat and informed the Medical Officers, who were absent, to join their duties immediately or will face the termination of services in view of the long absenteeism. The applicant has filed a representation dated 24.04.2008 with the respondent no. 3 requesting not to terminate his services and also requested to allow him to join the duties. On 23.05.2008, the respondent no. 3 sent a letter to the applicant and directed him to appear before the Medical Board and to obtain fitness certificate for joining services. Accordingly, the applicant appeared before the Medical Board, Nanded on 16.06.2008. On 2.12.2008, the Medical Board, Nanded issued certificate and certified that the applicant was fit to join duties. The applicant furnished the fitness certificate before the respondent no. 3 and requested to allow him to join duties. The respondent no. 3 then submitted detailed report to the respondent no. 2 in that regard on 15.06.2009. Thereafter, respondent no. 2 issued the posting order dated 20.8.2009 and posted the applicant as Medical Superintendent Class-I, Rural Hospital, Mukhed, District Nanded. Accordingly, the applicant joined his duties as Medical Superintendent Class-I in Rural Hospital, Mukhed, District Nanded. When he was serving there,

he made representation with the respondent no. 3 and requested him to give deemed date of promotion on the post of Deputy Director of Health Services by filing representations dated 6.5.2010 and 10.05.2010, as he was senior most Medical Superintendent. His representations had not been considered and decided by the respondents. On 19.07.2010, the Medical Superintendent, Rural Hospital, Mukhed had submitted proposal to the Civil Surgeon, Nanded for regularizing his services for the period from 23.04.1990 to 24.08.2009. He had also made representation dated 15.10.2010 in that regard, as he was going to retire in the year 2012. On 15.10.2010, the Civil Surgeon, Nanded issued a memo and called his explanation as regards period of absenteeism from 23.04.1990 to 24.08.2009. The applicant had given his explanation on 21.02.2011 and requested to treat the period of absenteeism from 23.04.1990 to 24.08.2009 as unauthorized leave by giving him continuity in the service. The Civil Surgeon, Nanded submitted the proposal to the Deputy Director of Health Services, Nanded along with his explanation on 15.04.2011. The Deputy Director of Health Services, Latur forwarded the proposal to the Director of Health Services, Bombay on 2.7.2011. On 15.07.2011, the respondent no. 3 sent a letter to the respondent no. 2 and sought information as to whether any Departmental Enquiry is proposed against the applicant regarding

unauthorized leave of 19 years and whether the proposal may be submitted before the Government for regularizing said period of absenteeism. On 12.1.2012, the applicant again made representation with the respondent no. 2 and requested to pass an appropriate order for regularization of period of absenteeism and to complete the documents for his pension and retiral benefits. No orders have been passed by the respondent no. 2 in that regard. The applicant retired on superannuation w.e.f. 31.08.2012.

4. After retirement, the applicant submitted application to the respondent no. 4 and requested to pay pension and pensionary benefits. The respondent no. 4 submitted proposal for sanction of leave encashment of the applicant to the Deputy Director of Health Services, Latur, which was forwarded to the respondent no. 3. But no pension and pensionary benefits had been given to the applicant. Therefore, the applicant filed O.A. No. 90/2013 before this Tribunal and prayed to issue direction to the respondent nos. 2 to 4 to pay the pension and pensionary benefits to him. He has also sought direction to the respondent nos. 2 & 3 to pass appropriate orders on the proposal submitted by the respondent no. 4 dated 2.7.2011 with other reliefs. The respondent nos. 2 and 3 filed their affidavit in reply and

contended that those employees who has completed 10 years' service are entitled to get the pension and pensionary benefits in view of the Corrigendum dated 15.12.2009 and accordingly, proposal for regular absenteeism period of the applicant is submitted to the respondent no. 2 and the said proposal is pending before the Finance Department. But on 19.08.2014, the respondent no. 2 had filed additional affidavit in reply and contended that the applicant tendered his resignation on 1.12.1997 and it was deemed to have been accepted by the competent authority after expiry of one month. It is its contention that after the year 2009, the services of the applicant should be treated as new appointment, as he resigned from the earlier post from the services in the year 1997 and therefore, he is not entitled for retirement benefits.

5. The O.A. has been disposed of by this Tribunal after hearing both the parties on 9.7.2015 and it was directed to the respondents to take decision on the representation filed by the applicant as regards regularizing the absenteeism period from 23.04.1990 to 24.08.2009 of the applicant and thereafter, consider his request for pension and pensionary benefits, if admissible. It is contention of the applicant that while deciding the O.A. No. 90/2013, this Tribunal has held that joining of the

applicant by the order dated 25.08.2009 after period of absentee cannot be said to be fresh appointment and it was reinstatement of the applicant in the service. In view of the direction given by this Tribunal in the earlier O.A. No. 90/2013, the respondent no. 2 and 3 ought to have taken decision under Rule 47 of the Maharashtra Civil Services (Pension) Rules, 1982. But the respondent no. 2 issued order dated 13.08.2015, by which his period of absentee from 23.04.1990 to 24.08.2009 was rejected on the ground that resignation tendered by him on 1.12.1997 was deemed to be accepted w.e.f. 1.1.1998 and therefore, he is not entitled for pension and pensionary benefits. It is also mentioned in the order that the joining of the applicant on 25.08.2009 should be treated as fresh appointment, but the said appointment was not legal. Therefore, the applicant is not entitled to get pension and pensionary benefits. The applicant has challenged the said order by filing the present O.A. on the ground that this Tribunal has held in O.A. No. 90/2013 that he was reinstated in service w.e.f. 25.08.2009 and it was not fresh appointment, but respondent nos. 2 and 3 had not considered the said aspect. It is his contention that this Tribunal directed the respondent nos. 2 to 4 to consider his representation regarding regularization of the absenteeism period from 23.04.1990 to 24.08.2009 and granting all pension and pensionary benefits as per the Rules. But the

respondents had not considered the said aspect properly and wrongly decided the representation and passed the impugned order dated 13.08.2015, which is not legal. Therefore, the applicant has prayed to quash and set aside the impugned order dated 13.08.2015 and also sought direction to the respondents to regularize the period of his absenteeism from 23.04.1990 to 24.08.2009 and to give regular pension and pensionary benefits as per Rules.

6. Respondents have filed their affidavit in reply and denied the contentions of the applicant. They have admitted the fact that the applicant was appointed as Medical Officer w.e.f. 12.10.1979 and served on various places. They have admitted that the applicant remained absent unauthorizely from 23.04.1990. It is their contention that during that period, the applicant had tendered his resignation w.e.f. 1.12.1997 in view of the provisions in para 2 (a)(4) of the Government Resolution issued by the G.A.D. dated 2.12.1997 and resignation was deemed to have been accepted by the competent authority after laps of one month period from the date of receipt of resignation letter. It is their contention that in view of the said provision, the resignation of the applicant dated 1.12.1997 has been deemed to be accepted w.e.f. 1.1.1998. It is their contention that the



applicant had not kept lien on his post and therefore, he has no right to claim retiral benefits. It is their contention that, as the applicant was remained absent unauthorizely since 23.04.1990, the competent authority issued show cause notice to the applicant on 13.01.2008 under Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The applicant had never responded to it and therefore, they published a notice in the Daily Lokmat Newspaper with the direction to the applicant to join duties otherwise his services will be terminated. They have admitted that the applicant has requested them vide letter dated 24.02.2008 to allow him to join duties and therefore, directed to appear before the Medical Board and to obtain fitness certificate. They have admitted the fact that on production of fitness certificate, he was posted as Medical Superintendent, Rural Hospital, Mudkhed, Dist. Nanded vide order dated 20.08.2009 and the applicant joined at Rural Hospital, Mudkhed on 25.08.2009. They have admitted that the Civil Surgeon, Nanded called explanation from the applicant regarding his absenteeism from 23.04.1990 to 24.08.2009 and the applicant had filed the representation and requested to treat the said period as unauthorized leave by giving him continuity in service. They have admitted the fact that the said proposal has been forwarded to the Deputy Director, Latur and then Deputy Director, Latur sent it to

the Director, Health Services, Mumbai vide letter dated 2.7.2011. The Director of Health Services sent proposal to the Government on 15.07.2011. They have admitted that the applicant had filed the application dated 12.01.2012 with a request to pass appropriate order regarding regularization of his absentee period and the said proposal was forwarded to the Director, Health Service by Deputy Director, Latur vide letter dated 5.12.2012. They have admitted the fact of filing of the O.A. No. 90/2013 and the orders therein. It is their contention that as per the directions of this tribunal the respondents have taken the decision on the representation of the applicant and held that the applicant tendered his resignation on 1.12.1997, which has been deemed to be accepted w.e.f. 1.1.1998 in view of the G.R. dated 2.12.1997 and therefore, the applicant was not in service, when he joined the posting on 25.08.2009. His appointment on the post w.e.f. 25.08.2009 was fresh appointment and it was not legal and therefore, he is not entitled to get pension and pensionary benefits. Therefore, the respondents passed the impugned order, which is legal and proper. Therefore, they supported the impugned order and prayed to reject the present Original Application.

7. I have heard Shri J.B. Choudhari, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the affidavit, affidavit in reply, rejoinder affidavit and various documents placed on record by the respective parties.

8. The learned Advocate for the applicant has submitted that the applicant served as Medical Officer, since his appointment in the year 1979 up to 22.04.1990. He has submitted that since 23.04.1990 to 24.08.2009 the applicant remained absent and therefore, show cause notice had been issued to him in the year 2008. The respondent no. 3 had published a notice in the daily Lokmat and thereby the applicant was directed to join the duties immediately or to face the termination of services in view of the long absenteeism. He has submitted that in pursuance of the said notice, he filed his explanation and approached respondents with a request to allow him to join duties and after completing formalities i.e. obtaining fitness certificate, he was posted as Medical Superintendent Class-I in Rural Hospital, Mukhed, District Nanded, by order dated 20.8.2009 issued by the respondent no. 2. Accordingly, he joined the said posting. He has submitted that thereafter, the applicant made representation for regularization of his absentee

period from 23.04.1990 to 24.08.2009 by filing several representations to the respondents, but they had not considered the said representations. Thereafter, he retired on 31.08.2012 on superannuation. Thereafter, he made representation to the respondents for grant of pension and pensionary benefits and for regularization of the above said period of absenteeism. But the respondents had not decided the said representations and therefore, he approached this Tribunal by filing O.A. No. 90/2013, in which the respondents have filed their say and contended that the applicant tendered his resignation on 1.12.1997, which was deemed to be accepted w.e.f. 1.1.1998 in view of the G.R. dated 2.12.1997. They had submitted that as the applicant resigned from his post, his subsequent appointment as Medical Superintendent w.e.f. 25.08.2009 cannot be legal one and therefore, the applicant is not entitled to get pension and pensionary benefits. He has argued that after considering the contention of both the parties, this Tribunal directed respondents while disposing the O.A. No. 90/2013 that the respondents to decide the representation of the applicant regarding absentee period and also decide whether he is entitled to get pension and pensionary benefits as per the Rules. He has argued that while deciding the O.A. No. 90 of 2013, this Tribunal has held that the applicant was reinstated in the service after considering his

explanation regarding absentee period and it was not a fresh appointment. He has submitted that in view of the observation and finding recorded by this Tribunal, the respondents have no authority to reconsider the said aspect, but the respondents by the communication dated 13.08.2015 decided that the appointment of the applicant w.e.f. 25.08.2009 was fresh appointment and it was illegal. It is has been further argued on behalf of the applicant that in the impugned order dated 13.08.2015 it has been observed that the applicant resigned from the service w.e.f. 1.1.1998 on the basis of resignation letter of the applicant dated 1.12.1997 and therefore, he is not entitled for pension and pensionary benefits. He has submitted that the impugned order dated 13.08.2015 is not in accordance with the directions given by this Tribunal in the O.A. No. 90/2013. He has argued that it was not open for the respondents to reconsider the issue regarding the appointment of the applicant on the post w.e.f. 25.08.2009, as the said issue had already been decided by this Tribunal in the earlier O.A. No. 90/2013. He has submitted that the respondents have to decide the representation of the applicant as regards regularization of absentee period and to decide whether he is entitled to get pension and pensionary benefits. But the respondents had not considered the said aspect with proper perspective and therefore, he prayed to allow the

present Original Application by quashing the impugned order dated 13.08.2015.

9. Learned Presenting Officer has submitted that the respondents have rightly decided the issue as per the directions of this Tribunal. He has submitted that the applicant has tendered his resignation on 1.12.1997, since no specific order regarding its acceptance or rejection has been passed by the respondents, it would have been deemed to be accepted after laps of one month in view of the provisions of G.R. dated 2.12.1997. As the applicant resigned from the service w.e.f. 1.1.1998, his subsequent appointment on the post w.e.f. 25.08.2009 amounts a fresh appointment. The said appointment was also not legal and therefore, the applicant is not entitled to get pension and pensionary benefits as claimed by him. He has submitted that the absentee period of the applicant was unauthorized and therefore, it amounts a break in the service and therefore, on that count also, the applicant is not entitled to get pension and pensionary benefits. He has submitted that the respondents have rightly decided the said aspect by issuing order dated 13.8.2015 and there is no illegality in the said order and therefore, he prayed to reject the present O.A.

10. On going through the submissions advanced by the learned Advocate for the applicant and learned Presenting Officer and considering their contentions, it is crystal clear that most of the facts are admitted to either of the parties. Admittedly, the applicant was appointed as Medical Officer on 27.09.1979 and posted at Government Medical College, Aurangabad. The applicant joined duties on 12.10.1979 and thereafter, he was transferred at several places. In the year 1998, he was posted at Pusad and he joined his duties accordingly. He discharged his duties up to 22.04.1990. Admittedly, the applicant remained absent on duties from 23.04.1990 to 24.08.2009. Admittedly, on 13.01.2008 the respondent no. 3 had issued show cause notice calling his explanation as to why his services cannot be terminated, as he remained absent from his duties unauthorizely. Not only this, the respondent no. 3 has published the notice in Daily Lokmat Newspaper calling upon applicant to join his duties or to face termination of his services in view of the long unauthorized absentee. In response to the said notice, the applicant has filed explanation with the respondent no. 3 and requested to allow him to join the duties. Thereafter, the respondents referred the applicant before the Medical Board, Nanded for obtaining fitness certificate. The applicant obtained fitness certificate dated 2.12.2008 issued by the Medical Board

and produced the same before the respondent no. 3, with a request to allow him to join the service. The matter was referred to the respondent no. 2 by the respondent no. 3. The respondent no. 2 then issued order dated 20.08.2009 and posted the applicant as Medical Superintendent Class-I, Rural Hospital, Mudkhed and accordingly he joined duties on 25.08.2009. The applicant made representations on 6.5.2010 and 10.05.2010 to the respondent no. 3 for giving him deemed date of promotion on the post of Deputy Director of Health Services, as he was senior most Medical Superintendent. He has also made representation for regularization of his period of absentee from 23.04.1990 to 24.08.2009. But the respondent nos. 2 and 3 had not passed any order regarding deemed date of promotion of the applicant. Thereafter, proposal for regularization of the applicant had been sent by the Civil Surgeon, Nanded to the Deputy Director of Health Services, Latur and the Deputy Director of Health Services forwarded the said proposal to the Director of Health Services, Mumbai. The said proposal had been forwarded to the Government, but it was not decided. Meanwhile the applicant retired from the service on superannuation w.e.f. 31.08.2012. Thereafter, the applicant claimed pension and pensionary benefits from the respondents, but the respondents had not taken decision on his representation. Therefore, he filed O.A. No.



90/2013, which was disposed of with a direction to the respondents to decide the representation of the applicant for regularization of absentee period as well as issue regarding grant of pension and pensionary benefits to him. As per the directions of this Tribunal, the respondents have issued the impugned order dated 13.08.2015.

11. In order to decide issue involved in the matter, it is material to have a look to the judgment of this Tribunal in O.A. No. 90/2013. While deciding the O.A. No. 90/2013, this Tribunal has observed in paragraph no. 26 as follows :-

*“26. On perusal of the said letter dated 30<sup>th</sup> July, 2014, it seems that the respondents are coming with a case that the resignation of the applicant was already accepted w.e.f. 1.1.1998 and, therefore, he has lost lien over the pension and service. In this regard, it is material to note that there was no communication, as regards acceptance of resignation w.e.f. 1.1.1998, made by the respondents to the applicant. Had it been a fact that the resignation was accepted w.e.f. 1.1.1998, there was no reason for the respondents to propose enquiry against the applicant for unauthorized absence. Secondly, there was no reason for the respondents to issue notice to the applicant and also to publish such notice in the newspaper calling upon the applicant to explain as to why his absence shall not be treated as unauthorized.*

*The further development shows that the respondents not only accepted the explanation of the applicant, but also send him for medical examination before the Medical Board. The applicant then submitted medical certificate as regards his fitness and thereafter the applicant was given appointment. Even though in the letter dated 3<sup>rd</sup> July, 2014 (Exhibit "R-III" page-69 of paper book), the fact is admitted that the applicant was reinstated on 25.8.2009, it is the respondents' say that it shall be treated as new appointment. Perusal of the order dated 20.8.2009 in respect of applicant's reinstatement (Exhibit 'G' page-19 of paper book), shows that the applicant was reinstated and not reappointed. In any case, in the circumstances, the order cannot be said to be that of a fresh appointment."*

On going through the said observations, it is crystal clear that this Tribunal had held that the appointment of the applicant on the post of Medical Superintendent Class-I by order dated 28.08.2009 was not a fresh appointment and it was reinstatement of the applicant in the service. Therefore, no direction had been issued to the respondent nos. 2 to 4 in that O.A. No. 90/2013 by this Tribunal for considering the said aspect again. In spite of that the respondents have decided the said issue, which is not legal. The respondents misconstrued the order of this Tribunal passed in the O.A. No. 90/2013 and exceeded its power and decided that the applicant's subsequent appointment was fresh

appointment and it was not a continuation of the earlier service. Therefore, the impugned order dated 13.8.2015 passed by the respondents to that effect is not legal and proper and hence, it requires to be quashed and set aside.

12. It is also material to note that while disposing of the O.A., this Tribunal has issued the direction to the respondents which are as follows:-

*“(ii) The respondent Nos. 2 to 4 are directed to take decision on various representations filed by the applicant particularly as regards the regularizing the absenteeism period from 23.4.1990 to 24.8.2009 of the applicant and thereafter to consider the request of the applicant for pension and pensionary benefits, if admissible and considering the rules and regulations therefor, particularly the provision of Rule 47 of the Maharashtra Civil Services (Pension) Rules, 1982.”*

13. By the said directions, the respondent no. 2 to 4 were directed to take decision on the representation filed by the applicant as regards regularization of absentee period from 23.04.1990 to 24.08.2009 and then to consider the request of the applicant for pension and pensionary benefits in view of the provisions of Rule 47 of the Maharashtra Civil Services (Pension) Rules, 1982. On going through the

impugned order dated 13.08.2015, it reveals that the respondents had not considered the said aspect with proper perspective and passed the impugned order, which is in contravention of the directions of this Tribunal. The respondents had not taken decision as regards regularization of the absentee period of the applicant w.e.f. 23.04.1990 to 24.08.2009 and therefore, the impugned order requires to be quashed and set aside.

14. It is also material to note that the applicant himself in his application dated 15.10.2010 admitted that his absentee was unauthorized and he requested respondents to consider it accordingly. The respondents have not considered the said aspect while issuing impugned order dated 13.08.2015.

15. All the above said facts show that the respondents had not followed the directions given by this Tribunal in O.A. No. 90/2013 in proper perspective. They have misconstrued the order and exceeded the authority and therefore, the impugned order dated 13.08.2015 is not proper, legal and correct. Hence, it requires to be quashed and set aside by allowing the present O.A.

16. In view of the above said facts and circumstances of the case, the O.A. is allowed. The impugned order dated

13.08.2015 issued by the respondent no. 2 is quashed and set aside.

The respondents are directed to decide the issue regarding regularization of the absentee period of the applicant for the period from 23.04.1990 to 23.08.2009 and then to consider the request of the applicant for pension and pensionary benefits, if admissible in view of the Rules and regulations therefor, particularly the provisions of Rule 47 of the Maharashtra Civil Services (Pension) Rules, 1982 as directed by this Tribunal in O.A. No. 90/2013 within a period of two months from the date of this order. The said order be communicated to the applicant in writing.

There shall be no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**