

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 367 OF 2017

DISTRICT: LATUR

**Smt. Aruna Ganpatrao Suryawanshi,)
@ Aruna Prakash Jadhav,)
Age: 58 years, Occu. : Service,)
R/o. Shital Niwas, AUSA Road, Driver)
Colony, Dist. : Latur.)**

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,)
Through its Secretary,)
Medical Education and Drugs)
Department, Mantralaya,)
Mumbai-32.)**
- 2) **The Director of Medical)
Education and Research,)
Maharashtra State, Mumbai)**
- 3) **The Dean,)
Dr. Shankarrao Chavan Govt.)
Medical College and Hospital,)
Nanded.)**
- 4) **The Dean,)
Government Medical College and)
Hospital, Latur.)**

.. **RESPONDENTS**

APPEARANCE : Ms. Preeti R. Wankhade, learned Advocate for
the Applicant.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the Respondents.

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

ORDER**(Delivered on this 29th day of November, 2017.)**

1. The applicant has challenged the impugned communication dated 1.2.2017 issued by the respondent No. 2 to the extent of not treating the period from 18.11.2015 to 23.06.2016 as Compulsory Waiting Period and prayed to direct the respondents to treat the said period as Compulsory Waiting Period under Rule 9 (14) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and to pay her full pay and allowances for the said period by filing the present Original Application.

2. The applicant entered in the Government service as Staff Nurse on 25.03.1982. She was promoted as In-charge Sister on 15.07.1986. Thereafter she was promoted to the cadre of Assistant Matron on 6.5.2013 and was posted at Government Medical College and Hospital, Latur. She is due to retire on superannuation on 31.08.2017.

3. On 9.6.2015, she was transferred from Latur to Nanded before completion of her statutory tenure of 3 years on the said post at Latur. Therefore, she has filed O.A. No. 357/2015 before this Tribunal and challenged the transfer order dated 9.6.2015 issued by the respondent No. 1. This Tribunal was

pleased to issue notices before admission and no interim relief had been granted in her favour. Thereafter, the applicant had reported at Dr. Shankarrao Chavan Government Medical Hospital, Nanded on 15.09.2015 for joining on the post of Assistant Matron. But that time all the three posts of Assistant Matron at Nanded had been occupied and there was no vacancy to accommodate her and therefore, respondent No. 3 informed the said fact to respondent No. 2 accordingly on the same day i.e. on 15.9.2015. Thereafter, respondent No. 1 had issued another transfer order in the month of November, 2015 and transferred one of the employees from Nanded to Latur and posted her at Nanded. The said order had not been served on her and therefore, she could not be able to join her posting at Nanded. There was no fault on her part. Thereafter, she joined her posting at Nanded as Assistant Matron on 24.6.2016. She was kept in hanging position from 15.09.2015 to 23.06.2016 by the respondents. Therefore, the said period can be treated as Compulsory Waiting Period, but the respondents had not taken decision on their own. Therefore, she has filed application dated 22.8.2016 to treat the said period as Compulsory Waiting Period. The respondent No. 3 has submitted a proposal to respondent No. 2 by giving incorrect information that the applicant had not joined her duties at Nanded in spite of communication/letter dated 16.3.2016 sent to

her. It is her contention that she had no knowledge about the communication dated 16.3.2016 and the respondent Nos. 3 and 4 had not given copy of it to her.

4. On 1.2.2017, the respondent No. 2 was pleased to issue a letter thereby partly rejecting the proposal submitted by the respondent No. 3 and treated her absentee period from 15.9.2015 to 17.11.2015 as Compulsory Waiting Period and the period from 18.11.2015 to 23.06.2016 has not been treated as Compulsory Waiting Period. It is her contention that the said order/communication is against the provisions of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and therefore, the same is not maintainable. It is her contention that the said period ought to have been treated as Compulsory Waiting Period, as she could not able to join her posting at Nanded due to the mistake of the respondents, as there was no vacancy at Nanded and new transfer order had not been communicated to her. Therefore, she constrained to file the present Original Application challenging the communication dated 1.2.2017.

5. The respondent Nos. 1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that by order dated 9.6.2015, the applicant was transferred to Nanded from Latur on administrative ground to

meet the exigencies of service and public interest. She was relieved from Latur on 11.6.2015 by the respondent No. 4 i.e the Dean, Government Medical College and Hospital, Latur, but she had not reported and joined the office of respondent No. 3 i.e. the Dean, Shankarrao Chavan Government Medical College & Hospital, Nanded within the joining period. There was vacancy of the post of Assistant Matron on the establishment of respondent No. 3 i.e. the Dean, Nanded when she has been relieved from Latur. The applicant reported to respondent No. 3 on 15.09.2015 for joining duties during pendency of the O.A. No. 357/2015, but there was no vacancy there at that time. The respondents have accommodated one Smt. Vimal Tukaram Bangar (Munde) on the vacant post of Assistant Matron in the office of respondent No. 3 on 17.8.2015, as the applicant had not joined the said posting. On 18.11.2015, one Smt. Dolas Subhadra Chintamani was relieved from the post of Assistant Matron at Nanded, as she has been transferred to Latur. The applicant has been posted at Nanded. The applicant had approached the respondent No. 3 for joining at Nanded on 15.09.2015, but thereafter she has not reported back to the respondent to join at Nanded. The applicant ought to have joined her new posting at Nanded during pendency of the O.A. No. 357/2015, but she had voluntarily remained absent and had not joined her new posting. Therefore, it will not

be legal to treat her absentee period from 15.09.2015 to 23.06.2016 as Compulsory Waiting Period. It is their contention that the applicant has been informed about her subsequent transfer order by communication dated 16.03.2016, but she has not joined her duties at Nanded.

6. It is their contention that the respondent No. 2 has approved the period from 15.09.2015 to 17.11.2015 (64 days) as Compulsory Waiting Period, as there was no vacant post at Nanded. But the applicant had not joined her new posting. Therefore, her absentee period from 18.11.2015 to 23.06.2016 has not been treated as Compulsory Waiting Period and accordingly, impugned communication dated 1.2.2017 has been issued. It is their contention that the impugned communication is issued as per the provisions of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 and there is no illegality in it and therefore, they prayed to reject the present Original Application.

7. I have heard Ms. Preeti R. Wankhade, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

8. Admittedly, the applicant was appointed as Staff Nurse on 25.03.1982 and thereafter, she was promoted as In-charge Sister on 15.07.1986. Again she was promoted as Assistant Matron on 6.5.2013 and was posted at Government Medical College and Hospital, Latur. On 9.6.2015, she was transferred from Latur to Nanded before completion of her statutory tenure of 3 years on the said post at Latur. Accordingly, she has been relieved on 11.6.2015 from Latur, but she had not joined her new posting. She has challenged the said transfer order by filing O.A. No. 357/2015 before this Tribunal. Admittedly, no interim relief was granted in favour of the applicant in the O.A. There is no dispute about the fact that the applicant had not joined her new posting at Nanded in view of the transfer order dated 9.3.2015 and therefore, respondent No. 1 has posted one Smt. Dolas Subhadra Chintamani as Assistant Matron at Nanded. Thereafter, on 15.09.2015, the applicant went to join posting as Assistant Matron at Nanded, but the respondent No. 3 could not able to allow her to join on the said post, as there was no vacancy there and this fact has been informed by the respondent No. 3 to the respondent No. 2 on the very day. During the pendency of the O.A. No. 357/2015, the respondent No. 1 issued another transfer order 10.11.2015 transferring Smt. Dolas Subhadra Chintamani as Assistant Matron, Latur from Nanded and maintained the

transfer order of the applicant from Latur to Nanded. The applicant thereafter, amended the O.A. No. 357/2015 and challenged the subsequent transfer order dated 10.11.2015. Thereafter, she joined her posting at Nanded on 23.6.2016. The Original Application No. 357/2015 has been decided by this Tribunal on 9.08.2016 and this Tribunal quashed the transfer orders dated 9.6.2015 and 10.11.2015 and allowed the applicant to continue as Assistant Matron in Government Medical College and Hospital at Latur till completion of her tenure as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Accordingly, the applicant joined the said posting and she filed the application for treating her entire period of absence as Compulsory Waiting Period. But the respondent No. 2 issued impugned order dated 1.2.2017 treated her absentee from 15.09.2015 to 17.11.2015 (64 days) as Compulsory Waiting Period and granted Extraordinary Leave for the period from 18.11.2015 to 23.06.2016 (218 days).

9. Learned Advocate for the applicant has submitted that the applicant was kept in hanging position by the respondent authorities from 15.09.2015 to 23.06.2016. No post of Assistant Matron at Nanded was vacant, when the applicant went to join there on 15.09.2015. He has submitted that the respondents had

not served the order dated 10.11.2015 on the applicant and therefore, there is no knowledge about her transfer to Nanded on vacant post after 15.09.2015. Not only this, but the communication/letter dated 16.03.2016 had never been served on her and therefore, in the absence of communication from the respondents, the applicant cannot be said to be at fault for not joining her duties at Nanded. She has submitted that the applicant joined her posting at Nanded on 24.06.2016, when she learnt about the subsequent transfer order dated 10.11.2015. She has submitted that the initial transfer order dated 9.6.2015 had been quashed by this Tribunal. Since the order was illegal, the applicant had not joined her duties at Nanded and therefore, the applicant cannot be blamed for it and therefore, her absentee during that period can be treated as Compulsory Waiting Period and therefore, impugned order passed by the respondents granting Extraordinary Leave for the period from 18.11.2015 to 23.06.2016 without treating it as Compulsory Waiting Period is against the provisions of Rule 9 (14) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Therefore, she prayed to quash the impugned communication dated 1.2.2017 issued by the respondent No. 2 in that regard.

10. Learned Presenting Officer has submitted that the applicant has been transferred to Nanded from Latur by order

dated 9.6.2015 and at that time, the post of Assistant Matron in Dr. Shankarrao Chavan Government Medical College & Hospital, Nanded was vacant. The applicant without joining new posting remained absent and she approached this Tribunal by filing O.A. No. 357/2015. No interim relief was granted in favour of the applicant in that O.A. Therefore, it was incumbent on the part of the applicant to join her posting at Nanded, but she deliberately avoided to join her posting at Nanded and remained absent. She has submitted that since the applicant had not joined the transferred post at Nanded, the respondents filled that post. Thereafter, the applicant approached the respondent No. 3 i.e. the Dean, Shankarrao Chavan Government Medical College & Hospital, Nanded with a request to allow her to join post on 15.09.2015, but no post was vacant there. Therefore, respondent No. 3 informed the said fact to the respondent No. 2 and thereafter, another transfer order dated 10.11.2015 had been issued by the respondents whereby one Smt. Dolas Subhadra Chintamani had been transferred from Nanded to Latur and the applicant's transfer order has been maintained. She has submitted that the applicant had knowledge about the said order. She has challenged the said order by making amendment in the O.A. No. 357/2015. In spite of that, she intentionally had not joined the post of Assistant Matron at Nanded and remained

absent till 24.06.2016. Meanwhile, communication was sent to her to join her new posting at Nanded, but in spite of that, she had not joined her new posting. She has submitted that this fact shows that the applicant voluntarily and deliberately had not joined her new posting at Nanded and remained absent and therefore, her absentee period from 18.11.2015 to 23.06.2016 had not been treated as Compulsory Waiting Period and Extraordinary Leave was granted to the applicant for the said period. She has submitted that as the applicant was at fault her request to treat the said period as Compulsory Waiting Period has not been considered and accordingly, the impugned order has been passed by the respondent No. 2 which is legal one as per the provisions of Maharashtra Civil Services (General Conditions of Services) Rule, 1981. Therefore, she supported the impugned order and prayed to reject the present Original Application.

11. Original record of O.A. No. 357/2015 had been called for perusal. On perusal of the said record, it reveals that in view of the transfer order dated 9.6.2015, the applicant has been relieved from Latur on 11.6.2015. She had to join her new posting/transferred place at Nanded after enjoying joining period, but she had not joined the said posting and she approached this Tribunal by filing O.A. No. 357/2015 challenging the transfer order dated 9.6.2015. No interim relief was granted to the

applicant in that O.A. Therefore, it was incumbent on the part of the applicant to join her new posting at Nanded, but she deliberately avoided to join the posting at Nanded. Therefore, the respondents have filled up that post by posting another person there. On 15.09.2015, the applicant approached to the respondent No. 3 with a request to allow her to join the posting at Nanded, but there was no vacancy and therefore, respondent No. 3 was not able to allow her to join the post. He has informed the said fact to the respondent No. 2 and thereafter, respondents have issued another transfer order dated 10.11.2015 transferring one Smt. Dolas Subhadra Chintamani from Nanded to Latur and created vacancy for the applicant at Nanded and maintained earlier order of transfer. The applicant has knowledge regarding the said order dated 10.11.2015. She has challenged the said order in O.A. No. 357/2015. She has filed Misc. Application No. 500/2015 in O.A. No. 357/2015 for amendment on 26.11.2015 and sought leave of this Tribunal to amend the O.A. to challenge the order dated 10.11.2015. That Misc. Application was allowed on 26.11.2015. This shows that the applicant had knowledge regarding order dated 10.11.2015 immediately after its issuance. In spite of that, she had not joined her posting at Nanded and remained absent. Lastly on 24.06.2016, she has joined her posting at Nanded. This shows that in spite of the fact that

interim relief was not granted in favour of the applicant in O.A. No. 357/2015, the applicant had not intentionally and willfully joined her posting at Nanded and remained absent. The respondents have rightly treated her absence from 15.09.2015 to 17.11.2015 as Compulsory Waiting Period and she could not able to join her post at Nanded, as no post of Assistant Matron was vacant at Nanded on the establishment of respondent No. 3, when she visited the office of respondent No. 3 on 15.09.2015. But further period from 18.11.2015 to 23.06.2016 has been treated as willful absentee of the applicant and therefore, they granted Extraordinary Leave to her for the said period. This fact shows that the applicant voluntarily remained absent on duty, in spite of the service of the subsequent transfer order dated 10.11.2015 till 24.06.2016. The applicant was at fault and therefore, the said period cannot be treated as Compulsory Waiting Period in view of the provisions of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

12. Learned Presenting Officer has placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **State of Bihar and others Vs. Kripa Nand Singh and another** reported in **(2014) 14 Supreme Court Cases 375 in Civil Appeal No. 6692 of 2014, decided on July 23, 2014**, wherein the respondent was appointed as teacher vide order dated

5.2.1986 and directed to join duties within 21 days. He reported for duty on 24.2.1986 but was not allowed to join due to lack of vacancy. He waited for five years to get another posting but made no representations during the said period for joining duty at any other place. Therefore, it was held that his conduct shows that he was at fault and he should have brought the matter to the notice of the higher authorities and sought for a posting in any other place, so as to save his appointment. Therefore, the Hon'ble Apex Court has set aside the judgment of Hon'ble High Court confirming that the respondent was entitled to salary for the said period.

13. I have no dispute about the settled legal principles laid down therein. Principles laid down in the said citation is most appropriately applicable in the instant case also as the applicant in this case had not joined her duties in spite of the fact that the vacancy had been created at Nanded for her by transferring one Smt. Dolas Subhadra Chintamani from Nanded to Latur by order dated 10.11.2015. Not only this, but she had not made attempt to approach her higher authorities seeking directions for her joining at Nanded, since there was no vacancy when she approached with the respondent No. 3 on 15.09.2015. On the contrary, she deliberately remained absent on duty. Her conduct shows that she voluntarily remained absent on duty and she was at fault.

Therefore, she is not entitled to claim that the said period may be treated as Compulsory Waiting Period. The respondents have rightly considered the said aspect and rejected the claim of the applicant by treating her absentee period from 18.11.2015 to 23.6.2016 as Extraordinary Leave and passed impugned communication dated 1.2.2017. There is no illegality in the impugned communication. Therefore, I do not find merit in the present O.A. Consequently, O.A. deserves to be dismissed.

14. In view of the above discussions in foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

DATE : 29.11.2017.

PLACE : AURANGABAD.

KPB/S.B. O.A. No. 179 of 2017 BPP 2017 Compulsory Waiting Period