

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 179 OF 2017

DISTRICT: AURANGABAD

Smt. Vidya D/o Babarao Eghare,)
Age: 35 years, Occu. : Service,)
R/o. Plot No. 71, Jyoti Nagar,)
Aurangabad, Tq. & Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Women and Child Development)
Department, Mantralaya,)
Mumbai-32.)
(Copy to be served on C.P.O.)
Maharashtra Administrative)
Tribunal Bench at Aurangabad.)

2) **The Commissioner,**)
Integrated Child Development)
Services Scheme, Maharashtra)
State, Raigad Bhavan, Bekepur,)
Mumbai – 400614.)

3) **The Deputy Commissioner,**)
Women and Child Development,)
Aurangabad Division, A'bad.)

.. **RESPONDENTS**

APPEARANCE : Shri S.P. Dhoble, learned Advocate holding for
Shri N.L. Choudhari, learned Advocate for the
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, learned
Presenting Officer for Respondents.

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

ORDER

(Delivered on this 20th day of November, 2017.)

1. The applicant has sought direction of this Tribunal to the respondents to grant salary for the period from 1.6.2014 to 10.02.2015 by filing present Original Application.
2. The applicant was initially appointed as Mukhya Sevika under Child Development Project Office, Beed. She was transferred from Beed to Aurangabad on administrative ground vide order dated 31.05.2010. On 19.05.2014, the applicant was transferred from Aurangabad to Beed before completion of her normal tenure of six years at Aurangabad. Therefore, she has filed O.A. No. 310/2014 before this Tribunal challenging the transfer order dated 19.05.2014. The O.A. came to be decided on 6.2.2015. The Tribunal allowed the O.A. and quashed and set aside the transfer order dated 19.05.2014 and relieving letter dated 29.05.2014.
3. In pursuance of the said order, the respondent No. 3 issued order dated 11.2.2015 and directed the applicant to join at the vacant place of one Smt. Yamuna Khillare at Aurangabad. Accordingly, she joined the services on the very day.
4. On 23.02.2015 and 18.03.2015, she has submitted request applications with the respondents for disbursement of

salary for the period from 1.6.2014 to 10.02.2015, as she had not joined her transfer place, as the transfer order was illegal. The respondents had not decided her applications. Therefore, she approached this Tribunal by filing O.A. No. 516/2015. This Tribunal by order dated 18.02.2016, decided the O.A. and directed the respondents to decide the applications filed by the applicant within stipulated time. Accordingly, the respondents have passed order dated 11.5.2016 and rejected her applications on the ground that she was absent on duty during the period from 1.6.2014 to 10.02.2015 and therefore, she is not entitled to get salary on the principle "No Work No Payment".

5. The applicant then made application dated 4.6.2016 with the respondents and requested to consider her request for payment of salary for the said period. But the respondents have not decided the same and therefore, she approached this Tribunal by filing the present Original Application and sought direction to the respondents to disburse the salary for the said period to her.

6. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. They have not disputed the fact about date of joining of the applicant and transfer from Beed to Aurangabad in the year 2010 and

thereafter, again from Aurangabad to Beed in the year 2014. They have not disputed the fact about filing of the different O.As. by the applicant before this Tribunal and decisions therein. It is their contention that they have decided the applications filed by the applicant as per the directions given by this Tribunal and rejected the prayer of the applicant on the basis of rule "No Work No Payment", as the applicant remained absent during the period from 1.6.2014 to 10.02.2015 and she had not joined her new posting at the transferred place. It is their contention that the said period was considered as Extraordinary Leave and accordingly, Extraordinary Leave was sanctioned by order dated 11.05.2016 in view of the Rule 63(6) of the Maharashtra Civil Services (Leave) Rules, 1981. It is their contention that the applicant is not entitled to get salary and allowances during the absenteeism period, as she had not joined at her transfer place and therefore, the order under challenge passed by the respondent No. 3 is legal one and therefore, they prayed to reject the Original Application.

7. I have heard Shri S.P. Dhoble, learned Advocate holding for Shri N.L. Choudhari, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned

Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

8. Admittedly, the applicant was initially appointed as Mukhya Sevika under Child Development Project Office, Beed. Thereafter, she has been transferred from Beed to Aurangabad vide order dated 31.05.2010 on administrative ground. She has been again transferred to Beed from Aurangabad before completion of her normal tenure of posting. She has approached before this Tribunal by filing O.A. No. 310/2014, which came to be disposed of on 6.2.2015 and this Tribunal quashed and set aside the transfer order dated 19.05.2014 and relieving letter dated 29.05.2014. Thereafter, applicant was posted at Aurangabad on the vacant place of one Smt. Yamuna Khillare by order dated 11.2.2015 issued by the respondent No. 3 and accordingly, she joined her new posting on the very day. Thereafter, she moved applications on 23.02.2015 and 18.3.2015 to the respondents and requested to pay salary for the period from 1.6.2014 to 10.02.2015. But the said applications were not decided by the respondents within a reasonable time. Therefore, she approached this Tribunal by filing O.A. No. 516/2015. The said O.A. came to be decided by this Tribunal by order dated 18.02.2016 with a direction to the respondents to decide the

applications moved by the applicant within a stipulated time. Accordingly, the respondent No. 3 had passed the order dated 11.5.2016 and rejected the request of the applicant and granted Extraordinary Leave to the applicant for the period from 1.6.2014 to 10.02.2015 on the principle "No Work No Payment". Thereafter, applicant moved an application dated 4.6.2016 with the respondents and requested for payment of salary for the said period.

9. Learned Advocate for the applicant has submitted that the applicant had challenged the transfer order dated 19.05.2014 in O.A. No. 310/2014 and the said transfer order and relieving order had been quashed by this Tribunal. He has submitted that thereafter, the applicant got new posting in view of the transfer order issued by the respondent No. 3 on 11.02.2015. He has submitted that the applicant had not joined the transferred place in view of the transfer order dated 19.05.2014, though she has been relieved. He has submitted that as the transfer order and relieving order has been quashed, the absenteeism period of the applicant w.e.f. 1.6.2014 to 10.02.2015 can be legalized and same can be treated as duty period and therefore, she is entitled to get salary for the said period. He has submitted that the respondent No. 3 has not considered the said aspect and rejected the request

of the applicant and issued impugned order dated 11.05.2016. He has submitted that the applicant again approached the respondents with a request to pay salary for the said period by filing application dated 4.6.2016, but no decision has been taken by the respondents thereon and therefore, he prayed to allow the present Original Application and direct the respondents to grant salary to the applicant for the period from 1.6.2014 to 10.02.2015.

10. Learned Presenting Officer has submitted that the request of the applicant for payment of salary for the period from 1.6.2014 to 10.02.2015 has been rejected by the respondents by order dated 11.5.2016 on the principle "No Work No Payment". He has submitted that the applicant has not challenged the said order dated 11.5.2016 issued by the respondent No. 3 till today and therefore, the relief sought by the applicant in the present Original Application cannot be granted. She has submitted that the respondent No.3 has rejected the request of the applicant by recording reasons by order dated 11.5.2016 and he granted Extraordinary Leave to the applicant for the period from 1.6.2014 to 10.02.2015 in view of the provisions of Rule 63(6) of the Maharashtra Civil Services (Leave) Rules, 1981. She has further submitted that there is no illegality in rejecting the request of the

applicant to grant salary for the said period, as she had not joined on the transferred place. She has submitted that the applicant willingly remained absent during that period and therefore, she is not entitled to claim salary for that period. Therefore, she prayed to reject the present Original Application.

11. On perusal of the record it reveals that the applicant was relieved on 29.05.2014 in view of the transfer order dated 19.05.2014, which has been challenged by the applicant before this Tribunal by filing O.A. No. 310/2014. No interim relief was granted in that O.A. In spite of that, the applicant had not joined her new place of posting. She remained absent on duty since 1.6.2014 to 10.02.2015. She got new posting on 11.2.2015 in view of the decision of this Tribunal in O.A. No. 310/2014, she had not worked during that period. She had not applied for any leave for the said period. She has claimed salary for that period by filing applications dated 23.2.2015 and 18.3.2015 to the respondents. As the respondents had not taken decision on the said applications, this Tribunal directed the respondents to decide the applications of the applicant while deciding the O.A. No. 516/2015 by its order dated 18.02.2016. Accordingly, respondent No. 3 decided the applications filed by the applicant on 11.5.2016 and rejected the request of the applicant to grant salary of the

said period by recording reasons. The respondent No. 3 has rejected the request of the applicant on the rule "No Work No Payment". The said order dated 11.5.2016 passed by the respondent No. 3 has not been challenged by the applicant before the competent forum till today. On the contrary, she moved an application dated 4.6.2016 and reiterated her earlier request to grant salary for the said period. All these facts show that the applicant deliberately had not joined the duty during the said period. No doubt, the applicant has challenged the transfer order dated 19.05.2014 by filing O.A. No. 310/2014 in this Tribunal, but no interim relief in her favour had been granted in the said O.A. Therefore, it is bounden duty of the applicant to join her new posting, but she had not joined the duty. She deliberately and intentionally remained absent on duty. She had not rendered service during that period. Since there is no work done by the applicant during that period, she cannot claim salary for the said period as of right. It is also pertinent to note that the applicant had not applied for any admissible leave for the said period. Therefore, the respondent No. 3 has granted Extraordinary Leave to the applicant for the said period by passing order dated 11.5.2016. The applicant has not challenged the said order and therefore, she cannot claim salary for the said period. Therefore, directions as sought by the applicant cannot be granted. There is

no merit in the present Original Application. Consequently, it deserves to be dismissed.

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

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 179 of 2017 BPP 2017 salary and allowances