

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.824/2016

DISTRICT: - OSMANABAD

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Dr. Asha d/o. Apparao Kadam,  
Age : 42 years, Occu. : Service,  
R/o. Sub-District Hospital,  
(Trauma) Care Centre, Omarga,  
Tq. Omarga, Dist. Osmanabad.

...APPLICANT

**V E R S U S**

1) The State of Maharashtra,  
Through its Secretary,  
Health Department,  
Mantralaya, Mumbai-32.

2) Director Health Department,  
Mumbai.

3) The Deputy Director of Health,  
Latur, Dist. Latur.

4) Chief Executive Officer,  
Zilla Parishad, Osmanabad.

5) The District Health Officer,  
Osmanabad, Dist. Osmanabad.

...RESPONDENTS

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APPEARANCE :Shri Shamsundar Patil, Advocate holding  
for Shri R.D.Khadap, Advocate for  
Applicant.

:Smt. Deepali Deshpande, Presenting  
Officer for respondents.

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CORAM : B. P. Patil, Member (J)

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DATE : 25<sup>th</sup> September, 2018  
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**ORAL ORDER**  
**(Delivered on 25<sup>th</sup> Day of September, 2018)**

1. By filing the present O.A., the applicant has prayed to direct the respondents to give her benefits of increments from the date of her initial appointment on ad-hoc basis i.e. from 06-10-2001.

2. It is contention of the applicant that she was appointed as Medical Officer on ad-hoc basis by order dated 06-10-2001 by the respondents. Thereafter, she has been continued in service from time to time. It is her contention that she has been regularized in service on 11-02-2009 as per notification issued by the respondents on 02-02-2009 by way of one time absorption. Since the date of her absorption in service i.e. from 11-02-2009 she has been given benefits of annual increments but the respondents had not given her benefits of annual increments from the date of her initial appointment on ad-hoc basis. It is her contention that the Tribunal has extended the said benefits to the similarly situated persons appointed on ad-hoc basis in various cases.

3. It is her contention that the decision given by this Tribunal extending benefits of annual increments to other similarly situated employees was challenged by the Government before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing Writ Petition No.720/2006 & other Writ Petitions but the Hon'ble High Court has dismissed the said Writ Petition on 27-11-2008 and confirmed the view taken by the Tribunal. It is her contention that the Government challenged the order of Hon'ble High Court before the Hon'ble the Apex Court by filing Special Leave to Appeal (Civil) No. C.C. 18902-18915/2010 but the Hon'ble Apex Court has dismissed the same on 02-02-2011. It is her contention that as per the Maharashtra Civil Services (Pay) Rules, she is entitled to get yearly increments from the date of her initial appointment but the respondents had not granted the same to her, and therefore, she has approached this Tribunal.

4. Respondent nos.1 to 3 have resisted the contentions of the applicant by filing their affidavit in reply. They have admitted the fact that the applicant was initially appointed as Medical Officer on ad-hoc

basis purely on temporary basis by the Director, Health Services, Mumbai by order dated 06-10-2001 for a period of 4 months and posted her at Trauma Care Centre, Tq. Omarga, Dist. Osmanabad on the terms and conditions mentioned in the said appointment order. It is their contention that the services of the applicant were continued with technical breaks till the date of her one time absorption in service by Government Notification dated 02-02-2009. It is their contention that as per Clause 4(vii) of the said notification dated 02-02-2009, the service rendered on ad-hoc basis by the Medical Officers prior to their absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme. It is their contention that the applicant is not entitled for condonation of technical breaks as well as the benefits of annual increments during her earlier temporary services in view of Rule 4(vii) of the notification dated 02-02-2009. It is their contention that as per Maharashtra Civil Services (Pay) Rules, annual increments are admissible after completion of one year's service from the date of regular appointment

i.e. from 11-02-2009. It is their contention that the regular increments have been granted to the applicant since her regular appointment in view of the Maharashtra Medical and Health Services Group-A (One Time Absorption of Medical Officers Appointed on Ad-hoc basis in Maharashtra) [Special] Rules, 2009. It is their further contention that the applicant is relying on the earlier decision rendered by this Tribunal and claiming the same relief on the ground of parity. They have admitted that Writ Petitions filed before the Hon'ble High Court against the order of the Tribunal are dismissed.

5. It is their further contention that the Hon'ble the Apex Court in C.A.No.1413/2013 decided on 28-07-2004 as well as in C.A.No.7744/1997 decided on 18-02-2003 has held that temporary and ad-hoc services cannot be regularized and on the basis of said judgment General Administration Department (GAD), Government of Maharashtra has issued Circular dated 22-08-2005 and decided that the ad-hoc services cannot be regularized although the employees have worked for many years. It is their contention that as the applicant has been regularized w.e.f. 11-02-2009

she is not entitled to get increments for earlier services rendered by her on ad-hoc basis. Therefore, the respondents have prayed to dismiss the O.A.

6. I have heard Shri Shamsundar B. Patil learned Advocate holding for Shri R.D.Khadap learned Advocate for the applicant and Smt. Deepali Deshpande learned Presenting Officer for respondents. Perused documents placed on record by the parties.

7. Admittedly, initially the applicant was appointed as Medical Officer on Ad-hoc basis by order dated 06-10-2001 for a certain period. Thereafter, she has been continued in service giving technical breaks in her service. She worked on ad-hoc basis till regularization of her service. Admittedly, the Government has regularized services of the Medical Officers who were serving on ad-hoc basis on the basis of Special Rules of 2009. Admittedly, the applicant has received annual increments regularly after her regularization in service.

8. Learned Advocate for the applicant has submitted that this Tribunal has earlier decided the issue involved in the matter and granted annual

increments to the Medical Officers appointed initially on ad-hoc basis and absorbed in service in view of Special Rules of 2009. He has submitted that this Tribunal has granted benefits with annual increments to those medical officers for the tenure of their ad-hoc service. He has submitted that decision of the Tribunal rendered in various cases has been challenged by the Government before the Hon'ble High Court of Judicature of Bombay Bench at Auranabad by filing Writ Petitions but the Writ Petitions came to be dismissed on 27-11-2008. Said decision was challenged by the Government before the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No. C.C. 18902-18915/2010 but Hon'ble the Apex Court dismissed the said civil applications on 02-02-2011. He has submitted that since the issue has been settled up to the level of Hon'ble the Supreme Court, there is no need to enter into merits of the case and on the basis of decisions of the Tribunal, Hon'ble High Court and Hon'ble the Supreme Court, benefits have to be extended to the applicant.

9. In support of his claim, applicant has placed reliance on the judgment of Tribunal in

R.A.No.38/2015 in O.A.No.64/2013 and others delivered on 02-05-2016 as well as the judgment of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No.772/2016 & Other W.Ps. in the case of State of Maharashtra and Others V/s. Siddheshwar Ramrao Mundhe decided on 23-11-2017. He has submitted that since the similar relief was granted to the similarly situated Medical Officers, the applicant is entitled to get said benefits, and therefore, he prayed to allow the O.A.

10. Learned P.O. has submitted that in view of the Special Rules of 2009, the applicant has been absorbed in service and as per Rule 4(vii) of the said rules, applicant is not entitled to get benefits of increments regarding her earlier service rendered on ad-hoc basis. She has fairly admitted about the decision rendered by the Tribunal in which this Tribunal has extended the said benefits to the similarly situated medical officers and the decision is confirmed till the Hon'ble the Supreme Court.

11. On perusal of the record, more particularly, judgment produced on record by the learned Advocate



for the applicant it reveals that similarly situated medical officers had approached this Tribunal seeking same relief and similar relief was granted to them by this Tribunal in various matters. Said decision has been challenged by the Government before the Hon'ble High Court by filing various Writ Petition but those Writ Petitions were dismissed. Thereafter the State had filed Special Leave to Appeal (Civil) No. C.C. 18902-18915/2010 before the Hon'ble the Apex Court and challenged the judgment of the Hon'ble High Court but Hon'ble the Apex Court dismissed the said special leave to appeal on 02-02-2011. It means that the judgment delivered by the Tribunal has been upheld up to the Hon'ble the Apex Court.

12. Since the similar relief has been granted by this Tribunal to the similarly situated medical officers, in my opinion, applicant is also entitled to get similar benefit but the respondents have not considered her case positively in proper perspective. On perusal of the judgments produced on record it reveals that these respondents have raised similar objections for not extending benefits to the applicant in earlier O.As. filed

by the similarly situated Medical Officers but their contentions were not accepted.

13. After considering submissions of both sides and various rules, Division Bench of this Tribunal had held that there is no illegality in extending the benefits and granting increments to those applicants. The said view and decision of the Division Bench of this Tribunal is binding on this Bench. Therefore, I do not find substance in the submissions made by the learned P.O. in that regard. The applicant is entitled to get benefits as granted to the similarly situated Medical Officers as per the decision of the Division Bench of the Tribunal which has been confirmed by the Hon'ble High Court and also by the Hon'ble Supreme Court. The case of the applicant is squarely covered by the earlier decisions of this Tribunal, Hon'ble High Court and Hon'ble Supreme Court, the applicant is also entitled to get the same relief. Therefore, the present O.A. deserves to be allowed.

14. In view of the above discussion, O.A. stands allowed. Applicant is held eligible to get annual increments of her earlier services on ad-hoc basis.

Respondents are directed to grant benefits of annual increments to the applicant from the date of her initial appointment i.e. from 06-10-2001. No order as to costs.

**MEMBER (J)**

**Place: Aurangabad  
Date : 25-09-2018.**

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