

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.323/2017

DISTRICT: - DHULE

Shri Vikas s/o. Atmaram Mali,
Age : 54 years, Occu. : Service,
R/o. Dhule, Tq. & Dist. Dhule.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
- 2) The Settlement Commissioner & Director,
the land Record, Pune.
- 3) The Deputy Director of Land Record,
Nashik Division, Nashik.
- 4) The Urban Land Survey Officer,
Dhule.
- 5) The District Superintend of Land Record,
Dhule.
- 6) The Deputy Superintendent of Land Record
Shrigonda, Dist. Ahemdnagar. ...RESPONDENTS

APPEARANCE :Shri S.P.Dhoble Advocate holding for Shri
N.L.Choudhary Advocate for the
Applicant.

:Smt. Resha Deshmukh Presenting Officer
for the respondents.

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

DATE : 13th October, 2017

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J U D G M E N T
[Delivered on 13th day of October, 2017]

The applicant has challenged the impugned orders dated 02-03-2016 passed by respondent no.3 Deputy Director of Land Records, Nashik Division, Nashik granting 98 days extraordinary leave to the applicant for his absence w.e.f. 27-12-2014 to 03-04-2015 and the order dated Nil-11-2016 bearing outward no.13484 passed by the respondent no.2 Settlement Commissioner and Director of Land Records, Pune rejecting his appeal challenging the order dated 02-03-2016 by filing the present O.A.

2. The applicant has joined services of the respondents w.e.f. 03-03-2000 on the post of Surveyor on the establishment of Deputy Superintendent of Land Records, Shirpur. He has been transferred as Shirastedar in the office of Deputy Superintendent of Land Records, Shrigonda on promotion by order dated 23-12-2014. Accordingly, he has been relieved on 26-12-2014 to join his new posting. He had to join his new posting on or before 04-01-2015 in the office of respondent no.5 but he fell ill, and therefore, he was advised to take rest. He moved an application

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and prayed to grant medical leave w.e.f. 01-01-2015 to 31-01-2015. He, thereafter, had not recovered from his illness, and therefore, he made applications from time to time for extending medical leave up to 14-03-2015.

3. In the meanwhile, respondent no.3 had issued show cause notice dated 02-03-2015 and called upon him to explain as to why action should not be initiated against him for not joining the post of Shirastedar in the office of respondent no.5. The applicant had given reply to the said authorities on 13-03-2015 mentioning his ill-health and prayed to drop the disciplinary action against him. On 01-04-2015 respondents issued the order and modified the earlier order and posted him as Head Clerk in the office of respondent no.4 on promotion. Accordingly, the applicant joined the said post on 04-04-2015. Respondent no.6 forwarded his applications for granting medical leave to the respondent no.4 on 17-04-2015. It is contention of the applicant that he ought to have filed the application for granting medical leave for the period from 27-12-2014 to 03-04-2015 since he was relieved on 26-12-2014. Likewise, he ought to have applied for medical leave for the

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period 15-03-2015 to 03-04-2015 as he joined his duty with the respondent no.4 on 04-04-2015. Therefore, he filed fresh application for granting medical leave for the period commencing from 27-12-2014 to 03-04-2015. Respondent no.4 forwarded the said application to the respondent no.5. Respondent no.5 called necessary information from the respondent no.4 from time to time. Respondent no.4 submitted the information to the respondent no.5.

4. On 02-03-2016, respondent no.3 had sanctioned leave without pay (extraordinary leave) of 98 days to the applicant on the ground that the applicant willingly remained absent from the duty. Being aggrieved by the said order, the applicant filed an appeal before the respondent no.2 on 30-03-2016 and prayed to cancel the order dated 02-03-2016. But the respondent no.2 without considering his contentions rejected the appeal vide order dated Nil-11-2016 having outward no.13484. It is the contention of the applicant that the respondent no.2 as well as the respondent no.3 have not considered his contentions while granting leave without pay for 98 days. It is his

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contention that orders passed by both the respondents are not legal, and therefore, he prayed to quash the said orders by allowing the present O.A. and also prayed to grant the earned leave for the said period and prayed to issue directions to the respondents to pay salary of 98 days.

5. Respondent nos.1 to 5 have filed their affidavits in reply and denied the contentions of the applicant. It is their contention that the applicant was serving as Maintenance Surveyor in Shirpur office and he was promoted as Shirastedar and posted at Shrigonda, Dist. Ahmednagar but the applicant had not joined his promotional post at Shrigonda though he had been relieved from the office of Shirpur. It is their contention that the applicant was insisting them to post him in Jalgaon or Nashik District as Shrigonda is at the distance of about 400 to 450 k.m. from his residence at Jalgaon. It is their contention that the applicant deliberately avoided to join the promotional post at Shrigonda, District Ahmednagar and filed the applications to grant medical leave without joining the promotional post at Shrigonda. It is their contention that the applicant has not obtained prior

permission of his higher authorities before proceeding on leave. The act of the applicant amounts misbehavior and misconduct. It is their contention that the applicant cannot claim leave as of right. Respondents have rightly rejected his leave application for medical leave as the applicant willingly and deliberately remained absent. He joined at Dhule after modification of the earlier transfer order. It is their contention that there is no illegality in the impugned orders issued by them. Therefore, they prayed to reject the O.A.

6. I have heard Shri S.P.Dhoble Advocate holding for Shri N.L.Choudhary Advocate for the Applicant and Smt. Resha Deshmukh Presenting Officer for the respondents. I have perused documents placed on record by the parties.

7. Admittedly, the applicant joined services of the respondents w.e.f. 03-03-2000 as Maintenance Surveyor in the office of Deputy Superintendent of Land Records, Shirpur. Admittedly, the applicant was promoted and transferred by the order on 23-12-2014 from Shirpur to Shrigonda, Tq. Ahmednagar. It is not much disputed that

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the applicant has been relieved from the office of Deputy Superintendent of Land Records, Shirpur on 26-12-2014 to join his new posting at Shrigonda. Admittedly, the applicant was to join the new posting on or before 04-01-2015 but he applicant had not joined the said posting. The applicant submitted application for leave on medical ground from 01-01-2015 to 31-01-2015 without joining new posting, and thereafter, again he moved applications for extension of medical leave for the period 01-02-2015 to 28-02-2015, 01-03-2015 to 07-03-2015 and 08-03-2015 to 14-03-2015. Admittedly, in the meanwhile, respondent no.2 issued show cause notice date 02-03-2015 and called explanation from the applicant as to why action should not be taken against him for not joining on promotional post at Shrigonda. Applicant had replied the said notice on 13-03-2015 explaining about his illness and prayed to drop the disciplinary action. It is not much disputed that on 01-04-2015, respondent no.3 issued an order modifying the earlier order of transfer of promotion of the applicant and promoted him on the post of Head Clerk in the office of respondent no.4 at Dhule. Thereafter, the applicant joined the office of respondent no.4 on

04-04-2015. It is not much disputed that the applicant had not moved the application for leave of any kind for the period commencing from 27-12-2014 to 31-12-2014 and 15-03-2015 to 03-04-2015, initially. But thereafter, he moved one application for granting medical leave for the entire period commencing from 27-12-2014 to 03-04-2015 on 13-04-2015.

8. Learned Advocate of the applicant has submitted that the applicant could not able to join his promotional post at Shrigonda because of his illness and Doctor had advised him to take rest. He submitted an application for medical leave and again submitted applications for extension of medical leave. He has argued that in all 189 days' earned leave and 97 days' half pay leave/commuted leave were at the credit of the applicant. He has argued that due to the compelling situation, the applicant could not be able to join the duty and therefore he proceeded on leave. The respondent authorities ought to have considered the said facts and granted commuted leave or earned leave to the applicant for the said period of 98 days. He has submitted that the applicant was suffering from heart disease and

nobody was there at Shrigonda to take care of him. Therefore, he could not join the posting at Shrigonda and considering the said reasons respondents ought to have allowed his leave applications and to have granted leave admissible to him. He has submitted that the respondent no.2 as well as the respondent no.3 had not considered the said aspect while rejecting his appeal and the application for leave. Therefore, he prayed to allow the O.A. and to quash orders passed by the respondent no.3 and respondent no.2 and also to grant earned leave / medical leave for the said period of 98 days.

9. Learned P.O. has submitted that the applicant had not moved an application for leave and got it sanctioned before proceeding on leave. She has submitted that in view of the provisions of Maharashtra Civil Services (Leave) Rules, an employee cannot enjoy leave as of right. She has submitted that the applicant has been promoted as Shirastedar in the office of Deputy Superintendent of Land Records, Shrigonda by the order dated 23-12-2014. She has argued that the applicant was relieved from the office of Deputy Superintendent of Land Records, Shirpur on

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26-12-2014. Accordingly, the applicant had to join his new posting at Shrigonda but he had not joined the post Shirastedar at Shrigonda and deliberately and intentionally proceeded on leave. She has argued that the leave applications tendered by the applicant have not been received by the office of Deputy Superintendent of Land Records, Shrigonda. She has submitted that all the applications are received by the Deputy Superintendent of Land Records, Shrigonda after joining duty by the applicant on his new posting at Dhule.

10. Learned P.O. has further argued that the applicant has created false records showing that he submitted those applications to respondent no.6. She has argued that the applicant has not moved applications for the period from 27-12-2015 to 31-12-2015 as well as 15-03-2015 to 03-04-2015, initially. Thereafter, he moved an application dated 13-04-2015 for granting medical leave for entire period commencing from 27-12-2014 to 03-04-2015. She has submitted that the applicant had attached fitness certificate issued by the medical officer stating that he was fit to join duty but no certificate of illness was attached by

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the applicant along with the application dated 13-04-2015 therefore, respondent no.3 has rightly rejected the said application. She has submitted that the applicant has not produced medical record to show that he was under treatment during that period he was unable to join duties due to ill-health. Therefore, respondent no.3 has rightly rejected the application of the applicant for granting medical leave and treated the absence period as extraordinary leave. She has further submitted that the respondent no.2 has rightly considered the contentions of the applicant and he found no illegality in the order passed by the respondent no.3, therefore, he rejected the appeal of the applicant. She has submitted that there is no illegality in the impugned order passed by the respondent no.3 and respondent no.2, respectively. Therefore, the respondents prayed to reject the O.A.

11. On perusing documents filed on record, it reveals that the applicant has been relieved from the post of Maintenance Surveyor in the office of Deputy Superintendent of Land Records, Shirpur but he had not joined his promotional posting as Shirastedar in the office

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of Deputy Superintendent of Land Records, Shrigonda, Dist. Ahmednagar on 26-12-2014. He ought to have joined duty in the office of Deputy Superintendent of Land Records, Shrigonda on or before 04-01-2015 but he has failed to join the duty. Instead of that, he sent application for granting medical leave w.e.f. 01-01-2015 to 31-05-2015, and thereafter, medical leave application for extension of leave for the period 01-02-2015 to 28-02-2015, 01-03-2015 to 07-03-2015, 08-03-2015 to 14-03-2015 to the office of Deputy Superintendent of Land Records, Shrigonda, Dist. Ahmednagar.

12. In the meanwhile, respondent no.3 issued show cause notice dated 02-03-2015 to the applicant to show cause as to why action should not be taken against him for not joining on the new posting, to which, the applicant has given reply on 13-03-2015. Thereafter, earlier order dated 23-12-2014 had been modified by the respondent no.3 by order dated 01-04-2015 and the applicant has been promoted as Head Clerk in the office of respondent no.4 at Dhule, and accordingly, he joined the new posting on 04-04-2015.

13. The applicant had not moved any application for grant of leave for the period of 14-03-2015 to 03-04-2015, initially. But, thereafter on 13-04-2017, he filed one more application and prayed to grant medical leave for the entire period commencing from 27-12-2014 to 03-04-2015 and attached the fitness certificate issued by Dr. Nikhil Bahugune dated 06-04-2015, which is at page 42 of the paper book. It does not disclose the disease suffered by the applicant and the date on which he was fit to join his duties. Not only this, but one medical certificate issued by Dr. Bahugune is placed on record at paper book page 44, which was issued by Dr. Bahugune on 27-12-2014 wherein it has been mentioned that the applicant was suffering from Ischemic Heart Disease, and Doctor opined that he had to remain absent on duty for recovery of his health w.e.f. 27-12-2014 to 03-04-2015. Said certificate shows that it has been issued on 27-12-2014 for the period commencing from 27-12-2014 to 03-04-2015. It was issued for the future period. Therefore, it creates suspicion regarding genuineness of the certificate as well as the credibility of the medical officer who issued the certificate. There is nothing on the record to show that the applicant

was advised to take rest for recovery of his health. Therefore, in such circumstances, in my opinion, the said documents have been obtained by the applicant to suit his purpose.

14. It is material to note here that the applicant had avoided to join his duty on promotional post of Shirastedar in the office of Deputy Superintendent of Land Records, Shrigonda, Dist. Ahmednagar on the ground of his ill-health but as soon as his order has been modified and he has been posted at Dhule in the office of respondent no.4 by order dated 01-04-2015, he joined the duty immediately on 04-04-2015 without obtaining fitness certificate from the competent medical officer. He produced the fitness certificate issued by Dr. Bahugune on 06-04-2015, which shows that he collected the said certificate subsequently. These facts show that the applicant had intentionally avoided to join his promotional post at Shrigonda and he deliberately and intentionally remained absent from duty. Cause of ill-health shown by the applicant seems to be not a genuine one. Therefore, respondent no.3 had rightly rejected his application for

granting medical leave and treated the absence period as deliberate absence on the part of the applicant and granted extraordinary leave of said period of 98 days. In these circumstances, in my view, there is no illegality in the impugned order passed by the respondent no.3 on 02-03-2016.

15. Respondent no.2 considered the contentions of the applicant. He has rightly scrutinized the documents on record, and thereafter, rejected the appeal preferred by the applicant by recording reasons. There is no illegality in the order passed by the respondent no.2.

16. The respondent no.3 has rightly granted extraordinary leave to the applicant considering the abovesaid facts. Therefore, no interference is called for in the order passed by respondent no.3 rejecting medical leave of the applicant and granting extraordinary leave for absence period of 98 days. It is evident that the applicant has deliberately avoided to join his new posting under the guise of ill-health. Therefore, respondent nos.2 and 3 have rightly treated his absence period as unauthorized absence and granted extraordinary leave to the applicant. There is no illegality

in the impugned order passed by the respondent no.2 rejecting appeal of the applicant. Therefore, no interference is called for in the orders passed by the respondent no.3 and the respondent no.2, respectively. There is no merit in the O.A. Consequently, it deserves to be dismissed.

16. In view of the above facts and circumstances of the case, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 13-10-2017.