

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.647/2017

DISTRICT: - AURANGABAD

Dr. Sonali d/o. Bhausahab Sayamber,
Age : 36 years, Occu. : Medical Officer,
R/o. C/o. Sub District Hospital Vaijapur,
Tq. Vaijapur, District. Aurangabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai.
- 2) The Director of Health Services,
Aarogya Bhavan Saint George Hospital Campus,
C.S.T., Mumbai.
- 3) The Deputy Director of Health Services,
Aurangabad Circle, Aurangabad.
- 4) The Civil Surgeon,
Civil Hospital, Aurangabad,
Dist. Aurangabad.
- 5) The Medical Superintendent,
Sub-District Hospital, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad. ...RESPONDENTS

APPEARANCE :Shri V.B.Wagh Advocate for the Applicant.
:Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

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

DATE : 9th January, 2018

O R D E R
[Delivered on 9th day of January, 2018]

The applicant has challenged order dated 07-09-2017 issued by the respondent no.5 relieving her from the post of Dental Surgeon, Sub District Hospital, Vaijapur, Tq. Vaijapur, Dist. Aurangabad by filing the present O.A.

2. The applicant has passed BDS examination in the year 2002. She had applied for the post of Dental Surgeon and she was appointed on ad-hoc basis with condition that, her services will be continued till selection of regular candidate by Maharashtra Public Service Commission (MPSC). Accordingly, she had joined the duty as Dental Surgeon, Sub District Hospital, Vaijapur on 01-01-2005. She approached this Tribunal by filing O.A.No.35/2005, which was disposed of on 22-08-2005. The Tribunal had issued directions to the respondents to continue her services until MPSC selected candidate is appointed or for making way to the candidate admitted to the post-graduation or till a regular incumbent is posted in her place. If there is occasion to dispense with the service of ad-hoc appointees, the principle of last come first go should

be followed and for that purpose seniority at the State level shall be followed instead of the District level. It is her contention that her services were continued time to time on ad-hoc basis.

3. Meanwhile, the Government has taken decision for one time absorption of Dental Surgeons. Accordingly, Government had called information from respective authorities. Name of the applicant had been forwarded for regular absorption on the said post. It is averred by the applicant that her services were continued from time to time by the respondent authorities and the proposals were sent in that regard and ex-post facto sanction for continuation of the Dental Surgeons on Ad-hoc basis had been given by the respondent nos.1 and 2. Respondents had released salary to them but annual increments were not released. Therefore, the applicant approached this Tribunal by filing O.A.No.239/2015 for releasing annual increments. The O.A. was allowed and this Tribunal had directed respondents to release increments time to time to the applicant. Order passed by this Tribunal on 09-09-2015 in O.A.No.239/2015 had been challenged by the State Government before the Hon'ble High Court by filing Writ

Petition No.259/2017 but the Writ Petition was dismissed by the Hon'ble High Court.

4. It is averred by the applicant that she is in service since 01-01-2005 continuously and not a single memo has been issued to her. The respondent no.5 had been transferred and posted at Sub District Hospital Vaijapur. He had some prejudice against the applicant. The applicant had requested the respondent no.5 to release her salary due from 01-11-2016 till 17-06-2017 on the basis of order passed by the respondent no.2 on 17-06-2017 but the respondent no.4 has not released the payment.

5. On 07-09-2017, respondent no.5 issued a letter relieving the applicant from the post of Dental Surgeon, Sub District Hospital, Vaijapur on the basis of telephonic message received to him from respondent nos.2 and 4 and directed the applicant to report office of respondent no.2 for further orders. It is her contention that she is a Dental Surgeon, a Group B employee and the respondent no.1 is the competent authority to pass such orders but such order has to be passed in writing. It is her contention that respondent no.2 issued an oral order relieving her from the present post and on the basis of his order, respondent

nos.4 and 5 acted upon. It is her contention that the impugned order issued by the respondent no.5 on the directions given by the respondent nos.2 and 4 is illegal and against the provisions of law. Therefore, she has filed present O.A. and challenged the said order.

6. Respondent nos.2, 4 and 5 have filed their affidavit in reply and resisted contentions of the applicant. They have admitted the fact that the applicant was appointed as Dental Surgeon w.e.f. 01-01-2005 on ad-hoc basis. They have admitted the fact that the applicant filed O.A.No.335/2005 before the Tribunal and this Tribunal passed final order on 22-08-2005 holding that the continuation of the ad-hoc appointment of the applicant shall be subject to satisfactory performance of the applicant. It is their contention that initially order of appointment of the applicant was for a period of 120 days or till regular MPSC selected candidate is appointed whichever is earlier.

7. It is their contention that the applicant failed to provide her service as Dental Surgeon to the patients and her work was not satisfactory. She has not reported on duty for last 3 months. Several memos were issued to her

for her unauthorized absence and for failure to discharge the duties. It is their contention that one delegation in the leadership of Shri J.K.Jadhav (Retired Director of Technical Education) approached the respondent no.2 with complaint regarding unsatisfactory work of the applicant. Respondent no.2 made an enquiry with the Medical Superintendent and after being satisfied, he directed respondent no.4 to relieve the applicant immediately. On the basis of his directions, respondent no.4 directed the respondent no.5 to relieve the applicant from the post of Dental Surgeon. It is their contention that the services of the applicant were continued subject to condition of her satisfactory performance but the performance of the applicant was not satisfactory, and therefore, she has been relieved.

8. It is their contention that the Government by G.R. dated 13-10-2014 decided to regularize the services of the ad-hoc Dentists after interview conducted by the MPSC. It is their contention that MPSC issued advertisement for appointment on the post of Dentist in Group B and in the said process the applicant was disqualified by the MPSC. Therefore, she remained as an ad-hoc Dentist. She has not passed MPSC examination and her services are not

regularized by way of absorption by the Government. Therefore, action taken by the respondent no.2 to relieve her is legal one. On these grounds they have prayed to reject the O.A.

9. I have heard Shri V.B.Wagh learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents. Perused the documents placed on record by both the parties.

10. Admittedly, the applicant was appointed as Dental Surgeon at Sub-District Hospital Vaijapur on ad-hoc basis w.e.f. 01-01-2005. Admittedly, she filed O.A.No.35/2005 before this Tribunal. Said O.A. was disposed of by this Tribunal on 22-08-2005 wherein following order is passed:

"4. The petitioner shall be continued until the MPSC selected candidate is appointed, or for making way for candidate admitted to the post graduation or till a regular incumbent is posted in her place. If there is occasion to dispense with the service of ad-hoc appointees, the principle of last come first go should be followed and for that purpose seniority at the State level shall be followed instead of the District level seniority.

5. We also make it clear that continuance of ad-hoc appointment shall be subject to satisfactory performance."

11. Services of the applicant on ad-hoc basis were continued from time to time. Admittedly, the respondents had not released annual increments to the applicant and other Dental Surgeons. Therefore, the applicant filed another O.A.No.239/2015 before this Tribunal, which was allowed on 09-09-2015. The Tribunal had directed the respondents to release increments to the applicant from time to time. Admittedly, the said order has been challenged by the Government of Maharashtra before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No.259/2017, which was dismissed on 06-02-2017.

12. It is also not much disputed that the Government decided to regularize services of the ad-hoc Dentists subject to approval of the MPSC. Accordingly, her information was forwarded to MPSC for her absorption in the said post. Admittedly, MPSC declared the applicant as not eligible for the appointment on the post of Dental Surgeon. Admittedly, the respondent no.5 Medical Superintendent, Sub District Hospital, Vaijapur issued the impugned order

dated 07-09-2017 on the basis of telephonic message received to him from respondent no.4 Civil Surgeon, Civil Hospital, Aurangabad and respondent no.2 Director, Health Services, Mumbai. Respondents relieved the applicant w.e.f. 07-09-2017 and directed her to join the office of Director, Health Services, Mumbai for further orders. It is not much disputed that till today no written order has been issued by the respondent no.2 in that regard. Admittedly, the applicant is a Group B Medical Officer.

13. Learned Advocate for the applicant has submitted that the applicant is serving as Dental Surgeon continuously in Sub District Hospital, Vaijapur since 01-01-2005. He has submitted that services of the applicant have been continued in view of the order passed by the Tribunal in O.A.No.335/2005. He has submitted that thereafter also the applicant approached this Tribunal by filing O.A.No.239/2015 for releasing her annual increments. He has submitted that Hon'ble Tribunal allowed the O.A. and the said decision was also upheld by the Hon'ble High Court in Writ Petition No.259/2017. He has submitted that because of the litigations filed by the applicant for protecting her rights, the respondents have

grudge against her. Therefore, respondent no.5 in connivance with respondent nos.2 and 4 issued the impugned order relieving the applicant from the post of Dental Surgeon, Sub District Hospital, Vaijapur.

14. Learned Advocate for the applicant has submitted that respondent no.5 issued the said order on the basis of oral directions received from respondent nos.2 and 4 on phone. He has submitted that no written order has been issued by respondent no.2 or respondent no.4 in that regard till today. He has submitted that respondent no.5 has no power or authority to issue such relieving order unless and until the respondent no.2 or the Government issues such order in writing. He has submitted that the salary of the applicant has not been released w.e.f. 01-11-2016 and she made representations to the respondents in that regard. Therefore, the respondents had grudge against the applicant, and consequently, they issued impugned order against the applicant. He has submitted that the impugned order is not an order of transfer and she has not been transferred from Sub District Hospital, Vaijapur but only order relieving her from the post of Dental Surgeon has been issued by the impugned order

and directions were given to her to join office of Director of Health Services, Mumbai i.e. respondent no.2. He has contended that respondent no.5 has relieved the applicant forcibly with the help of Police with an intention to defame the applicant. He has submitted that such steps taken by the respondent no.2, 4 and 5 are illegal, and therefore, he prayed to allow the O.A. and to quash and set aside the impugned order dated 07-09-2017.

15. Learned Advocate for the applicant has further submitted that the respondent no.2, 4 and 5 made a plan to relieve the applicant. He has submitted that the respondent no.4 Civil Surgeon, Aurangabad was on earned leave w.e.f. 04-09-2017 till 29-09-2017 prefixing holidays falling on 2nd and 3rd September, 2017 and suffixing holidays falling on 30-09-2017 and 01-10-2017. He has submitted that on 06-09-2017 the respondent no.2 issued directions to the respondent no.4 on phone though he was not on duty and was not holding charge of the post of Civil Surgeon but he colluded with respondent no.4 and therefore, the respondent no.2 directed the respondent no.5 to issue impugned order of relieving the applicant from the

post of Dental Surgeon, Sub District Hospital, Vaijapur at the instance of the respondent no.2.

16. Learned Advocate for the applicant has invited my attention towards the documents filed at paper book page 127-129 showing that respondent no.4 was on leave at the relevant time. He has submitted that this fact shows that the impugned order has been issued with mala fide intention, and therefore, it is illegal. He has submitted that even if the appointment of the applicant is on ad-hoc basis, the respondents have to follow the due procedure while terminating or relieving the applicant from the said post but no such procedure has been followed by the respondents. Therefore, the impugned order is illegal and on that ground also he has prayed to quash the impugned order.

17. Learned Advocate for the applicant has submitted that neither respondent no.2 nor respondent no.4 has authority to relieve the applicant from her present posting and they have not followed any legal provision for relieving the applicant from her present posting. Therefore, the impugned order is illegal.

18. Learned CPO has submitted that the appointment of the applicant was on ad-hoc basis and her services are

continued subject to satisfactory performance till filling of the post by appointment of regular candidate by the MPSC. He has submitted that this Tribunal had held that appointment of the applicant is subject to her satisfactory performance, and accordingly, disposed of the O.A.No.335/2005 on 22-08-2005. He has submitted that the applicant was not discharging her duties properly. She was not following and obeying the orders of the superior officers. She used to close dispensary during office hours. She remained absent without permission on various occasions, and therefore, notices had been issued to her from time to time by respondent no.5 to show cause as to why disciplinary action should not be initiated against her. But she has not given satisfactory reply to the said notices. He has submitted that delegation under the leadership of one J.K.Jadhav (Retired Director of Technical Education) approached the respondent no.2, Director of Health Services, Mumbai with complaints regarding unsatisfactory work of the applicant. Enquiry was conducted in that regard, and therefore, respondent no.2 directed the respondent no.4 Civil Surgeon to relieve the applicant. Accordingly, respondent no.5 issued the impugned order as per directions of the respondent no.4.

19. Learned CPO has further argued that appointment of the applicant on ad-hoc basis and continuation of her service was subject to satisfactory performance of the applicant as per order of this Tribunal. He has submitted that as there were several complaints against the applicant relating to her unsatisfactory performance, the respondent no.2 Director of Health Service, Mumbai terminated her services and accordingly directed the respondent no.4 Civil Surgeon to issue impugned order of relieving the applicant from that post. He has submitted that there is no illegality in the action taken by the respondent no.2 against the applicant. Therefore, he supported the impugned order.

20. Learned CPO has further submitted that the impugned order is in consequence of termination of services of the applicant and the respondent no.2 has power and authority to terminate the services of the applicant who was appointed on ad-hoc basis, if her services are not found to be satisfactory. He has submitted that accordingly, respondent no.2 terminated services of the applicant and there is no illegality in the said order. Therefore, he prayed to dismiss the O.A.

21. I have gone through the documents on record. On perusal of the same, it reveals that the applicant was initially appointed on ad-hoc basis as Dental Surgeon in Sub District Hospital Vaijapur (previously Rural Hospital, Vaijapur) for 120 days by respondent no.2 Director of Health Services by order dated 30-12-2004 (paper book page 59). Her services were continued in view of the order passed by this Tribunal in O.A.No.335/2005 until MPSC selected candidate is appointed or for making way to a candidate till a regular incumbent is posted in her place.

22. Admittedly, on the date of issuance of the impugned order i.e. on 07-09-2017, the applicant was working as Dental Surgeon in Sub District Hospital, Vaijapur. On perusal of the impugned order (paper book page 34), it reveals that said order has been issued by respondent no.5 quoting reference regarding telephonic messages received from respondent no.2 Director of Health Services and Civil Surgeon, Aurangabad i.e. respondent no.4 received on 06-09-2017. The applicant was relieved on the basis of the said communication/s by the impugned order by respondent no.5 and she was directed to join the office of Deputy Director of Health Services, Mumbai immediately.

The impugned order dated 07-09-2017 is reproduced as under:

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23. On plain reading of the abovesaid order it reveals that it is a simple order relieving the applicant from the post of Dental Surgeon, Sub District Hospital, Vaijapur and to join the office of respondent no.2 at Mumbai. Therefore, by orders dated 11-09-2017, 11-10-2017, and 15-11-2017 by this Tribunal the respondents were specifically directed to file personal affidavit explaining the provisions under which they relieved the applicant. Accordingly, respondent no.2 Dr. Satish Pawar filed his affidavit on 07-10-2017, 13-11-2017 and 08-12-2017 stating that he has directed

respondent no.4 to relieve the applicant as her performance was not satisfactory. Respondent no.4 Dr. G.M.Gaikwad, Civil Surgeon, Aurangabad has also filed his affidavit on 09-10-2017 and 31-10-2017 reiterating the same facts. There was no whisper about the provisions under which directions were given by the respondent no.2 to respondent no.4, and directions given by the respondent no.4 to respondent no.5, to relieve the applicant. It is simply stated that they have relieved the applicant as her performance is not satisfactory. Surprisingly, during the pendency of the O.A. respondent no.4 issued one more order dated 21-11-2017 on the basis of letter issued by the respondent no.2 Dr. Satish Pawar on 16-10-2017 and thereby terminated the services of the applicant with immediate effect but thereafter respondent no.5 had cancelled the order dated 21-11-2017 by another order dated 09-12-2017. Both Dr. Satish Pawar Director of Health Services and Dr. G.M.Gaikwad, Civil Surgeon, Aurangabad were called upon to explain the said fact. In response to it both of them have filed their affidavit/s again on 08-12-2017 and 09-12-2017 respectively, stating that communication dated 16-10-2017 issued by the respondent no.2 to the respondent no.4 has been wrongly interpreted by the respondent no.4 Dr.

Gaikwad, Civil Surgeon, Aurangabad, and therefore, order dated 21-11-2017 terminating services of the applicant had been wrongly issued. Thereafter the order dated 21-11-2017 had been cancelled by respondent no.4 Civil Surgeon by order dated 09-12-2017.

24. On going through the said affidavits and documents on record it is crystal clear that no termination order terminating services of the applicant has been issued by the respondent no.2 till today. But at the time of final hearing of the matter, learned CPO has made statement at Bar that on the basis of instructions received to him from Shri Gaikwad, Civil Surgeon, Aurangabad that respondent no.2 Dr. Satish Pawar, Director of Health Services, Mumbai has informed Shri Gaikwad that the impugned order issued by respondent no.5 is the termination order. Learned CPO has submitted that by treating said impugned order as termination order of the applicant, the matter may be decided.

25. From this, one can arrive at a conclusion that respondent no.2 Dr. Satish Pawar, Director of Health Services as well as the respondent no.4 are changing their stands from time to time. Respondent no.2 has finally

come up with a case that the impugned order is a termination order of the applicant's services. Respondent no.2 Director of Health Services is the appointing authority for the applicant. He is empowered to terminate services of the applicant by following due process of law as per rules. But in the instant case, respondent no.2 Dr. Satish Pawar has not followed the procedure and due process of law while terminating the services of the applicant or while issuing the telephonic directions to the respondent no.4 and 5 in that regard. The impugned order has been issued on 07-09-2017 on the basis of oral directions given by the respondent no.2 and 4 to the respondent no.5 on telephone. Till today, no written order in that regard has been issued by the respondent no.2 which is appointing authority of the applicant.

26. Now, respondent no.2 states that the impugned order is issued as consequence of termination of service of the applicant. But no written termination order is coming before the Tribunal till today. Therefore, in the absence of written termination order, it cannot be said that the applicant has been terminated from service by impugned order dated 07-09-2017.

27. It is also material to note that respondent no.2 has come up with a case that services of the applicant have been terminated as she was appointed on ad-hoc basis and accordingly impugned order dated 07-09-2017 has been issued. Had it been a fact that the applicant has been terminated by the impugned order dated 07-09-2017 then there was no necessity to the respondent no.2 to direct the respondent no.4 again to terminate services of the applicant and to report the compliance by sending letter dated 16-10-2017. But fact is different. Respondent no.2 again directed the respondent no.4 to report compliance in that regard by communication dated 16-10-2017. Therefore, respondent no.4 issued the termination order dated 21-11-2017 but he had withdrawn the said order of termination and canceled it by order dated 09-12-2017. All these facts show that the impugned order is not an order terminating services of the applicant. It is only an order relieving the applicant from the post of Dental Surgeon, Sub District Hospital, Vaijapur.

28. It is also material to note that by the impugned order the applicant was directed to join the office of the respondent no.2 Director, Health Services, Mumbai,

immediately. Had it been a fact that as per the contention of the respondent no.2 it is a termination order then in that case no such direction to the applicant to join office of the respondent no.2, Director, Health Services, Mumbai is needed but the fact is that the applicant was directed to join office of the Director, Health Services by the impugned order. This fact itself falsifies the contention of the respondent no.2 that the applicant's services had been terminated by the impugned order.

29. On going through the documents on record and events took place during the course of the hearing of the O.A., it reveals that the respondent no.2 Dr. Satish Pawar, Director of Health Services acted mala fide, vindictively and arbitrarily and had given directions to the respondent no.4 Dr. Gaikwad, Civil Surgeon, Aurangabad on telephone who was on leave on that date to relieve the applicant immediately, and accordingly, respondent no.5 issued the impugned order dated 07-09-2017. The applicant is a Group B Medical Officer. While terminating services of the applicant or while relieving the applicant from the present post, it is expected that written order has to be issued by respondent no.2 who is responsible officer and appointing

authority but no such written order has been issued by the respondent no.2 till today. This shows that the respondent no.2 has acted in arbitrary manner. He has no regards towards procedure and provisions of law. He acted high handedly while giving alleged directions to respondent no.4 to terminate services of the applicant and to relieve her immediately.

30. It is material to note here that ample opportunities were given to the respondent no.2 to explain the provision under which the impugned order has been issued and the procedure followed by him but he has not availed those opportunities and also had not given satisfactory explanation in that regard. He has changed his earlier stand that the applicant has been relieved and has come up with a new case that the impugned order is termination order. All these facts are sufficient to show that the respondent no.2 Director of Health Services acted without following provisions of law and illegally directed the respondent no.4 to issue order of relieving the applicant on telephone. This shows that he has no regards to the provisions of law and procedure to be adopted while

discharging duty as Director of Health Services and being an administrative head.

31. In view of this, in my opinion the impugned order is illegal, and therefore, same requires to be quashed and set aside by allowing the O.A.

32. Before parting with the matter, it is necessary to mention here that respondent no.2 has acted irresponsibly, arbitrarily and high handedly while giving directions to the respondent no.4 on phone to relieve the applicant. He has taken the action against the applicant with mala fide intention and vindictively. By oral orders he has directed respondent nos.4 and 5 to allegedly terminate services of the applicant and to issue relieving order. Therefore, it is just and proper to direct respondent no.1 Secretary, Health Services to make enquiry in the matter and in the conduct of respondent no.2 i.e. Director of Health Services and to take appropriate action against the respondent no.2.

33. In view of the above discussion, O.A. is allowed. Impugned order dated 07-09-2017 relieving the applicant from the post of Dental Surgeon, Sub District Hospital, Vaijapur is hereby quashed and set aside. Respondents are

directed to repost the applicant immediately as Dental Surgeon at Sub District Hospital, Vaijapur, Dist. Aurangabad. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 09-01-2018.

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