

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.1040 OF 2021**

Maharashtra State Gazetted Medical Officers )  
Federation, Reg. No./NSK./1732/2014, )  
Office Address : Sigdha Society, Plot No.003, )  
Sector 15, Bhujbalwadi, New Panvel, )  
District : Raigad. )  
Through Shri : Arun Bhanudas Koli, )  
President, Maharashtra State Gazetted Medical )  
Officers Federation, Plot No.003, A-Wing, )  
Bhujbal Wadi, New Panvel, District : Raigad )...**Applicants**

**Versus**

The State of Maharashtra )  
Through Principal Secretary, )  
Public Health Department, )  
Gokuldas Tejpal Hospital Complex, 8<sup>th</sup> floor, )  
Mumbai - 400 001. )...**Respondent**

**Mr. R.M. Kolge, learned Counsel for the Applicants.**

**Ms. K.S. Gaikwad, learned Presenting Officer for the Respondent.**

**CORAM : Justice Mridula Bhatkar, Chairperson  
Mr. Debashish Chakrabarty, Member(A)**

**RESERVED ON : 13.11.2024**

**PRONOUNCED ON : 10.01.2025**

## **J U D G M E N T**

1. The Applicants who are members of 'Maharashtra State Gazetted Medical Officers Federation' were appointed on 'Ad-hoc Basis' as 'Medical Officers, Group-B' by 'Public Health Department'. The Applicants pray that they be absorbed on regular posts in 'Government Service' from dates of their 'Initial Appointment' as 'Medical Officer, Group-B' for purposes of 'Service Benefits' such as grant of 'Annual Increment' and 'Earned Leave' by condonation of 'Breaks in Service' given to them by 'Public Health Department'.

2. The learned Counsel Mr. R.M. Kolge on behalf of Applicants submitted that this OA No.1040/2021 was filed by 'Maharashtra State Gazetted Medical Officers Federation' which is registered as 'Reg.No./NSK/1732/2016'.

3. The learned Counsel for Applicants further submitted that decision had been taken to absorb all 'Medical Officer, Group-B' as per 'The Medical Officer, Group-B (B.A.M.S.) in the Maharashtra Medical and Health Services (One Time Absorption of Medical Officers appointed on Ad-hoc Basis) Rules 2018' framed under 'Article 309' of the 'Constitution of India' which was brought into effect by 'Notification' dated 11.01.2019 of 'Public Health Department.'

4. The learned Counsel for Applicants emphasized that as some members of 'Maharashtra State Gazetted Medical Officers Federation' have already been absorbed on regular posts in 'Government Service' and granted 'Service Benefits' of 'Annual Increment' and 'Earned Leave' upon condonation of 'Breaks in Service' given to them by 'Public Health Department'; therefore remaining 'Medical Officers, Group-B' especially from Thane, Pune and Kolhapur Divisions who

are also members of 'Maharashtra State Gazetted Medical Officers Federation' and seeking to be absorbed on regular posts in 'Government Service' be granted similar 'Service Benefits' already granted to some others by 'Public Health Department'.

5. The learned Counsel for Applicant stated that 'Maharashtra State Gazetted Medical Officers Federation' had made several representations in this regard on 03.03.2021, 08.03.2021, 17.03.2021, 23.03.2021, 03.03.2021, 03.05.2021, 08.06.2021 and 11.06.2021 to 'Public Health Department'. All 'Medical Officers, Group-B' were initially appointed on 'Ad-hoc' Basis for periods of '11 Months' and after giving them 'Breaks in Service' of 'One to Two days'; they were again reappointed on 'Ad-hoc Basis' for next period of '11 Months'. The 'Public Health Department' by communication dated 15.01.2021, 16.03.2021 and 15.05.2021 has rejected their request for condonation of 'Breaks in Service' and absorption on regular posts in 'Government Service' from dates of 'Initial Appointments' on 'Ad-hoc Basis' under 'Public Health Department'.

6. The learned Counsel for Applicants thereupon submitted that regular posts in 'Government Service' of 'Medical Officers, Group-B' have already been sanctioned by 'Public Health Department' and therefore must be given to Applicants. The Applicants have rendered long valuable service under 'Public Health Department'. The exemplary 'Public Services' rendered by all 'Medical Officers, Group-B' deserves to be duly acknowledged through condonation of 'Breaks in Service' and counted as continuous service from dates of 'Initial Appointments' with grant of consequential 'Service Benefits' by 'Public Health Department'.

7. The learned Counsel referred to 'GR dated 08.11.2023 of 'Public Health Department' to claim that services of 'Medical Officers, Group-A', who had also been given 'Initial Appointments' on 'Ad-hoc Basis' was regularized and they have been given effect of continuous service with entitlement 'Service Benefits' for entire period of 'Ad-hoc Basis' under 'Public Health Department'. In support of his submission learned Counsel for Applicants also placed reliance on following Judgments:-

- (a) Dr. Rutwik R. Patil Vs. The State of Maharashtra & Ors. dated 14.06.2023 passed by this Tribunal in O.A.No.553 /2022 with O.A.No.554/2022.**
- (b) Dr. Umesh V. Nichat & Ors. Vs. The State of Maharashtra & Ors. dated 12.01.2024 passed by the M.A.T. Nagpur Bench, Nagpur in O.A.No.59/2017 with O.A.No.60/2017.**

8. The learned Presenting Officer Smt. K.S. Gaikwad on behalf of Respondents relied on 'Affidavit-in-Reply' dated 06.06.2023 filed through Mr. Vishveshvar Daulatrao Patil, Chief Administrative Officer in office of 'Deputy Director of Health Services, Mumbai Circle, Thane' mainly to emphasize that Applicants who have admittedly served long as 'Medical Officer, Group-B' under 'Public Health Department' were well aware that their 'Initial Appointments' were made on 'Ad-hoc Basis' and thus it was always temporary in nature necessitating 'Breaks in Service' of 'One to Two days' between two consecutive appointments for periods of '11 Months'. Thus; when these 'Medical Officer, Group- B' were to be absorbed on regular posts in Government Service as per terms and conditions laid down by 'Notification' dated 11.01.2019 of 'Public Health Department'; it was condition precedent that past services rendered by them on 'Ad-hoc Basis' were not be considered as per 'Rule 4(iv)' of 'The Medical Officer, Group-B (BAMS) in the 'Maharashtra Medical and Health

Services (One Time Absorption of Medical Officers appointed on Ad-hoc Basis) Rules 2018' for purposes of 'Service Benefits' such as (i) Pay (ii) Pension, (iii) Leave and (iv) Grant of Promotion as Specialist or on any other posts under the 'Assured Career Progression Scheme'.

9. The 'Judgment' dated 14.06.2023 passed by 'MAT-Mumbai Bench' in **Dr. Rutwik R. Patil Vs. The State of Maharashtra & Ors in O.A.Nos.553 & 554/2022** which is further relied in 'Judgment' dated 12.01.2024 passed by 'MAT-Nagpur Bench' in **Dr. Umesh V. Nichat & Ors. Vs. The State of Maharashtra in O.A.No.59/2017 with O.A.No.60/2017** has held as under :

*"6. The learned Advocate for the Applicant has pointed out that the decision rendered by M.A.T, Aurangabad Bench dated 17.07.2015 in O.A.No.678/2014 granting the same relief to the Medical Officer was upheld by Hon'ble High Court in Writ Petition No.798/2016 decided with connected Writ Petitions on 23.11.2017. He has further pointed out that one more decision rendered by this Tribunal in O.A.No.167/2020 decided on 07.10.2021 has also attained finality. Lastly, he made reference to the decision rendered by this Tribunal in O.A.No.1047/2021 decided with connected O.A.Nos.1048 and 1049/2021 on 14.11.2021. The learned P.O. was not in a position to state as to whether the decision rendered by the Tribunal on 14.11.2021 is challenged before higher forum. On the other hand, learned Advocate for the Applicant made statement that it is not challenged and Government is about to implement it.*

*7. As the issue involved here has already attained finality and implemented by the Respondents, the Applicants being similarly situated persons are entitled to the same benefit on the principles of parity and equality."*

10. The Applicants in OA No.59/2017 with OA No.60/2017 were 'Medical Officers, Group-B' and thus had been given 'Breaks in Service' after 'Initial Appointments' on 'Ad-hoc Basis' by 'Public Health Department'. Thus, they had prayed that 'Breaks in Service' during period of appointment on 'Ad-hoc Basis' be condoned and 'Service Benefits' such as 'Annual Increments' and 'Earned Leave' be granted by 'Public Health Department'. The OA No.59/2017 with OA No.60/2017 were allowed along with grant of 'Service Benefits' by

counting long periods of service rendered by them on 'Ad-hoc Basis'. The Applicants in OA No.59/2017 and OA No.60/2017 by 'Judgment' dated 12.01.2024 of 'MAT-Nagpur Bench' have thus been granted 'Service Benefits' of 'Annual Increments' and 'Earned Leave' by condonation of 'Breaks in Service' given by 'Public Health Department'.

11. The Applicants in OA No.553/2023 and OA No.554/2023 who on other hand were differently placed being 'Medical Officer, Group-A' but more importantly after their 'Initial Appointments' had been made on 'Ad-hoc Basis'; they were regularized in 'Government Service' by selection through 'MKCL' and 'MPSC'. The Applicants in OA No.553/2023 and OA No.554/2023 by Judgment dated 14.06.2023 have also been granted 'Service Benefits' of 'Annual Increments' and 'Earned Leave' by condonation of 'Breaks in Service' given by 'Public Health Department'.

12. The chequered history of repeated litigation initiated primarily by 'Public Health Department' regarding absorption of 'Medical Officers Group-A' and 'Medical Officers, Group-B' on regular posts in 'Government Service' and condonation of 'Breaks in Service' to grant them 'Service Benefits' such as 'Annual Increment' and 'Earned Leave' emerges clearly from 'Interim Order' dated 09.11.2023 of 'Hon'ble Bombay High Court' in 'Writ Petition No.2303/2019' which was filed by Public Health Department against 'Judgment' dated 02.05.2016 passed in OA No.242/2009 by 'MAT-Mumbai Bench'.

13. The learned Presenting Officer during course of arguments also pointed out that 'Judgment' dated 12.10.2023 passed by 'Hon'ble Bombay High Court' in Writ Petition No.10704/2023, Dr. Shivashree Mrutunjay Nilange and Ors. V/s. The State of Maharashtra & Ors.

had set aside 'Judgment' dated 26.04.2023 of 'MAT-Mumbai Bench' in O.A.No.267/2016 (Dr. Shivashree M. Nilange Vs. The State of Maharashtra & Ors.) and it now stands restored before 'MAT-Mumbai Bench'. Therefore; instead of this 'Judgment' dated 12.10.2023 in OA No.267/2016, we are inclined to rely on 'Judgments' in cases of Dr. Rutwik R. Patil (supra) and Dr. Umesh V. Nichat (supra) wherein similarly situated both 'Medical Officers, Group-A' and 'Medical Officers, Group-B' have been granted 'Service Benefits' such as 'Annual Increment' and 'Earned Leave' upon condonation of the 'Breaks in Service' from dates of 'Initial Appointment' on 'Ad-hoc Basis' upon their absorption as per 'Notification' dated 11.01.2019 of 'Public Health Department'. The Applicants in this OA No.1040/2021 who are represented by 'Maharashtra State Gazetted Medical Officers Federation' are similarly placed 'Medical Officers, Group-B' and therefore required to be granted same 'Service Benefits' of 'Annual Increment' and 'Earned Leave' by condonation of 'Breaks in Service' given by 'Public Health Department'.

14. The pathways laid down by various 'Judgments' passed by different benches of 'MAT' and 'Hon'ble Bombay High Court' about absorption of 'Medical Officers, Group-A' and 'Medical Officers, Group-B' who were given 'Initial Appointment' on 'Ad-hoc Basis' by 'Public Health Department' are required to be briefly enumerated for greater contextual clarity about grievance of Applicants in this OA No.1040/2021 who are represented by 'Maharashtra State Gazetted Medical Officers Federation'.

15. The 'Judgment' dated 13.7.2009 in 'OA No. 242/2009' had considered the issue of 'Medical Officer, Group-A' who were given 'Initial Appointment' on 'Ad-hoc Basis' by 'Public Health Department'. The 'MAT-Mumbai Bench' had condoned 'Breaks in Service' and

granted them consequential 'Service Benefits' such as 'Annual Increment' and 'Earned Leave'. However, this 'Judgment' dated 13.07.2009 in OA No.242/2009 was challenged before Hon'ble Bombay High Court by 'Public Health Department' by filing Writ Petition No.7681/2011. The 'Hon'ble Bombay High Court' by 'Judgment' dated 19.8.2015 had set aside 'Judgment' dated 13.7.2009 in OA No.242/2009 and remitted it back to 'MAT-Mumbai Bench'.

The OA No.242/2009 which was remitted back by 'Hon'ble Bombay High Court' was later re-heard and by 'Judgment' dated 02.05.2016 the 'MAT-Mumbai Bench', it was again held that Applicants were entitled to condonation of 'Breaks in Service' and grant of 'Annual Increments' and 'Earned Leave' for period of 'Ad- hoc Services' but no other 'Service Benefits'. The 'Public Health Department' had once again challenged the 'Judgment' dated 02.05.2016 passed in OA No.242/2009 passed by 'MAT-Mumbai Bench' before 'Hon'ble Bombay High Court' by filing Writ Petition No.2303/2019.

(a) The initial observations recorded on 22.12.2021 by 'Hon'ble Bombay High Court' in Writ Petition No.2303/2019 reads as follows :-

*"2. Prima facie, we are of the view that the impugned judgment of the Maharashtra Administrative Tribunal, Mumbai suffers from errors of law, deserving interdiction. The points highlighted by a coordinate Bench in an order of remand do not appear to have been considered at all. However, we grant learned counsel for the respondents/original applicants further time to come better prepared."*

(b) The later observations recorded on 09.11.2023 by 'Hon'ble Bombay High Court' in Writ Petition No.2303/2019 & Others are as follows :-

*"Maharashtra Administrative Tribunal has disposed of this group of Petitions following the decision of this Court in Writ 3484 Petition No.3484 of 2005 in*



*the case of State of Maharashtra and Anr. Versus Dr. Sangita d/o. Raghvir Phatale and thirteen other Writ Petitions dated 27 November 2008. The learned AGP states that as per his instructions this view has been deviated in the subsequent decisions. He seeks time to place on record compilation of those decisions.”*

The Public Health Department GR dated 08.11.2023 was belatedly issued to implement the ‘Judgment’ dated 02.05.2016 in OA No.242/2009 by withdrawing Writ Petition No.2303/2019 from Hon’ble Bombay High Court.

16. The ‘Judgment’ dated 12.10.2023 passed by ‘Hon’ble Bombay High Court’ in Writ Petition No.10704/2023 as mentioned above places more emphasis on contentions made by ‘Medical Officers, Group-B’ regarding ‘New Pension Scheme’ being unworkable as ‘Judgment’ dated 26.04.2023 in OA No.264/2016 of ‘MAT-Mumbai Bench’ did not appreciate the fact that it has come into effect from 01.01.2004. The observations relating to ‘New Pension Scheme’ in ‘Judgment’ dated 12.10.2023 passed by ‘Hon’ble Bombay High Court’ in Writ Petition No.10704/2023 are as reproduced below:-

*“7. Another nuance of the nature of challenge needs to be noticed. The challenge could be on the ground that the conditions are not acceptable. Challenge could also be that the conditions are inherently unworkable. Though, in the Original Application the second aspect of approach is hinted in the pleadings the same tried to be elaborated before us by the Petitioners in their petition, where the Petitioners have taken following grounds :-*

*"The Ld. Tribunal ought to have appreciated that the new pension scheme has come into effect from 01.01.2004. Therefore, the new pension scheme is applicable to the employees who have joined services after 01.01.2004. The Petitioners were appointed on the post of medical officers almost 10 to 14 years prior to 01.01.2004. It ought to have been appreciated that from 01.01.2004 there were no deductions from the salaries of Petitioners towards contribution under the new pension scheme. Even after the services of Petitioners came to be regularized in the year 2016, there have been no deductions from the salaries of Petitioners towards contribution under the new pension scheme. Therefore, the services of Petitioners could not have been subjected to the new pension scheme, more particularly when there were no deductions from the salaries of Petitioners. It ought to have been appreciated that Petitioners are entitled for pension under the old pension scheme.*

*This is the furtherance of prayer clause (c) made in the Original Application.*

8. *However we do not find any discussion on this aspect pleaded in the petition in aid of prayer clause (c), in the impugned order. It could be that this argument in aid of prayer clause (c) was not urged before the Tribunal in the form it is urged before us. Considering the fact that the Petitioners have now retired from the service and are without any pension whatsoever even after working for a substantial period of time, we are of the opinion that an opportunity be given to the Petitioners to agitate this issue before the Tribunal.*

9. *In the light thereof, the impugned order dated 26 April 2023 is quashed and set aside. The Original Application No.267/2016 of the Petitioners is restored before the Tribunal, qua the Petitioners only."*

17. The 'Judgment' dated 27.11.2008 in 'Writ Petition No.3834/2005 & Others' by 'Hon'ble Bombay High Court, Aurangabad Bench' is imperative to rely upon, as it had affirmatively upheld the cause of similarly placed lectures teaching in 'Government Medical Colleges' under 'Medical Education and Drugs Departments' and made following observations :-

*"1. These Petitioners challenge Orders passed by Tribunal. The Respondents/ original applicants the lecturers teaching in the Government Medical Colleges. They are admittedly working as ad-hoc employees since more than 9 to 10 years. Earlier proceedings were initiated by them before the Tribunal in which Orders were passed by the Tribunal directing Government Authorities to ignore all the artificial technical breaks by condoning the same or sanctioning earned leave in respect of such artificial technical breaks.*

*2. The Respondents again initiated proceedings for giving increments and certain allowances as same not the were denied to them on the ground that they have completed 365 days continuous service in a year. Their Applications were allowed by the Tribunal by placing reliance on the earlier orders passed. State has preferred to challenge that Orders.*

*3. It is unfortunate to notice that for years together the Respondents are continued as employees on ad-hoc basis. The Respondents the are discharging crucial and vital duties of lecturers in the Government Medical Colleges. Early decision was desirable on the part of State in this regard. It was informed to this Court that the candidates selected by the M.P.S.C. due to could not be screened and forwarded and which the Respondents had to continue for years together as ad-hoc employees.*

*4. In the light of the earlier Orders passed by the Tribunal which are not challenged by the State, as per the submission made on behalf of the State, we find that no case is made out for interference in exercise of our extra*

*ordinary writ jurisdiction. We do not find that the view adopted by the Tribunal is erroneous. In this view of the matter, all these Writ Petitions are dismissed."*

18. The 'Judgment' dated 4.7.2024 in OA No. 249/2021; OA No. 251/2021 & OA No.177/2022 of 'MAT-Aurangabad Bench' throws much light on issues relating to grant of 'Service Benefits' to 'Medical Officers, Group-B'. The 'Para 3', 'Para 4' and 'Para 5' which provide comprehensive perspective about the contentious which still remain unresolved by 'Public Health Department, although adjudicated by string of 'Judgments' beginning with OA No.149/2003 decided on 26.08.2003 are reproduced below:-

*"3. The applicants were initially selected and appointed as Medical Officers (Group-B) for the period of 11 months on ad-hoc basis or till the candidate becomes available from the Maharashtra Public Service Commission. The services of the applicants were time to time continued by giving appointment orders every time for the period of 11 months with technical breaks of 01 or 02 days. Each of these applicants had served for more than 10 years before their absorption. The services of these applicants were regularized by the State Government under onetime absorption scheme dated 11.01.2019. It is the grievance of the applicants that the respondents did not give the annual increments of the services rendered by these applicants on ad-hoc basis. It is the contention of these applicants that under rule 36 of the Maharashtra Civil Services (Pay) Rules, 1981 they are entitled to draw increment as a matter of course unless it is withheld as a penalty. It is further contended that rule 36 of the M.C.S. (Pay) Rules, 1981 do not discriminate between a temporary and permanent employee. It is the further contention of these applicants that they are also entitled for the Earned Leaves accrued in their favour of the period of services rendered by them on ad-hoc basis. The applicant have, therefore prayed for directions against the respondents to condone the technical breaks in ad-hoc service rendered by them and the services rendered by them on ad-hoc basis prior to their absorption may be counted for grant of annual increments, as well as, Earned Leaves.*

*4. Shri J.S. Deshmukh, learned counsel appearing for the applicants submitted that this Tribunal in Original Application No. 149/2003 decided on 26.08.2003 had directed the respondents therein to give benefits of annual increments to the ad-hoc employees by condoning the technical breaks. Learned counsel further submitted that the said order passed by this Tribunal was challenged by the State authorities in Writ Petition No. 3484/2005 before the Hon'ble Bombay High Court, Bench at Aurangabad, however, the Hon'ble High Court dismissed the said Writ Petition vide order dated 27.11.2008 and upheld the view taken by this Tribunal in the aforesaid O.A. Learned counsel further submitted that the order dated 27.11.2008 passed by the Hon'ble High Court was challenged by the State authorities before the Hon'ble Supreme Court by filing S.L.P. Nos. 18902-*

18915 of 2010. The Hon'ble Supreme Court, however, dismissed all those S.L.Ps. on 02.02.2011 on the ground of delay, as well as, on merits.

5. Learned counsel for the applicants pointed out that having regard to the order passed by this Tribunal as aforesaid, which has been maintained up to the Hon'ble Supreme Court, the State ultimately resolved to condone the technical breaks given to the applicants while they were working on ad-hoc basis and to convert the said period into Earned Leaves and also held the applicants entitled for earned leaves and the annual increments accrued in their favour from the date of their initial appointment for fixation of their pay accordingly. Learned counsel pointed out that pursuant to the directions given by the Principal Seat of this Tribunal at Mumbai in O.A. No. 242/2009 decided on 02.05.2016 the State Government has issued a policy decision on 08.11.2023 to extend the benefits to Group-A Medical Officers. thereafter Learned counsel further submitted that similarly situated Group-B Medical Officers approached before the Tribunal by filing O.A. No. 542/2019, which came to be allowed by this Tribunal on 12.07.2024. Learned counsel submitted that the Tribunal extended similar benefit of annual increments and E.Ls. as were made applicable to Group-A Medical Officers to Group-B Medical Officers. Learned counsel in the circumstances prayed for allowing the Original Applications.

9. It is not in dispute that all these applicants have been absorbed in the services of the State Government and more particularly in the Public Health Department vide G.R. dated 11.01.2019. There is further no dispute that clause 4 (iv) of the said notification provides that the service rendered by such ad hoc Medical Officers prior to the date of absorption shall not be considered for the purpose of pay, pension, leave and grant of promotion as specialist or on any other post under the Assured Career Progression Scheme.

10. Learned counsel appearing for the applicants has pointed out that similar clause was containing in the notification dated 02.02.2009 by which the Medical Officers, Group-A were absorbed in the Government service. Learned counsel further pointed out that this Tribunal in common order passed on 02.05.2016 in O.A. No. 242/2009 and others filed by the Medical 16 Officers (Group-A) after having considered the said rule recorded the conclusion that the said applicants are eligible to be granted earned leave and increment during the period of their ad hoc services.

11. Learned counsel further pointed out that in view of the Government Resolution issued by the Public Health Department of the State on 8th November, 2023 all the hurdles are cleared and it has been unambiguously held that the Medical Officers, Group-A are entitled for the annual increment and earned leave of the period of ad hoc services rendered by these Medical Officers. Learned counsel further pointed out that in O.A. No. 542/2021 Nagpur Bench of this Tribunal has considered the prayer of Group-B Medical Officers for grant of annual increment and earned leaves of the period of services rendered by the Medical Officers on ad hoc basis. Learned counsel pointed out that the facts involved in the present OAs are too identical with the facts existed in O.A. No. 542/2021.

12. We have duly considered the submissions made on behalf of the applicants as well as the respondents. The grievance raised by the applicants in the present OAs is no more res integra.

13. In earlier judgments this Tribunal has consistently held that the period of service rendered on ad hoc basis is liable to be considered for grant of annual increments and the earned leaves of the said period. In O.A. No. 242/2009 the said issue was discussed and decided in favour of the applicant therein and prior to that in O.A. No. 149/2003 similar relief was granted by the Tribunal and the said order was not disturbed up to the Hon'ble Apex Court. Though it has been argued by the learned Presenting Officer that the decisions referred to and relied upon are pertaining to the Medical Officers, Group-A and the officers in the present OAs are Group-B Medical Officers, we see no substance in the submission so made. It is immaterial whether the Medical Officers fall in Group-A or in Group-B, the question is whether period of service rendered by them on ad hoc basis shall be considered for grant of annual increments and Earned Leaves. When in the case of Group-A Medical Officers same is decided in their favour and they are held entitled for the said benefits, the present applicants cannot be denied the said benefit on the ground that they are Group - 'B' Medical Officers. Moreover, in the O.A. No. 542/2021 decided by Nagpur Bench of this Tribunal the officers in whose favour such relief has been granted are Group-B Medical Officers. For the aforesaid reasons we hold the present applicants entitled for the said benefits. In the result the following order is passed:-

#### O R D E R

- (i) The respondents are directed to count the period of ad hoc services of all these applicants for grant of increments, earned leaves by condoning the technical breaks in service and for no other purpose.
- (ii) The respondents are further directed to issue necessary orders in this regard within 03 months from the date of uploading of this order on the official website of this Tribunal.
- (iii) The present OAs stand disposed of in the aforesaid terms. There shall be no order as to costs."

19. The **Hon'ble Bombay High Court in W.P. No. 9427/2022 (State of Maharashtra Vs. Dr. Deepak A. Wani & Others) dated 14.09.2022** while deciding about challenge to 'Judgment' of 'MAT-Mumbai Bench' in OA Nos.821 to 826 of 2019 dated 08.01.2020 has referred to earlier 'Judgments' in cases of Dr. Jyotsna S. Potpate as well as Dr. Sangita Phatale. The 'Hon'ble Bombay High Court' has unequivocally held as under :-

"1. The Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) disposed of Original Application Nos.821 to 826 of 2019 by a common order dated 8<sup>th</sup> January 2020. The said order is challenged in these 4 (four) writ petitions by the State of Maharashtra.

5. *The Tribunal was referred to various judgments and orders passed by the Tribunal as well as by this Court. Its notice was also drawn to Circular dated 28<sup>th</sup> February 2017 and a Government Resolution dated 11<sup>th</sup> January 2019*

7. *It appears from the aforesaid excerpt that the Tribunal did not decide any point on merit and left it to the Government to take an informed decision having regard to the judgments of the Tribunal as well as this Court, which were cited before it. In the absence of a determination of the rival contentions on merit, we do not think that this is an appropriate case where we should embark upon a thorough examination of such contentions while entertaining these writ petitions.*

8. *We may note that Mr. Rajpurohit has urged us to dismiss the original applications instituted before the Tribunal based on the decision dated 7<sup>th</sup> April 2017 of a coordinate Bench of this Court (Bench at Nagpur) in Writ Petition No. 4969 of 2011 (State of Maharashtra and Ors. vs. Dr. Jyotsna Shamrao Potpite and Anr.). It is true that the Bench upset the order of the Nagpur Bench of the Tribunal and dismissed the original application, which was filed by the respondent no. 1/Jyostna Potpite claiming increments and other benefits, on the ground that only regular employees are entitled to the same.*

9. *We do not see any reason as to how this particular decision can be pressed into service by Mr. Rajpurohit for reversal of the order impugned in the absence of the judgment/order dated 7<sup>th</sup> April 2017 being brought to the notice of the Tribunal when it proceeded to dispose of the original applications before it.*

10. *That apart, we cannot ignore that the coordinate Bench (Bench at Nagpur) while deciding Dr. Jyotsna Potpite (supra), did not have the occasion to consider the other coordinate Bench decision dated 27<sup>th</sup> November 2008 of this Court (Bench at Aurangabad) in Writ Petition No.3484 of 2005 (State of Maharashtra Vs. Sangita Raghvir Phatale). We are, therefore, not persuaded to follow the decision in Dr. Jyotsna Potpite (supra) at this stage.*

11. *Mr. Rajpurohit complains that the Tribunal did not give an opportunity to the State to file reply affidavit. Such a submission is hardly relevant having regard to the fact that the Tribunal has not passed its order on the merits of the rival contentions.*

12. *In such view of the matter, we are of the opinion that the Government ought to implement the order of the Tribunal. We make it clear that all contentions on merit are left open for being looked into by the State for taking an appropriate decision on the basis of the judgments and orders which are governing the field, within three months from date."*

20. The 'Judgment' dated 14.11.2022 in O.A No. 1047/2021; O.A No. 1048/2021 and O.A No. 1049/2021 passed by 'MAT-Mumbai Bench' has enumerated past litigation especially relating to 'Medical

Officers, Group-A' who had claimed condonation of 'Breaks in Service' for grant of 'Service Benefits' such as 'Annual Increments' and 'Earned Leave'. The pertinent observations in 'Para 1 and Para 3' are as follows :-

*"1. All these Original Applications are filed by the Medical Officers Group-A for counting their previous ad-hoc service for increments and earned leave by condoning technical break. The Applicants were initially appointed as Medical Officers on ad-hoc basis and later they were appointed through MPSC vide order dated 04.07.2012 and 16.09.2012 as a regular Medical Officers. They made representations for counting their ad-hoc on the basis of the decision rendered by the Tribunal Aurangabad Bench on 17.07.2015 in O.A.No.678/2014. The Aurangabad Bench by common judgment dated 17.07.2015 decided the bunch of O.A.Nos.676, 677, 678 & 679/2014 along with O.A.No.69, 70, 71 & 72/2015 and allowed the Original Applications having found that the Applicants therein where similarly situated persons governed by the decision rendered by the Tribunal earlier in O.A.No.515/2013 decided on 10.12.2014. Later, this Tribunal Bench Mumbai also allowed O.A.Nos.167, 168, 169, 170 & 171/2020 with O.A.Nos.782, 783, 784 & 785 of 2020 on 07.10.2021.*

*3. Learned Counsel for the Applicants has pointed that the decision rendered by M.A.T. Aurangabad Bench dated 17.07.2015 has been upheld by the Hon'ble High Court in W.P.No.772/2016 decided with W.P.No.798/2016 and 800/2016 on 23.11.2017. He has further pointed out that the decision rendered by this Tribunal Bench Mumbai in O.A.Nos.167/2020 decided with bunch of O.As on 07.10.2021 has also attained finality since it is not challenged before the higher forum. He, therefore, submits that the Applicants being similarly situated persons are entitled to the same benefits rendered in above decisions."*

21. The fact of the matter is that while on one hand in respect of some 'Medical Officers, Group-A' and 'Medical Officers, Group-B', their 'Breaks in Service' have been condoned by Public Health Department to grant 'Service Benefits' such as 'Annual Increments and 'Earned Leave' as these entitlement were upheld in various 'Judgments' as elaborated above; yet on the other hand the 'Judgment' dated 26.04.2023 in OA No.267/2016 stands quashed and set aside and restored for fresh adjudication albeit only on issue of 'New Pension Scheme' qua the petitioner in W.P.No.10704/2023 by 'Judgment' dated 12.10.2023 of 'Hon'ble Bombay High Court'. Still by placing these contentious issues on the larger canvas; it is

very evident that long standing grievances of both 'Medical Officers, Group-A' and 'Medical Officers, Group-B' have attained finality through on catena of 'Judgments' passed by different benches of 'MAT' and 'Hon'ble Bombay High Court'. The 'Hon'ble Supreme Court of India' by its 'Judgment' dated 02.02.2011 in 'SLP 18902-18915 of 2010' had upheld the 'Judgment' dated 27.11.2008 in Writ Petition No.3484/2005 passed by 'Hon'ble Bombay High Court, Aurangabad Bench'.

22. The grievances of Applicants in this OA No.1040/2021 who are represented by 'Maharashtra State Gazetted Medical Officers Federation' will still have to be redressed against aforesaid backdrop of multi layered litigation hoisted from time to time by affected 'Medical Officers, Group-A' and 'Medical Officers, Group-B' but vehemently countered by 'Public Health Department'; by now relying on provisions of 'Section 22(2)' of 'The Administrative Tribunals Act 1985' which lays emphasis on expeditious redressal of grievances based on perusal of documents; written representations and oral arguments which can be so achieved by ring fencing this O.A.No.1040/2021. The provisions of 'Section 22(2)' of the Administrative Tribunals Act, 1985 which comes to our aid is as reproduced below :-

*"Section 22(2) : A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and (after hearing such oral arguments as may be advanced)."*

23. The 'Public Health Department' cannot absolve itself from the piquant situation which stands enlarged by this OA No.1040/2021 which it only has helped develop over time regarding absorption of 'Medical Officers, Group-A' and 'Medical Officers, Group-B' on regular



posts in 'Government Service' by constantly side stepping implementation of elaborate reasoned 'Judgments' passed by various benches of 'MAT' and 'Hon'ble Bombay High Court'. The incremental efforts made by 'Public Health Department' to implement these has been more like the proverbial 'Swing Of The Pendulum'; by adopting stance to somehow keep the well settled matter of entitlement of 'Service Benefits' to 'Medical Officers, Group-A' and 'Medical Officers, Group-B' always alive; as it is so evident from fact that 'Public Health Department' had chosen to again file Writ Petition No.2303/2019 & Ors. challenging detailed 'Judgment' dated 02.05.2016 in OA No.242/2009 passed by 'MAT-Mumbai Bench'. Yet; in the midst of such administrative haziness fostered by 'Public Health Department' acting incrementally in the past; which now stands exposed and accentuated as instances of 'Cherry Picking' has also recently come to light after 'Government Order' dated 11.11.2024 came to be issued by Public Health Department to selectively implement 'Judgment' dated 12.01.2024 in OA No.59/2017 & OA No.60/2017 of 'MAT-Nagpur Bench'. The 'Public Health Department' would do much better to adopt straight forward and proactive stance to grant similar 'Service Benefits' of 'Annual Increments' and 'Earned Leave' to all other similarly placed 'Medical Officers Group-B' serving under 'Public Health Department'.

24. The 'Public Health Department' with its intriguing ambivalent attitude seems to be more interested in playing 'Hide and Seek' rather than whole heartedly resolving the decades old genuine grievances of 'Medical Officers, Group-B' who are repeatedly forced to seek redressal as in this OA No.1040/2021 even after having served with commendation for many years including during challenging period of 'Covid-19 Pandemic'. The righteous grievances of Applicants represented by 'Maharashtra State Gazetted Medical Officers

Federation' in OA No.1040/2021 are compelling enough to grant them 'Service Benefits' after condonation of 'Breaks in Service' given by 'Public Health Department' along with grant of consequential 'Annual Increments' and 'Earned Leave'. Helpful to us in finding the right direction at the congested crossroads so as to expeditiously redress the grievances of Applicants in this OA No.1040/2021 who are represented by 'Maharashtra State Gazetted Medical Officers Federation' are the provisions of 'Section 22(2)' of 'The Administrative Tribunals Act 1985' and the non-commendable selective approach taken by 'Public Health Department' to issue 'Government Order' dated 11.11.2024 for just one 'Medical Officers, Group-B' which in service jurisprudence will not only be typified as 'Arbitrary Exercise' of executive powers by 'Public Authority' and decision taken in respect of 'Medical Officers, Group-A' by Public Health Department GR dated 08.11.2023.

25. The Public Health Department by GR dated 08.11.2023 has taken following 'Policy Decision' as per 'Judgment' dated 02.05.2016 in OA No.242/2009, but only in respect of 'Medical Officers, Group-A'. The Para 2, Para 3 & Para 4 of this GR dated 08.11.2023 are reproduced below :-

“२. उक्त याचिकेतील सन २००५ पूर्वी नियमित पदावर अस्थायी सेवेत कार्यरत असलेल्या व दि.०२.०२.२००९ रोजीच्या अधिसूचनेन्वये (सन २००९ व सन २०१० अशा दोन टप्प्यात) नियमित सेवेत समावेश झालेल्या सर्व वैद्यकीय अधिकारी, गट-अ यांना महाराष्ट्र प्रशासकीय न्यायाधिकरण (मा. मॅट, मुंबई) यांच्या आदेशानुसार नियमित पदावर केलेल्या अस्थायी सेवेच्या कालावधीतील तांत्रिक खंड अर्जित रजेमध्ये रुपांतरीत करून सदर सेवा कालावधीतील अर्जित रजा व वार्षिक वेतनवाढी मंजूर करून सदरचे वैद्यकीय अधिकारी समावेशनापूर्वी नियमित पदावर ज्या तारखेला अस्थायी स्वरूपात सेवेमध्ये प्रथमतः हजर झाले त्या तारखेपासून आजपावेतोची वेतननिश्चिती करण्यास सदर शासन निर्णयाद्वारे मान्यता देण्यात येत आहे.

३. तसेच विधि व न्याय विभागाच्या दि.२८.०२.२०१७ च्या परिपत्रकातील तत्त्वनिर्देश दि.०२.०२.२००९ रोजीच्या अधिसूचनेन्वये (सन २००९ व सन २०१० अशा दोन टप्प्यात) समावेश झालेल्या उर्वरित वैद्यकीय अधिकारी, गट-अ (एस-२०) यांना लागू करण्यात येऊन त्यांचे देखील नियमित पदावर केलेल्या अस्थायी सेवेच्या कालावधीतील तांत्रिक खंड अर्जित रजेमध्ये रुपांतरीत करून सदर सेवा कालावधीतील अर्जित रजा व वार्षिक वेतनवाढी मंजूर करून सदरचे वैद्यकीय अधिकारी समावेशनापूर्वी नियमित पदावर ज्या तारखेला अस्थायी स्वरूपात सेवेमध्ये प्रथमतः हजर झाले त्या तारखेपासून आजपावेतोची वेतननिश्चिती करण्यास सदर शासन निर्णयाद्वारे मान्यता देण्यात येत आहे.

४. संदर्भ क्र.१ येथील दि.०२.०२.२००९ रोजीच्या अधिसूचनेन्वये (सन २००९ व सन २०१० अशा दोन टप्प्यात) समावेश झालेले सर्व वैद्यकीय अधिकारी, गट-अ हे समावेशनापूर्वी नियमित पदावर ज्या तारखेला अस्थायी स्वरूपात सेवेमध्ये प्रथमतः हजर झाले त्या तारखेपासून आजपावेतोची वेतननिश्चितीचा स्वयंपूर्ण / परिपूर्ण प्रस्ताव संबंधित कार्यालय प्रमुखांनी मूळ रेकॉर्डसह विभागास मान्यतेस्तव सादर करावा.”

26. The 'Public Health Department' is therefore stringently directed to proceed immediately with utmost alacrity and deep sense of equity and equality towards all 'Medical Officers, Group-B' including Applicants in this OA No.1040/2021 to unfailingly act as per directions in 'Para 3' of 'Government Circular' dated 28.02.2017 of 'Law and Judiciary Department' issued under authority of 'Chief Secretary, Government of Maharashtra' against backdrop of 'Judgment' of Hon'ble Supreme Court in ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347*** which prescribes that laudable 'Public Administration' must always eschew all forms of discrimination which are violative of 'Article 14' of 'Constitution of India'. The contents of 'Para 3' are reproduced below:-

3. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347*** has laid down similar principle, thus :

*"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently".*

27. The Applicants in this OA No.1040/2021 who are 'Medical Officers, Group-B' and represented by 'Maharashtra State Gazetted Medical Officers Federation' therefore to be granted 'Service Benefits' such as 'Annual Increments' and 'Earned Leave' within period of 'Four Weeks' on similar lines as has been done in respect of 'Medical Officers, Group-A' by Public Health Department GR dated 08.11.2023.

**ORDER**

- (i) The OA No.1040/2021 is Allowed.
- (ii) No Order as to Cost.

Sd/-  
**(Debashish Chakrabarty)**  
**Member (A)**

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**

prk

D:\D Drive\PRK\2024\12 Dec\O.A.1040-21 Absorption, break in service & promotion.doc