

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 129 OF 2021**

**(Subject:- Continuity In Service)**

**DISTRICT:-NANDED**

**Dr. Sheshrao S/o Pundlikrao Lohgave,** )  
Age – 47 Years, Occ- Medical Officer (Group-A), )  
Presently working at Primary Health Centre, )  
Kalambar, Tq. Loha, District Nanded. ) **APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra** )  
Through Principal Secretary, )  
Public Health Department, )  
10<sup>th</sup> floor, G.T. Hospital, Building, )  
New Mantralaya, Mumbai-1. )
- 2. The Commissioner Health Services & )  
Director (N.H.M.)** )  
3<sup>rd</sup> floor, Arogya Bhavan, St. Georges )  
Hospital Campus, Mumbai-1. )
- 3. The Deputy Director of Health Services,)**  
Latur Circle, Latur. )  
M.I.D.C. Barshi Raod, Latur. )
- 4. The Chief Executive Officer,** )  
Zilla Parishad, Nanded, )  
District Nanded. ) **RESPONDENTS**

-----  
**APPEARANCE** : Shri J.S. Deshmukh, learned counsel  
for the applicant.  
: Shri A.P. Basarkar, learned Presenting  
Officer for the respondent authorities.  
-----

**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **13.06.2024.**  
-----

## **ORAL ORDER**

Heard Shri J.S. Deshmukh, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities finally.

2. By filing this Original Application the applicant is seeking direction to the respondents to extend leave benefits and annual increments for past ad-hoc service rendered by the applicant and further seeking direction to the respondents to condone the technical breaks in ad-hoc service and service spent on ad-hoc basis may be counted for grant annual increments as well as earned leave.

3. Brief facts giving arise to this Original Application are as follows:-

(i) The applicant is working as a Medical Officer (Group –A) at Primary Health Centre, Kalambar, Tq. Loha, District Nanded. Initially the applicant was selected and appointed as a Medical Officer under respondents for the period of one year on ad-hoc basis or till the candidate is available from Maharashtra Public Service Commission (M.P.S.C.) vide order dated 09.06.2005 issued by Joint Director Health Services,

Mumbai and posted under Zilla Parishad, Yeotmal. The applicant had resumed the duties w.e.f. 01.07.2005.

(ii) It is the further case of the applicant that he continued on the said post by giving 1 year and 11 months appointment order with technical break of one or two days between the spell of two orders and as such, he has rendered six years ad-hoc service prior to his regularization. The applicant came to be substantially appointed on the post of Medical Officer (Group –A) by way of nomination vide order dated 04.07.2012 and resumed the duties on 01.08.2012. By filing this Original Application the applicant is claiming that his prior ad-hoc service should be counted for grant of annual increment as well as earned leave by condoning the technical breaks.

4. Learned counsel for the applicant submits that this issue is no more res-integra. The Division Bench of this Tribunal at Aurangabad by judgment and order dated 17.07.2015 in a group of matters bearing Original Application Nos. 676, 677, 678 and 679 all of 2014 in the identical facts directed the respondents to grant the similar reliefs to the applicant therein namely condonation of breaks in ad-hoc

service prior to selection by MPSC as Medical Officers Group – A and Assistant Professors and that their earlier services spent on ad-hoc and temporary basis may be counted for grant of increments as well as Earned Leave and for no other purpose.

5. Learned counsel for the applicant submits that the Division Bench of this Tribunal has passed the said order by referring the judgment and order dated 10.12.2014 passed by this Tribunal at Aurangabad in O.A.No. 515/2013 and others.

6. Learned counsel for the applicant submits that being aggrieved by the same, the respondent –State of Maharashtra has approached to the Hon'ble High Court of Bombay, Bench at Aurangabad by filing the **Writ Petition No. 772 of 2016 (State of Maharashtra & Ors. Vs. Siddheshwar Ramrao Mundhe)** and connected Writ Petitions. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 21.01.2016 has confirmed the order passed by this Tribunal.

7. Learned counsel for the applicant further pointed out that even in a case of **Dr. Abhay S/o. Abasaheb Shinde**

**Vs. the State of Maharashtra & Ors.**, Original Application No. 543/2021 and in a group of matters bearing O.A.Nos. 821 to 826 of all 2019 in the identical set of facts, the principal bench of this Tribunal at Mumbai has also taken the similar view.

8. Learned counsel for the applicant submits that recently this Tribunal at Aurangabad in a case of **Dr. Ansari Shahnaz Begum Vs. the State of Maharashtra & Ors., Original Application No. 905/2022** and in a case of **Dr. Ratnakar Dnyanoba Tandale Vs. the State of Maharashtra & Ors., Original Application No. 906 of 2022**, by common order dated 13.02.2024 in the identical set of facts has directed the respondents to consider the period of service rendered by the applicants therein on ad-hoc basis for grant of increments, as well as, earned leave and for no other purpose.

9. Learned counsel for the applicant submits that in a case of **Dr. Abhay S/o. Abasaheb Shinde Vs. the State of Maharashtra & Ors., Original Application No. 543/2021**, the Nagpur Bench of Maharashtra Administrative Tribunal by

order dated 30.01.2024 in the identical set of facts has taken similar view.

10. Learned counsel for the applicant submits that this Original Application deserves to be allowed.

11. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that the applicant was appointed as ad-hoc Medical Officer purely on temporary basis for 11 months contract from time to time. The applicant is not entitled for regular annual increments in terms of provisions of Rule 36 of Maharashtra Civil Services (Pay) Rules, 1981 (hereinafter referred to as "Pay Rules of 1981"). Rule 36 of the said Pay Rules of 1981 is regarding annual increment which is applicable only to the permanent or regularly appointed employees. The learned Presenting Officer submits that each and every ad-hoc/temporary appointment of the applicant is fresh appointment for the period of 11 months. Thus the applicant is entitled to pay admissible to the post and not more. Learned Presenting Officer submits that in terms of Rule 9(53) of Pay Rules, 1981; "Temporary post" means a post carrying a definite rate of pay sanctioned for a limited time. Learned Presenting

Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

12. In reply to this, learned counsel for the applicant submits that the applicant was appointed against the vacant post and ultimately through the Special Selection Board. Learned counsel for the applicant submits that in all the cases relied upon by learned counsel for the applicants, this issue was raised and dealt with in a similar manner. Learned counsel for the applicant further pointed out that the State Government has obeyed all the orders passed in the above cited judgments and issued the necessary orders in connection with the applicants therein.

13. In the backdrop of above submissions, the Original Application deserved to be allowed.

14. In the identical set of facts in a group of matters bearing Original Application Nos. 676, 677, 678 and 679 all of 2014, the Division Bench of this Tribunal at Aurangabad by order dated 17.07.2015 has granted the similar reliefs as claimed by the applicant therein by relied upon the judgment of this Tribunal at Aurangabad dated 10.12.2014 passed in O.A.No. 515/2013 and others. In the aforesaid judgment, in

the identical set of facts, the Tribunal held that the person selected by the M.P.S.C for Maharashtra Medical & Health Services, Group A under the Public Health and Medical Education and Research Department as Medical Officers/Assistant Professors will be entitled for condonation of breaks of their ad-hoc service prior to such appointment on the recommendation of the MPSC and also service prior to such regular appointment will be counted for the purpose of grant of increments and Earned Leave. The said order was confirmed by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition No. 772/2016 and other connected matters.

15. Further there are recent orders as pointed out by learned counsel for the applicant passed by the Division Bench of this Tribunal at Aurangabad in O.A.Nos. 905 and 906 both of 2022 so also Nagpur Bench of this Tribunal in O.A.No. 543/2021 based upon the earlier view. This Tribunal at Aurangabad so also the Nagpur Bench of this Tribunal in the identical set of facts have taken a similar view.

16. In view of same and since I find no substance in the submissions made on behalf of the respondents, this



Original Application deserves to be allowed. Hence, the following order:-

**ORDER**

- (A) The Original Application is hereby allowed.
- (B) The respondents are hereby directed to count ad-hoc services of the applicant for grant of increments, Earned Leave by condoning technical breaks in service and for no other purpose.
- (C) The respondents are hereby further directed to issue necessary orders within three months from the date of this order.
- (D) In the circumstances, there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 13.06.2024**

SAS O.A. 129/2021 (S.B.) Continuity