

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 228 OF 2022**

**(Subject:- Suspension)**

**DISTRICT:-JALGAON**

<b>Dr. Saurabh s/o Prakash Kulkarni,</b>	)	
Age: 37 years, Occu: Service as	)	
Ad-hoc Associate Professor (Anatomy)	)	
Government Medical College,	)	
Jalgaon, Tq. & Dist. Jalgaon.	)	
Cell- 8329675705	)	<b>APPLICANT</b>

**V E R S U S**

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|---|---|--------------------|
| <b>1. The State of Maharashtra</b>              | ) |                    |
| Through its Secretary,                          | ) |                    |
| Medical Education & Drugs Department,           | ) |                    |
| 9 <sup>th</sup> Floor, Gokuldas Tejpal Hospital | ) |                    |
| Campus, Lokmanya Tilak Road,                    | ) |                    |
| Mumbai-01.                                      | ) |                    |
| <b>2. The Commissioner,</b>                     | ) |                    |
| Directorate Medical Education & Drugs,          | ) |                    |
| D. Pamello Road, St. George Hospital            | ) |                    |
| Compound, Fort, Mumbai.                         | ) |                    |
| <b>3. The Director,</b>                         | ) |                    |
| Medical Education & Drugs Department            | ) |                    |
| D Pamello Road, St. George Hospital             | ) |                    |
| Compound, Fort, Mumbai.                         | ) |                    |
| <b>4. The Dean,</b>                             | ) |                    |
| Government Medical College,                     | ) |                    |
| Jalgaon, Civil Hospital Campus,                 | ) |                    |
| Pande Chowk, Jalgaon – 425001                   | ) |                    |
| <b>5. The Incident Commander/Administrator</b>  | ) |                    |
| Government Medical College,                     | ) |                    |
| Civil Hospital Campus, Pande Chowk.             | ) |                    |
| Jalgaon, Dist. Jalgaon.                         | ) | <b>RESPONDENTS</b> |
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**APPEARANCE** : Shri M.B. Kolpe, learned counsel  
for the applicant.  
: Shri D.M. Hange, learned Presenting  
Officer for the respondent authorities.  
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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**  
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**DATE** : **24.04.2024**  
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### **ORDER**

Heard Shri M.B. Kolpe, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the suspension order dated 08.06.2020 issued by the respondent No.5. The applicant is also seeking direction that the period of suspension from 08.06.2020 to 08.04.2022 to be declared as duty period and further the respondents be directed to disburse the salary of the said period.

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

(i) On 16.08.2012, the applicant came to be appointed as a Assistant Professor (Anatomy) at Government Medical College,

Mumbai through Maharashtra Public Service Commission (M.P.S.C.). The M.P.S.C. has recommended the name of the present applicant and further by order dated 08.10.2012 the place of joining was changed from Mumbai to Aurangabad. On 17.11.2012, the applicant had joined at Aurangabad in Government Medical College as Assistant Professor (Anatomy). On 17.11.2014, the period of probation of the applicant was successfully completed and his appointment was regularized.

(ii) It is the case of the applicant that he was temporarily promoted as Ad-hoc Associate Professor and posted at S.B.H. Government Medical College, Dhule where he joined on 27.10.2015. After completion of the period of ad-hoc service, he was relieved from the services at Dhule and posted at Government Medical College, Aurangabad on his post of Assistant Professor. By order dated 15.09.2017, the applicant was again posted in S.V.N. Government Medical College, Yeotmal as ad-hoc Associate Professor, where he has joined on 19.09.2017. On 26.09.2017, the applicant was promoted for 360 days as Ad-hoc Associate Professor and posted to Government Medical College, Jalgaon.

(iii) It is the case of the applicant that when the applicant was discharging his duties at Jalgaon an office order was issued to discharge duties to handover the dead bodies to the relatives died due to pandemic of Covid-19.

(iv) It is the specific case of the applicant that he has given application for medical leave as due to illness he was not able to discharge the duties on 25.05.2020 and also submitted the medical prescription on 29.05.2020 in support of his contention.

(v) The applicant further states that on 07.06.2020, the Incident Commander/Administrator, Government Medical College, Jalgaon has issued memorandum to the applicant and directed the applicant to resume the duties by rejecting his request seeking medical leave. The said memorandum dated 07.06.2020 is marked as Annexure 'A-7'.

(vi) According to the applicant, he was under the observation of Dr. Patankar at Aurangabad the therefore, he could not resume the duties. On 08.06.2020, the applicant has sent the medical papers and application to the Dean by E-mail, however, by ignoring the said documents, the respondent No.5 i.e. Incident Commander has issued the

suspension order of the applicant by taking recourse to the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "M.C.S. Rules, 1979") w.e.f. 29.05.2020. The applicant was under treatment since 29.05.2020 to 26.08.2020 and he has regularly taken the treatment at Sant Eknath Antarang Hospital, Aurangabad.

(vii) On completion of 90 days of the suspension order, the applicant has made an application to revoke the suspension and to allow the applicant to join the services. He has also made request to make payment of subsistence allowance to him as per Rules. The applicant time and again has made similar request by filing the application. By Government order dated 08.04.2022, the applicant came to be reinstated and the decision about subsistence allowance has also been taken. It is stated in the order itself that the decision about regularization of the period of suspension will be taken in due course separately. Hence, this Original Application.

4. Learned counsel for the applicant submits that the impugned order of suspension dated 08.06.2020 (Annexure 'A-8') is nullity in the eye of law as the respondent No.5 is not an appointing authority to pass the order of suspension

against the applicant. Learned counsel for the applicant submits that in view of same, the passing of the impugned order is arbitrary and colourable exercise of power.

5. Learned counsel for the applicant submits that the respondent No.5 has ignored that the applicant has submitted an application on 29.05.2020 informing the respondent No.4 herein that due to illness, he was not able to resume his duties and thus unable to attend the work. Learned counsel for the applicant submits that the applicant has given application for medical leave but the same was turned down. This approach of the respondent No.5 itself is cryptic in nature. The respondent No.5 has also ignored the details mailed by the applicant on 08.06.2020 in respect of ongoing treatment due to the illness of the applicant. Learned counsel for the applicant submits that though belatedly the suspension order has been revoked and the applicant came to be reinstated, however, no decision has been taken about regularizing the period of suspension i.e. from 08.06.2020 to 08.04.2022 and the respondents have not paid the salary of the said period to the applicant.

6. Learned counsel for the applicant has referred the provisions of Rule (4) of the M.C.S. Rules, 1979 and vehemently submitted that the respondent No.5 who is Incident Commander/Administrator of the Government Medical College, Jalgaon is not a competent authority to pass the suspension order. Learned counsel for the applicant submits that the Original Application deserves to be allowed.

7. Learned Presenting Officer on the basis of affidavit in reply filed by respondent Nos. 1 to 5 submits that the pandemic Covid-19 was at peak during the said period and the situation was very much critical. Therefore, the Government has issued the order dated 01.06.2020 and appointed the Chief Executive Officer, Zilla Parishad, Jalgaon as Incident Commander/Administrator to look after the entire management and coordination of Covid-19.

8. Learned P.O. submits that the applicant remained absent from duty when his services were extremely necessary for the Covid-19 situation. The applicant has submitted an application dated 29.05.2020 and he had not applied for leave on 29.05.2020 as contended. Further the applicant was posted at Jalgaon and discharging his duties at Jalgaon. His

headquarter was Jalgaon. The applicant was responsible to handover dead bodies of the corona patients to their relative. Surprisingly, the applicant has submitted the medical prescription issued by the private hospital of Aurangabad. It is thus clear that in the critical emergency condition of Covid-19, the applicant left headquarter without permission of the superior authorities. Hence, the memo dated 07.06.2020 is rightly issued by the Incident Commander/Administrator, Government Medical College, Jalgaon. The applicant was communicated to remain present on the duty and also informed that failure will be resulted into dismissal from service in terms of provisions of Epidemic Control Act, 1897 and Disaster Management Act, 2005.

9. Learned P.O. submits that the entire system was engaged in the management and treatment of Covid-19 patients. In such a critical situation, the applicant has not only left the headquarter without permission of his superiors but he remained absent from his duties. The applicant was therefore suspended from the service vide order dated 08.06.2020.



10. Learned P.O. submits that it is incomprehensible that though the applicant himself belongs to medical fraternity and is medical teacher at Government Medical College, has submitted the prescription issued by the private doctor which shows that he was under treatment for psychological reasons. The applicant should have preferred to approach the experts in the department of psychiatry in any nearest Government Medical College and Hospital.

11. Learned P.O. submits that the departmental enquiry has been initiated against the applicant. The applicant should have understood his responsibility as a Doctor and Medical Teacher during the period of Covid-19. The applicant was responsible for handing over the dead bodies of corona patients to their relatives which was a very crucial responsibility. During the said period, the situation was very sensitive and critical. The applicant remained absent from duty in this situation and therefore, he was suspended. Learned P.O. submits that the decision about reinstatement and subsistence allowance to the applicant has been taken vide Government order dated 08.04.2022.

12. Learned counsel for the applicant on the basis of rejoinder affidavit of the applicant submits that in spite of suffering from severe symptoms of depression, the applicant was discharging his duties at Government Medical College, Jalgaon. Further, the said symptoms were aggravating and the applicant had started developing suicidal tendencies. The applicant has personally explained his difficulties to the Dean, Government Medical College, Jalgaon. On 29.05.2020, his suffering became so grave that immediate professional help was mandatory. Therefore, the applicant has preferred to approach the consultant available at Aurangabad. Learned counsel for the applicant submits that though the applicant has given information about his illness to the Dean time to time, but it was not taken seriously.

13. Learned counsel for the applicant submits that the depression is severe mental disorder and requires immediate and complete treatment. It is the vested rights of the persons with mental illness and right to treatment and quality of care in terms of provisions of Section 18 (1) and 18 (2) of The Mental Healthcare Act, 2017. This fact has been ignored by the respondents while passing the impugned order.

14. Learned counsel for the applicant submits that due to said suspension order and initiation of the departmental enquiry, though the respondent No.1 held meeting of the Departmental Promotion Committee on 20.09.2021, the applicant was not promoted and the result about his promotion is kept in sealed pocket and the same will be opened after completion of the departmental enquiry.

15. Learned counsel for the applicant submits that the applicant is victim of illegal suspension for the period of one year and ten months during which he was denied subsistence allowance by the respondents. Thereafter, he was reinstated on inferior post and he was paid subsistence allowance of inferior post when he came to be suspended from the superior post of Associate Professor.

16. Learned P.O. on the basis of sur-rejoinder filed on behalf of respondent No.4 to the rejoinder of the applicant submits that in view of provisions of Epidemic Diseases Control Act, 1897 and Disaster Management Act, 2005, the suspension order came to be passed against the applicant.

17. Learned P.O. submits that due to death of Corona infected patients, letter from the office of the Collector, Jalgaon was received in the month of May, 2020. In order to carry out complete management and coordination in the critical situation, as per G.R. dated 01.06.2020 issued by the Medical Education and Drugs Department. Shri B.N. Patil, Chief Executive Officer, Zilla Parishad, Jalgaon was appointed as Administrator and he was given administrative powers.

18. As per the office order dated 08.04.2020, Dr. Saurabh Kulkarni was entrusted with the responsibility of handing over the corpse to the relatives of the deceased on Friday and Saturday as per the guideline of the Government. As Corona infection was at peak in the State and the District, there were orders that the officers and employees should not go on any kind of leave during the said period. However, the applicant has submitted his statement on 29.05.2020 to the effect that he is not able to attend the work due to illness. He remained absent from duty since 29.05.2020 (Friday). It was very serious matter. Memorandum was issued on 07.06.2020 to the effect that the office is not in a position to sanction the leave as the department in which the applicant is working is

falling in the essential service and thus, the applicant needs to report work immediately or otherwise the action will be taken against him in terms of the said Diseases Control Act, 1897 and in terms of Disaster Management Act, 2005. However, the applicant did not return to duty during the said critical period.

19. Learned P.O. submits that original position of Dr. Saurabh Kulkarni is Assistant Professor (Anatomy) and his original institution is Government Medical College, Aurangabad. On completion of 90 days of the suspension period dated 26.08.2020, a request was submitted for guidelines to Directorate for further process and to for subsistence allowance. The applicant was working in the institute on ad hoc basis for the post of Associate Professor and his original post of Assistant Professor is Government Medical College, Aurangabad. There was a confusion as to whether the suspension allowance should be paid to the post of Associate Professor (Ad-hoc) or to the post of Assistant Professor. Accordingly, the Directorate of Health was informed. The decision was necessary to be taken at the Government level about the revocation and reinstatement of

the applicant and the subsistence allowance. In connection with the case, no specific decision has been taken about it and no guidelines and orders have been received from the Government.

20. Learned counsel for the applicant has vehemently submitted that suspension order dated 08.06.2020 is nullity in the eye of law as the suspension order has been passed by the Incident Commander/Administrator i.e. respondent No.5 who is not an appointing authority of the applicant. Learned counsel for the applicant has referred the provisions of Rule (4) of the M.C.S. Rules, 1979.

21. In view of above submissions, sub-rule (1) of Rule (4) of M.C.S. Rules, 1979 is relevant for the present discussion which is reproduced herein below:-

***“4. Suspension.-***

*(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension-*

*(a) where a disciplinary proceeding against him is contemplated or is pending, or*

*(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or*

*(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:*

*Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.*

*(2) ... ..*

*(3) ... ..*

*(4) ... ..*

*(5) ... ..”*

22. In view of sub-rule (1) of Rule 4 of M.C.S. Rules, 1979, the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension. Clause (a), (b) and (c) prescribes the circumstances in which the suspension order can be passed. In the proviso to sub-rule (1) it is stated that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

23. On careful perusal of the suspension order dated 08.06.2020 (Annexure 'A-8'), I find that the suspension order has been passed jointly by the respondent No.5 i.e. the Incident Commander/Administrator, Government Medical College, Jalgaon and by the Dean, Government Medical College, Jalgaon and the copy thereof is also marked to the Government. The said suspension order has been passed in contemplation of disciplinary proceedings in terms of 4(1) (a) of the M.C.C. Rules, 1979. The reasons for suspension have been specifically stated in the order and the copy thereof has been forwarded to the Director, Medical Education and Research, Mumbai and to the Secretary, Medical Education and Drugs Department, Mumbai.

24. On careful perusal of the Government order dated 01.06.2020 it appears that the Chief Executive Officer, Zilla Parishad, Jalgaon came to be appointed as Incident Commander/Administrator of the Government Medical College, Jalgaon under the special circumstances of outbreak of Covid-19 and increasing of death toll of the infected Covid-19 patient which has frightened the citizens. It has been specifically stated in the Government order that in order to



streamline and coordinate effectively in the work of the Government Medical College and to control over the administration during the said period, Chief Executive Officer, Zilla Parishad, Jalgaon is appointed as administrator with the further rider that the Dean of the Government Medical College, Jalgaon shall continue with his regular work of patient service and treatment of Covid-19 patient. It thus appears that there as a clear cut bifurcation of work in view of outbreak of pandemic Covid-19.

25. Furthermore, as stated above, even assuming that the respondent No.5 has passed the said order of suspension, however, the said order of suspension is also signed by the Dean and the copy of the order of suspension has also been forwarded to the Government explaining as to under what circumstances, the order was made.

26. In view of above discussion, in my considered opinion, there is sufficient compliance of sub-rule (1) of Rule (4) of M.C.S. Rules, 1979 and the submissions made on behalf of applicant by the learned counsel that the suspension order dated 08.06.2020 is nullity and is devoid of merits.

27. Learned counsel for the applicant has vehemently submitted about the illness of the applicant and tried to justify his absence. It is not necessary to repeat again that the entire situation in the Country as well as State was fearful and critical. There was increasing death toll of the infected Covid-19 patient which has frightened the citizens to such an extent that the situation was required to be handled seriously, sensitively and responsibly. In the backdrop of this critical situation, even though specific directions have been issued to the officers and the employees, the applicant under the pretext of his illness, not only left the headquarter by submitting an application but produced the certificate of a private hospital about his treatment at Aurangabad. It is clear that the applicant during that critical situation left headquarter without taking permission from the superior officers.

28. On perusal of the copy of the application dated 29.05.2020 (Annexure 'A-6' collectively) I find that the applicant has simply stated in the application that he is unable to attend the duties due to illness and the said application was submitted to Dean, Government Medical

College, Jalgaon. There is one prescription annexed to the said application which has been issued by Dr. Vikrant Pathankar, Aurangabad. It has been stated that the symptoms of are depression with the feeling of sadness, apathy and lethargy etc. It is rather obvious that during the outbreak of Covid-19 and imposition of lockdown and continuation thereof from time to time, there was a general feeling of sadness, apathy etc. particularly when a person is associated with the work of handing over the dead bodies of the Covid-19 patients to the relatives. However, the applicant should have resumed the duties forthwith when he was not specifically advised by the treating doctor to stay away from the duties. It is further rather doubtful as to what led the applicant who is holding the post of Assistant Professor in the Government Medical Collage to approach the private doctor to obtain said certificate (Annexure 'A-6' collectively). Thus in my considered opinion, the suspension order in a given circumstances was legal, proper and correct.

29. So far as the prayer of the applicant about regularization of the suspension period as duty period and to disburse the salary of the said period to him, it is open for the

applicant to file an application to that effect after completion of departmental enquiry and upon filing such application, it is open for the respondent authorities to decide the said application on its own merits in accordance with law.

30. In view of above discussion, I find no substance in the Original Application and the same is liable to be dismissed. Hence, the following order:-

**O R D E R**

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**  
**Date : 24.04.2024**  
SAS O.A. 228/2022(S.B.)Suspension