

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 230 OF 2022

DIST. : AURANGABAD

Dr. Seema D/o Madhukar Digaskar @,))
 Dr. Seema W/o Dhananjay Pathak,)
 Age. 50 years, Occu. Associate Professor,)
 R/o C/o Dr. Dhananjay Pathak,)
 Flat No. 3, Plot no. 102, Swara Residency,))
 Samarthnagar, Aurangabad.) ..

APPLICANT

V E R S U S

1. The State of Maharashtra,)
 Through its Secretary,)
 Medical Education & Drugs)
 Department, Mantralaya,)
 Mumbai – 400 032.)
2. The Commissioner,)
 Directorate of Medical Education)
 and Research, Govt. Dental)
 College & Hospital Building,)
 St. George's Hospital Compound,)
 Near V.T., Mumbai – 01.)
3. The Dean,)
 Government Dental Hospital and)
 College, Aurangabad.)..

RESPONDENT

 APPEARANCE :- Shri M.C. Swami, learned counsel for
 the applicant.

: Shri V.G. Pingle, learned Presenting
 Officer for the respondent.

CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : 18.03.2024

ORAL - ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri M.C. Swami, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent.

2. Applicant was promoted to the post of Professor vide order passed on 13.12.2021. At the relevant time the applicant was working as a Associate Professor at Aurangabad. After promotion, posting was given to the applicant at Government Dental College at Mumbai and she was expected to join within 30 days from the date of order.

3. It is the case of the applicant that before the time for joining on promotional post expires, she suffered serious ailment and was required to be hospitalized. Learned counsel for the applicant submitted that the applicant was compelled to extend the medical leave for certain more period and last such medical leave was applied by her on 08.02.2022 for next 15 days. It is the grievance of the applicant that in the meanwhile period i.e. on 18.02.2022 her promotion came to be cancelled on the ground that she did not join on the promotional post

within the given period and did not even apply for extension of time for joining on the promotional post.

4. Learned counsel pointed out that in the application seeking medical leave the request was also made by the applicant seeking extension of time for joining on the promotional post. Learned counsel submitted that last such application seeking extension of time was submitted by the applicant on 14.02.2022. However, without considering the said applications the order of promotion has been cancelled by the respondents. According to the applicant, the order of promotion has been illegally and arbitrarily cancelled. Applicant has, therefore, approached this Tribunal seeking following reliefs:-

“(A) This Original Application may kindly be allowed.

(B) To quash and set aside the order dated 18.02.2022 passed by the Respondent No. 1 thereby cancelling the promotion of the applicant on the post of Professor, Conservative Dentistry, Govt. Dental College, Mumbai.

(C) To direct the respondents to relieve the applicant from the post of Associate Professor Conservative Dentistry, Govt. Dental College, Aurangabad and allow her to join the post of Professor, Conservative Dentistry, Govt. Dental College, Mumbai.”

5. Respondents have resisted the contentions raised in the application, as well as, prayers made therein. Joint affidavit in reply is filed by the respondent nos. 1 to 3. Sum and substance of the contentions raised by the respondents is that without seeking extension of time to join at the promotional post, the applicant did not join within the stipulated period or within extended period and hence the respondents were constrained to pass the impugned order. Shri V.G. Pingle, learned Presenting Officer reiterated the contentions raised in the affidavit in reply and submitted that no error can be noticed on part of the respondents in issuing the order of cancelling the promotion granted to the applicant for not joining within stipulated period.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondent authorities. Most of the facts are not in dispute. The applicant was on medical leave during the period between 04.01.2022 till 22.02.2022 is not in dispute. Leave for the aforesaid period has been duly sanctioned by the competent authority vide its order dated 19.07.2022. Therefore, there shall not be any doubt that in the relevant period the applicant was ill.

7. In view of the stipulation in the order of promotion the applicant was to join on the promotional post on or before 13.01.2022. As is revealing from the documents on record, before few days thereafter the applicant was required to be on medical leave. She sought the leave up to 22.02.2022 and said leave, as mentioned hereinabove, was sanctioned by the respondents. From the documents on record it is further revealed that on 23.02.2022 the applicant resumed the duties of her erstwhile post at Aurangabad. The documents also reveal that on 14.02.2022 further medical leave was asked for by the applicant and request was specifically made for extension of time to join at the promotional post on medical ground. The submission of the said application on 14.02.2022 has not been denied or disputed by the respondents. There is nothing on record to show that the aforesaid request of the applicant was turned down or rejected by the respondents. On the contrary, after few days Government sanctioned medical leave of the said period. It has to be, therefore, presumed that leave of the said period was sanctioned, may be later on, but retrospectively.

8. Though it was *post facto* sanction, fact remains that during the relevant period the applicant was on medical leave. The applicant had immediately made a representation stating

out all the facts therein as to under what circumstances she could not join on the promotional post.

9. After having gone through the documents placed on record, it is revealed that the applicant had duly applied for the medical leave, as well as, for extension of time to join on the promotional post. Last such application was forwarded by the applicant on 14.02.2022 through the Dean of Government Dental College & Hospital at Aurangabad. In the said application the applicant has sought time to join on the promotional post. On 14.02.2022, it was also communicated by the Dean of Government Dental College & Hospital, Aurangabad that the applicant was not relieved till the said date. Respondent no. 01, however, vide the order passed on 18.02.2022 cancelled the promotion granted to the applicant. Respondents have not clarified nor any such document is placed on record by them evidencing that the application dated 14.02.2022 made by the applicant was rejected by the respondents. Most importantly the respondent no. 02 vide order passed on 19.07.2022 sanctioned the medical leave to the applicant for the period between 04.01.2022 to 22.02.2022.

10. As we have mentioned hereinabove, there has remained no doubt that in the period between 04.01.2022 to

22.02.2022 the applicant was on medical leave. The order of promotion thus has been cancelled while the applicant was on medical leave. Though it is true that when the order dated 18.02.2022 was passed by respondent no. 01, the medical leave of the applicant was not sanctioned and it came to be approved vide the aforesaid order dated 19.07.2022 retrospectively, the fact remains that on 18.02.2022, the request of the applicant vide letter dated 14.02.2022 seeking extension of time on medical grounds was pending before respondent no. 01. Respondent no. 01 neither allowed the said application nor rejected it.

11. In the impugned order dated 18.02.2022 there is a reference of the letter dated 11.02.2022. Vide the aforesaid letter written by respondent no. 01 to the Dean of the Government Dental College & Hospital, Aurangabad the learned Dean was directed to relieve the applicant by 14.02.2022. It was further stated in the said letter that if the applicant does not join on her promotional post by 14.02.2022, it would be presumed that she is not interested in joining on the promotional post and the order of her promotion would be cancelled. Learned Dean was asked to apprise the applicant about the letter so received and contents of the said letter.

Learned Dean has forwarded a reply to the said letter on 14.02.2022, thereby informing the Government that the applicant has sought extension of time to join on the promotional post on the medical grounds and further that the Hon'ble Minister for Medical Education has also instructed not to relieve the applicant from her existing post. In the impugned order dated 18.02.2022 passed by respondent no. 01 there is no reference of the letter of the Dean dated 14.02.2022, which was written by way of reply to the letter dated 11.02.2022 received from the Government.

12. The facts mentioned as above clearly reveal that though an application submitted by the applicant seeking medical leave was pending for consideration before respondent no. 01 wherein request was also made seeking extension of time to join on the promotional post, without deciding the same respondent no. 01 passed the order dated 18.02.2022 and thereby cancelled the promotion of the applicant. We reiterate that subsequently the Government has sanctioned the medical leave to the applicant for the period between 04.01.2022 to 22.02.2022. Thus, the applicant was on medical leave when her order of promotion was cancelled by respondent no. 01. Respondent no. 01, thus, arbitrarily exercised the powers vested

in him. Such an order cannot be sustained and deserves to be set aside. In the result, the following order is passed:-

ORDER

- (i) Order dated 18.02.2022 issued by respondent no. 01 is set aside.
- (ii) The respondents shall allow the applicant to join on the post of Professor (Conservative Dentistry) at Government Dental College at Mumbai, where she was posted after her promotion.
- (iii) The applicant to join on the promotional post at Mumbai within 04 weeks from the date of uploading of this order on the official website of this Tribunal.
- (iv) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 18.03.2024

Order Uploaded on the website on : 23.04.2024