

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 249/2021, 251/2021 & 177/2022

(1) Original Application No. 249/2021

DISTRICTS: AURANGABAD/
NANDURBAR/DHULE/JALGA
ON

1. Dr. Pandit S/o Raosaheb Rathod,
Age : 41 Years, Occ : Medical Officer (Group-B),
Presently Working at Open Air Prison, Paithan,
Tq. Paithan, District Aurangabad
2. Dr. Preeti Omprakashji Varma
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary Bhagur,
Tq. Vaijapur, District Aurangabad
3. Dr. Prashant S/o Santosh Badgujar,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center,
Pimpalkhuta, Tq. Akkalkuwa, District Nandurbar.
4. Dr. Pravin S/o Anant Kothawde,
Age : 37 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Ohva,
Tq. Akkalkuwa, District Nandurbar.
5. Dr. Pramod S/o Yashwantrao Sonavne,
Age : 42 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Moramba,
Tq. Akkalkuwa, District Nandurbar.
6. Dr. Rashtrapal S/o Dhudku Ahire,
Age : 42 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Rohini,
Tq. Shirpur, District Dhule.
7. Dr. Chandrashekhar S/o Dattatray Patil,
Age : 40 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary,
Satgaon, Tq. Pachora, District Jalgaon.

8. Dr. Virendra Ramesh Patil
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary,
Badarkha, Tq. Pachora, District Jalgaon.
9. Dr. Dnyaneshwar Namdeo Lad,
Age : 37 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary,
Savkheda, Tq. Gangapur, Dist. Aurangabad

V E R S U S

1. The State of Maharashtra,
Through,
Principal Secretary,
Public Health Department,
10th Floor, G. T. Hospital Building, New
Mantralaya, Mumbai-1.
2. The Commissioner Health Services & Director
(N.H.M.) 3rd Floor, "Arogya-Bhavan", St. Georges
Hospital Campus, Near C.S.T. Mumbai-1.
3. The Deputy Director of Health Services,
Nasik Circle, Nasik, Shalimar Chowk,
Trimbak Road, Nasik-422001.
4. The Deputy Director of Health Services,
Aurangabad Circle, Aurangabad, Opp-Baba Petrol
Pump, Aurangabad-431001.
5. The Chief Executive Officer
Zilla Parishad, Aurangabad.
6. The Chief Executive Officer
Zilla Parishad, Nandurbar,
District Nandurbar.
7. The Chief Executive Officer
Zilla Parishad, Dhule,
District Dhule.
8. The Chief Executive Officer
Zilla Parishad, Jalgaon,
District Jalgaon.

RESPONDENTS

(2) Original Application No. 251/2021

DISTRICTS: BULDHANA/ NASIK /
AURANGABAD / THANE / YEOTMAL /
PALGHAR / AKOLA / GONDIYA.

1. Dr. Swapnil S/o Sudhakar Aajbe,
Age : 46 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Lokhanda,
Primary Health Center, Ganeshpur, Tq. Khamgaon,
District Buldhana.
2. Dr. Deepashri Bharat Pilodkar,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Kalegaon,
Primary Health Center, Rohana, Tq. Khamgaon,
District Buldhana.
3. Dr. Jeevan S/o Babusing Rathod,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Shirala-Nemane,
Primary Health Center, Atali, Tq. Khamgaon,
District Buldhana.
4. Dr. Rajendrakumar S/o Shriram Suradkar,
Age : 46 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Pimpri Korde,
Primary Health Center, Ganeshpur, Tq. Khamgaon,
District Buldhana.
5. Dr. Mahesh S/o Laxmanrao Akhade,
Age : 43 Years, Occ : Medical Officer (Group-B),
Presently Working at Alopahic Dispensary, Bori-Adgaon,
Primary Health Center, Bothakazi, Tq. Khamgaon,
District Buldhana.
6. Dr. Baburao S/o Shaligram Telang,
Age : 49 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Antraj,
Primary Health Center, Ganeshpur, Tq. Khamgaon,
District Buldhana.
7. Dr. Jayashree Purushottam Muley,
Age : 41 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Alampur,
Primary Health Center, Nandura, Tq. Nandura,
District Buldhana.

8. Dr. Suhasini Laxmanrao Shiralkar,
Age : 42 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Varna,
Primary Health Center, Rohna, Tq. Khamgaon,
District Buldhana.
9. Dr. Shital Jagannath Thak,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Bhalegaon,
Primary Health Center, Pimpalgaon Raja, Tq. Khamgaon,
District Buldhana.
10. Dr. Shailesh Haribhau Khandare,
Age : 44 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Borjawala,
Primary Health Center, Pimpalgaon Raja, Tq. Khamgaon,
District Buldhana.
11. Dr. Pankaj Shankarlalji Sharma,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Shahapur,
Primary Health Center, Bothakazi, Tq. Khamgaon,
District Buldhana.
12. Dr. Gajesh Dadarao Deshmukh,
Age : 43 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Chitoda,
Primary Health Center, Bothakazi, Tq. Khamgaon,
District Buldhana.
13. Dr. Vishnudas Dajiba Kale,
Age : 44 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Ghatnandra,
Primary Health Center, Amthana, Tq. Sillod,
District Aurangabad.
14. Dr. Anand S/o Govindrao Patil,
Age : 47 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Dhabepauni,
Tq. Arjuni-Morgaon, District Gondiya.
15. Dr. Ashish S/o Mukundrao Akarte,
Age : 40 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Pathardi,
Primary Health Center, Adgaon, Tq. Telhara,
District Akola.

16. Dr. Pankaj S/o Anandrao Magar,
Age : 46 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Chatari,
Primary Health Center, Dhanki, Tq. Umarkhed,
District Yavatmal.
17. Dr. Pushpa Harichandra Bankar,
Age : 46 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Unit, Ozarkhed,
Tq. Trimbak, District : Nasik
18. Dr. Atul S/o Rajendra Deore,
Age : 40 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Kulwandi,
Tq. Peth, District Nasik.
19. Dr. Sonali Uttamdas Bairagi,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Kochargaon,
Tq. Dindori, District Nasik.
20. Dr. Prashant Eknath Khairnar,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Phirte Arogya Pathak, Desarane,
Tq. Kalwan, District Nasik.
21. Dr. Swati Sukdeo Deore,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Unit, Gandole,
Tq. Peth, District Nasik.
22. Dr. Devendra Chabildas Patil,
Age : 37 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Ashagad,
Tq. Dahanu, District Palghar.
23. Dr. Yogesh S/o Devidas Patil,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Kalamb,
Tq. Karjat, District Raigad.
24. Dr. Sachin Chagan Pawar,
Age : 37 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Kinhvali,
Tq. Shahapur, District Thane.

25. Dr. Umesh Sandu Patil,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Takipathar,
Tq. Shahapur, District Thane.
26. Dr. Rohini Madhukar Patel,
Age : 38 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Dolkhamb,
Tq. Shahapur, District Thane.
27. Dr. Sunil Haribhau Chahakar,
Age : 43 Years, Occ : Medical Officer (Group-B),
Presently Working at Allopathic Dispensary, Vihigaon,
Primary Health Center, Atali, Tq. Khamgaon,
District Buldhana.
28. Dr. Ameet Prabhakar Bamratkar,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Pimpalgaon
Nath, Primary Health Center, Borakhedi, Tq. Motala,
District Buldhana.
29. Dr. Prakash Narayanrao Wankhede,
Age : 43 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Kothali,
Primary Health Center, Borakhedi, Tq. Motala,
District Buldhana.
30. Dr. Shivanand Laxman Shingade,
Age : 47 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Vardadi (bk),
Primary Health Center, Adgaon, Tq. Sindkhed Raja,
District Buldhana.
31. Dr. Anand Devidas Paraskar,
Age : 47 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Akolkhed,
Primary Health Center, Mundgaon, Tq. Akot,
District Buldhana.
32. Dr. Sharad Shrirang Katkade,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Ayurvedic Dispensary, Katarni,
Tq. Yeola, District Nasik.

33. Dr. Sachin S/o Bhanudas Bairagi,
Age : 40 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Center, Nigdol,
Tq. Dindori, District Nasik.
34. Dr. Nutan Chandrabhan Bansode,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Primary Health Unit, Rayate,
Tq. Trimbakeshwar, District Nasik.

V E R S U S

1. The State of Maharashtra,
Through,
Principal Secretary,
Public Health Department,
10th Floor, G. T. Hospital Building, New
Mantralaya, Mumbai-1.
2. The Commissioner Health Services & Director
(N.H.M.) 3rd Floor, "Arogya-Bhavan", St. Georges
Hospital Campus, Near C.S.T. Mumbai-1.
3. The Deputy Director of Health Services,
Akola Circle, Akola, New Radhakishan Plots,
Akola-444001.
4. The Chief Executive Officer
Zilla Parishad, Buldhana,
Newar Jaistambh Chowk,
Buldhana-443001.
5. The Deputy Director of Health Services,
Nasik Circle, Nasik, Shalimar Chowk,
Nasik-422001.
6. The Chief Executive Officer
Zilla Parishad, Nasik, Trimbak Naka,
Mohan Nagar, Nasik
7. The Deputy Director of Health Services,
Mumbai Circle, Thane, Mental Hospital Compound,
Thane (W)-400604.

8. The Deputy Director of Health Services,
Aurangabad Circle, Aurangabad, Opp. Baba Petrol Pump,
Aurangabad-431001.
9. The Deputy Director of Health Services,
Nagpur Circle, Nagpur, Nagpur Circle, Mata Katcheri,
Shradhanand Peth, Trimurti Nagar, Near Diksha Bhumi,
Nagpur-440022.
10. The Chief Executive Officer
Zilla Parishad, Aurangabad
11. The Chief Executive Officer
Zilla Parishad, Gondiya, Dist. Gondiya-441601.
12. The Chief Executive Officer
Zilla Parishad, Thane, Dist. Thane
13. The Chief Executive Officer
Zilla Parishad, Palghar, Dist. Palghar.
14. The Chief Executive Officer
Zilla Parishad, Raigad, Dist. Raigad
15. The Chief Executive Officer
Zilla Parishad, Akola.

RESPONDENTS

(3) Original Application No. 177/2022.

DISTRICT : AURANGABAD

1. Dr. Pravin S/o Karbhari Dhakne,
Age : 39 Years, Occ : Medical Officer (Group-B),
Presently Working at Unani Dispensary, Pimpri Raja,
Tq. & Dist. Aurangabad

V E R S U S

1. The State of Maharashtra,
Through,
Principal Secretary,
Public Health Department,
10th Floor, G. T. Hospital Building, New
Mantralaya, Mumbai-1.

2. The Commissioner Health Services & Director
(N.H.M.) 3rd Floor, "Arogya-Bhavan", St. Georges
Hospital Campus, Near C.S.T. Mumbai-1.
3. The Deputy Director of Health Services,
Aurangabad Circle, Aurangabad, Opp. Baba Petrol Pump,
Aurangabad -431001.
4. The Chief Executive Officer
Zilla Parishad, Aurangabad,
Opp. Amba Apsara Cinema, Aurangpura,
Aurangabad-431001. .. RESPONDENTS

APPEARANCE :- Shri J.S. Deshmukh, learned Advocate for
the applicants in all these matters.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities in
all these matters.
: None appears for other respondents.

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

DATE : **04.07.2024**

ORAL ORDER

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

1. Heard Shri J.S. Deshmukh, learned counsel for the
applicants and Shri V.R. Bhumkar, learned Presenting Officer for
respondent authorities. None appears for other respondents.

2. Since in all these Original Applications grievance raised by the applicants and the reliefs sought by them are identical, we have heard all these matters together and deem it appropriate to decide these applications by a common reasoning.

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. Learned counsel further submitted that thereafter 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.

6. Respondent no. 06 only has filed affidavit in reply in the matters. Respondent no. 06 has contended in the said affidavit that the applicants are absorbed in the services with a specific condition that they would not be entitled to claim any past service benefits i.e. increments accrued in the said period or E.Ls. accrued in the said period. As such, according to the said respondent, the applicants are not entitled for any relief.

7. Respondent Nos. 1, 2, 3, 5 & 7 to 9 in O.A. No. 251/2021 have filed their joint affidavit in reply in the said O.A. It is the contention of these respondents that the applicants while joining the duties as ad-hoc employees have accepted the terms and conditions stipulated in the appointment orders served upon them, wherein it is specifically averred that the appointees may not be entitled for any increment or benefit of earned leave etc. It is contended that since the said appointments were contractual appointments the applicants are bound by the terms and conditions of the said contract and have thus no vested right to claim any benefit contrary to the said

terms and conditions. It is further stated that the applicants are wrongly relying on the order passed in O.A. 149/2003 since the said matter was relating to the Director of Medical Education and Research Department (DMER), whereas the present applicants are in the employment of Public Health Department and, as such, according to these respondents the said decision may not apply to the matters of the present applicants. It is further contended that the applicants have executed the bonds in pursuance of notification dated 11.01.2019, clause 5 of which demonstrates that the applicants may not be entitled for any service benefit of the period of ad- hoc services rendered by them. In the circumstances, the said respondents have prayed for dismissal of the said O.A.

8. Respondent No. 4 i.e. Zilla Parishad, Buldhana has also filed affidavit in reply in O.A. No. 251/2021 and has opposed for grant of any relief as claimed by the applicants. Relying on the judgment of the Hon'ble Supreme Court in the case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan in Civil Appeal No. 7744/1997 decided on 18.02.2003, it is contended that, ad-hoc employee if has accepted the conditions stipulated in the appointment order issued to him the said employee cannot take advantage of the fortuitous circumstances that he

continued for a long period and merely on that basis such employee cannot be regularized. When the present matters were heard Shri V.R. Bhumkar, learned Presenting Officer submitted that the affidavit in reply filed in O.A. No. 251/2021 may also be considered as affidavit in reply in other matters, wherein no separate reply has been filed by these respondents.

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

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.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 04.07.2024

UPLOADED ON : 14.10.2024