

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 50 OF 2021

DIST. : PARBHANI

Ravindra S/o Kishanrao Deshmukh,
 Age : 51 years, Occu.: Service as M.O.,
 R/o. Gangakhed, Tq. Gangakhed,
 District Parbhani.

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APPLICANTS

V E R S U S

1. The State of Maharashtra
 Through its Principal Secretary,
 Department of Public Health,
 10th Floor, GT Hospital Building,
 New Mantralaya, Mumbai-01.
2. The Director,
 Public Health Department,
 Arogya Bhavan, Mumbai.
3. The Deputy Director,
 Public Health Services,
 Aurangabad Division, Aurangabad.
4. The Civil Surgeon,
 District Civil Hospital, Parbhani,
 Tq. & Dist. Parbhani.
5. The Medical Superintendent
 Sub-District Hospital, Gangakhed,
 Tq. Gangakhed, Dist. Parbhani.

...RESPONDENTS

 APPEARANCE :- Shri Ganesh V. Mohekar, learned
 Advocate for the applicant.
 : Shri B.S. Deokar, learned Presenting
 Officer for the respondents.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman

DATE : **8th MARCH, 2023**

ORAL - ORDER

1. Heard Shri Ganesh V. Mohekar, learned counsel for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. The learned counsel for the applicant submits on instructions that the present Original Application is restricted in respect of the wages of the period from 13.7.2018 to 23.10.2018 and for other prayers the learned counsel submits that the applicant will approach before the appropriate authority. In the present Original Application the applicant has made the following prayer :-

“VI) REMIDIES SOUGHT :

A) *Original Application may kindly be allowed.*

B) *This Hon'ble Tribunal may please to direct the respondents authorities to release/pay the unpaid regular salaries for the period from 16.7.2018 to 4.11.2018, considering the same as on duty period as transfer order dated 16.7.2018 has been cancelled, one day salary for 1.6.2018, 14, 15 July-2018 and one month salary for whole month of August, 2017.*

C) *Any other suitable and equitable relief may kindly be granted in favour of applicant.*

VII) Interim Reliefs sought :

D) *Pending hearing and final disposal of this Original Application, the Respondents authorities may kindly be directed to deposit the unpaid regular salaries for the period from 16.7.2018 to 4.11.2018, considering the same as on duty period as transfer order dated 16.7.2018 has been cancelled, one day salary for 1.6.2018, 14, 15 July-2018 and one month salary for whole month of August, 2017 along with 12% interest.*

E) *Ad-interim relief in terms of prayer clause “D” be granted in favour of applicant.”*

3. The learned counsel for the applicant submitted that in the order passed in Original Application No. 523/2018 this Tribunal has recorded a clear finding that the order of transfer, which was impugned in the said Original Application was bad in law and was passed by incompetent authority. The applicant was transferred by order dated 13.7.2018 by the Director of Health Services. The said order was questioned by the applicant by filing Original Application No. 523/2018. During pendency of the said Original Application the said order of transfer came to be withdrawn vide another order dated 1.1.2019. in the meanwhile the respondents suspended the applicant vide order dated 23.10.2018. In the present Original Application the applicant has sought the wages of the period from 13.7.2018 till 23.10.2018. He has also prayed for the

wages of some earlier period i.e. wages for 1st June, 2018, 14th & 15th July, 2018 and for the month of August, 2017.

4. The request made by the applicant is opposed by the respondents. The learned Presenting Officer pointed out that the applicant was in fact supposed to resume at the transferred place even if he had challenged the said transfer order since there was no interim relief in that matter. Insofar as other requests are concerned the respondents have not taken any specific stand.

5. I have duly considered the submissions advanced by the learned counsel appearing for the applicant and the learned Presenting Officer appearing for the State authorities. I have also perused the order passed by the Tribunal in Original Application No. 523/2018 on 23.1.2019. The learned counsel Shri Mohekar has also placed his reliance on the judgment of principal Bench of this Tribunal at Mumbai in the case of **Smt. Surekha Nilkanth Gaikwad (heir of deceased applicant Shri Nilkanth Krushnadeo Gaikwad) Vs. the State of Maharashtra & Ors., Original Application No. 20/2021** decided on 28.4.2022. in the aforesaid Original Application the Tribunal has recorded a clear finding based on the law settled by the Hon'ble Supreme Court that if the order of transfer is issued by the Officer not

competent to issue such order and if such order is challenged by the employee concerned, he need not to report for duties in pursuance of the order of transfer, which he has challenged.

6. In the present matter similar circumstances are in existence. The decision rendered by the Tribunal in O.A. No. 523/2018 has not been challenged by the respondents; at least there is nothing placed on record by the respondents in that regard. In the circumstances, when the order of transfer dated 13.7.2018 was passed by the incompetent authority, and though the applicant did not resume in pursuance of the said order at the transferred place, he is entitled for the wages of the relevant period. Admittedly the said transfer order was withdrawn by the respondents themselves vide another order dated 1.1.2019. Before that the applicant was suspended w.e.f. 23.10.2018. In the circumstances, the applicant has to be held entitled for the wages of the period between 13.7.2018 till 23.10.2018. The respondents shall pay the wages of the said period to the applicant within 8 weeks from the date of this order.

7. Insofar as the prayer of the applicant for wages of the 1st June, 2018, 14th & 15th July, 2018 and wages for the month of August, 2017 is concerned, it cannot be considered for the

reason that the applicant without availing efficacious remedy available for that, has approached the Tribunal directly. Having regard to the specific provision under sections 19 & 20 of the Administrative Tribunals Act, 1985 such applications and such prayers cannot be entertained. Prayer in that regard, therefore, has been rejected.

8. The Original Application stands partly allowed in the aforesaid terms. No order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 8.3.2023

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