

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON JUDGMENT IN O.A. NOS. 530 & 531 BOTH OF 2015

(1) ORIGINAL APPLICATION NO. 530 OF 2015

DIST. : JALNA

Dr. Bhima s/o Fakira Dodke,
Age. 39 years, Occ. Medical Officer Group – A,
Presently working at Sub District Hospital,
Ambad, Tq. Ambad, Dist. Jalna. -- APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
Mantralaya, Mumbai - 32.
(through C.P.O., M.A.T.,
Aurangabad Bench).
2. The Director General of Health Service,
Vth floor, Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T., Mumbai.
3. The Dy. Director of Health Services,
Aurangabad Circle, Aurangabad.
4. The District Civil Surgeon,
District Hospital, Jalna. -- RESPONDENTS

WITH

(2) ORIGINAL APPLICATION NO. 531 OF 2015

DIST. : AURANGABAD

Dr. Abhaykumar s/o Balajirao Dhanorkar,

Age. 38 years, Occ. Medical Officer Group – A,
Presently working at Health & Family Welfare
Training Center, Aurangabad,
Dist. Aurangabad.

-- APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
Mantralaya, Mumbai - 32.
(through C.P.O., M.A.T.,
Aurangabad Bench).
2. The Director General of Health Service,
Vth floor, Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T., Mumbai.
3. The Dy. Director of Health Services,
Aurangabad Circle, Aurangabad.
4. The Chief Executive Officer,
Zilla Parishad, Aurangabad.
5. The Principal,
Health & Family Welfare Training Center,
N-5, Aurangabad, Dist. Aurangabad.-- RESPONDENTS

APPEARANCE : Shri J.S. Deshmukh, learned Advocate for
the Applicants in both the matters.

: Shri M.P. Gude, learned Presenting Officer
for the Respondents in O.A. no.
530/2016.

: Shri S.K. Shirse, learned Presenting
Officer for the Respondents in O.A. no.
531/2016.

CORAM : Hon'Ble Shri J.D. Kulkarni, Member (J)

J U D G M E N T**{Delivered on 22.9.2016}**

1. The applicant in O.A. no. 530/2016 – Shri Bhima F. Dodke – is claiming that as per rule 33 of M.C.S. (Pension) Rules, 1982 technical breaks in his service be condoned and the respondents be directed to extend the benefit of Assured Career Advancement Scheme to the applicant from the date on which he has completed 12 years of service in his present post i. e. w.e.f. July, 2013 and he be given revised pay scale.

2. The applicant was initially appointed as a Medical Officer on ad-hoc basis w.e.f. 14.7.2001. He filed O.A. no. 765/2001 for continuation of his post till the candidate from the M.P.S.C. was made available. Thereafter he has filed O.A. no. 37/2004 for extending the benefit of annual increment and accordingly the said benefit was extended to the applicant as per the order of this Tribunal dated 29.6.2004 passed by this Tribunal in the said O.A.

3. The applicant came to be appointed on substantive basis through MPSC vide order dated 27.1.2009 and was posted at Primary Health Centre, Ladsawangi, Dist. Aurangabad.

4. The applicant in O.A. no. 531/2016 – Shri Abhaykumar B. Dhanorkar – is also claiming that as per rule 33 of M.C.S. (Pension) Rules, 1982 technical breaks in his service be condoned and the respondents be directed to extend the benefit of Assured Career Advancement Scheme to the applicant from the date on which he has completed 12 years of service in his present post i. e. w.e.f. April, 2011 and he be given revised pay scale.

5. The said applicant Shri Abhaykumar was initially appointed as a Medical Officer on ad-hoc basis w.e.f. 21.4.1999. Earlier he filed O.A. no. 503/1999 before this Tribunal for continuation of his post till the candidate from the M.P.S.C. was made available. Thereafter he has filed O.A. no. 105/2003 for extending the benefit of annual increments and accordingly the said benefit was extended to the applicant as per the order of this Tribunal dated 2.9.2003 passed by this Tribunal in the said O.A.

6. The applicant Shri Abhaykumar came to be appointed on substantive basis through MPSC vide order dated 22.1.2009 and

was posted at Primary Health Centre, Dhakephal, Dist. Aurangabad.

7. It is the contention of both the applicants that by issuing the G.R. dated 20.7.2001 the Assured Progress Advancement Scheme has been made applicable to the employees, who have completed 12 years of their regular service. The applicants have completed 12 years of their service in the months of July, 2013 & April, 2011 respectively and thus they have become eligible for the benefit of the said scheme. Admittedly, the said scheme is not made applicable to both the applicants and hence they have filed present O.As. before this Tribunal.

8. The res. no. 1 has filed affidavit in both the O.As. In his affidavit in reply it is stated that the applicants were appointed after selection through M.P.S.C. vide orders dated 27.1.2009 & 22.1.2009 respectively and thus they have not completed 12 years of regular service and, therefore, they are not entitled to get the benefit of G.R. dated 20.7.2001.

9. Heard Shri J.S. Deshmukh, learned Advocate for the applicants in both the matters and Shri M.P. Gude, learned

Presenting Officer for respondents in O.A. no. 530/2015 & Shri S.K. Shirse, learned Presenting Officer for respondents in O.A. no. 531/2015. I have also perused the applications, affidavits, affidavit in replies as well as various documents placed on record in respective matters.

10. The learned Advocate for the applicants submits that in the earlier litigation the issue regarding availability of the Assured Progress Scheme was raised in various O.As. and W.Ps. and it has been unanimously held that such Assured Progress Scheme is available to the employees whose services are regularized and the technical breaks are condoned.

11. The learned Advocate for the applicants has placed reliance on the judgment delivered by this bench of the Tribunal in **O.A. no. 118/2012 (DR. ASHOK VISHWANTHRAO BIRADAR VS. THE STATE OF MAHARASHTRA & ORS.)**. In the said case, similar issue was involved wherein technical breaks were regularized and the services were treated as continuous service for grant of benefits of Assured Progress Scheme, since the date of initial appointment prior to regularization. In the said case, this Tribunal had considered the judgment delivered by this

Tribunal in O.A. no. 467/2007 and the judgment delivered by Hon'ble High Court in W.P. no. 4455/2009 so also the judgment delivered by this Tribunal in O.A. no. 644/2011. This Tribunal has observed in O.A. no. 118/2012 as under :-

“5. The learned counsel for the applicant submits that the similar claim was raised by one Dr. Pushpalata P. Sonawale in O.A. NO. 467/2007 and vide judgment dated 29.8.2008, the Principal Bench of this Tribunal at Mumbai allowed her application and the respondents are directed to consider her case for granting benefit of Assured Progress Scheme as per G.R. dated 20.7.2001.

6. Against the judgment in O.A. No. 467/2007, the Government of Maharashtra has filed W.P. No. 4455/2009, which came to be dismissed by the Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction on 22.07.2009, as the Hon'ble High Court did not find it is a fit case to interfere. In view of such dismissal of the said Writ Petition the benefit of Assured Progress Scheme was given to Smt. P.P. Sonawale vide Government order dated 6.11.2009.

7. The learned counsel for the applicant also placed reliance on the judgment delivered in O.A. No. 644/2011 in the case of Dr. S.R. Bagde Vs. State of Maharashtra and others dated 1.8.2012. In the said judgment the benefit of A.C.P.S. as per G.R. dated 20.7.2001 was granted. The learned counsel for the applicant submits that in view of the said judgment the case of the applicant be considered.”

It has been further observed in para 9 as under :-

“9. Perusal of the said judgments, on which the learned counsel for the applicant has placed reliance, clearly shows that in all these judgments, the question of effect of regularization of technical breaks was considered by the Tribunal and also by the Hon’ble High Court and it was found that in spite of the fact that the applicants who were given technical breaks, were considered for Assured Progress Scheme by regularizing technical breaks. In the present case also, the technical breaks have been regularized and therefore, the judgments delivered in the said O.As. are applicable to the present case also. In view thereof, I pass following order:

O R D E R

- 1. The Original Application is allowed.**
- 2. The respondents are directed to place the case of the applicant before the D.P.C. to consider the benefits of A.C.P.S. as per G.R. dated 20.07.2001, if the applicant is otherwise eligible, within a period of three months from the date of receipt of copy of this order.**
There shall be no order as to costs.”

12. The facts of both the cases show that in the present cases also initially both the applicants were appointed as Medical Officer on ad-hoc basis and were continued on the said posts. They were also given benefit of annual increments as per the orders passed by this Tribunal in the previous O.As. filed by them and the technical breaks were also condoned. In such circumstances, it was necessary for the respondents to consider the applicants' claim for giving them benefit of Assured Progress Advancement Scheme as promulgated by the Govt. vide G.R. dated 20.7.2001, provided the applicants satisfy all the prerequisites for getting such benefit.

13. In view of the discussion in foregoing paragraphs, I pass following order :-

ORDER

- (i) The O.A. nos. 530 & 531 of 2015 are allowed.
- (ii) The respondents are directed to place the cases of both the applicants before the Departmental Promotion Committee to consider their cases for grant of benefits of Assured Progress Advancement Scheme as per G.R. dated 20.7.2001, if the applicants are otherwise eligible, within a period of three months from the date of receipt of copy of this order.

There shall be no order as to costs.

MEMBER (J)