

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.190 OF 2016**

**DISTRICT: MUMBAI  
SUBJECT : REVERSION**

Shaila Prashant Sontakke, )  
Age: 34 years, Occ. Service, New Nursing Hostel, )  
Room No.2, 3<sup>rd</sup> Floor, J.J. Hospital Campus, )  
Byculla, Mumbai-400 008. ) ... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
(Through the Secretary, Medical Education )  
& Drugs Department, Mantralaya, )  
Mumbai. )
- 2) The Director of Medical Education )  
and Research (DMER) )  
Govt. Dental College and Hospital Bldg. )  
St. Georges Hospital Compound, )  
P.D' Mello Road, Mumbai – 400 001. )... **Respondents**

**Shri Laxman S. Deshmukh, learned Advocate for the Applicant.**

**Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)  
DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 13.06.2023.**

**PER : A.P. KURHEKAR, MEMBER (J)**

**JUDGMENT**

1. The Applicant has challenged order dated 26.11.2015 issued by Respondent No.2 – The Director of Medical Education and Research thereby reverting the Applicant from the post of Tutor to the post of Staff Nurse invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are uncontroverted facts giving rise to this Original Application.

- A) The Applicant was appointed as Staff Nurse by the Director of Health Service, Mumbai by way of nomination w.e.f. 03.03.2006 and was posted at Parbhani.
- B) While the Applicant was in service at Parbhani she again applied for the post of Staff Nurse in Director of Medical Education and Research and got selected. Director of Medical Education and Research by order dated 02.08.2011 appointed the Applicant as Staff Nurse in Swami Ramanand Tirth Rural Hospital and Medical College, Ambajogai, Dist. Beed.
- C) As per appointment order dated 02.08.2011 she was to join in 30 days.
- D) The Applicant by application dated 06.09.2011 requested for extension of time of 30 days.
- E) Director of Medical Education and Research by order dated 11.10.2011 gave additional 30 days time for compliance.
- F) In letter dated 11.10.2011 it was mentioned that for consideration of her initial service she needs to get relieved from earlier Department as per G.R. dated 02.12.1997.
- G) Accordingly the Applicant joined on 20.10.2011 with Swami Ramanand Tirth Rural Hospital and Medical College, Ambajogai, Dist. Beed.
- H) Later the Applicant was appointed on the post of Tutor by Director of Medical Education and Research by order dated 14.10.2013 and was posted at J.J. Hospital, Mumbai. As per appointment order dated 14.10.2013 probation period was one year.
- I) Accordingly, the Applicant joined J.J. Hospital, Mumbai in 2013 itself in terms of appointment order dated 14.10.2013.
- J) Respondent No.2 – The Director of Medical Education and Research issued Show Cause Notice dated 26.06.2015 stating that she had secured extension order dated

11.10.2011 by claiming false seniority. She was therefore called upon to submit her explanation as to why she should not be reverted to the post of Staff Nurse.

- K) The Applicant accordingly submitted reply on 06.07.2015 denying the allegation of suppression of any fact and submitted that posting of a Tutor is by nomination in terms of Recruitment Rules and not by promotion and therefore question of seniority etc. does not survive.
- L) Respondent No.2 – The Director of Medical Education and Research however by order dated 26.11.2015 reverted the Applicant to the post of Staff Nurse thereby cancelling her appointment to the post of Tutor.

3. It is on the above background, the Applicant has challenged order dated 26.11.2015 *inter-alia* contending that it is totally unsustainable in law and prayed for reinstatement on the post of Tutor.

4. Shri L.S. Deshmukh, learned Advocate for the Applicant sought to assail impugned order dated 26.11.2015 *inter-alia* contending that since the Applicant was appointed on the post of Tutor by order dated 14.10.2013 by nomination the question of reverting the Applicant to the post of Staff Nurse does not survive and secondly it is a punishment totally bad in law since no D.E. was initiated for such reversion and mere Show Cause Notice cannot be equated with the regular D.E. Thus, according to him the punishment of reversion being major punishment it could not have been passed without conducting the regular D.E. by observing principle of natural justice and in accordance to law as contemplated under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. He has further pointed out that the Applicant was relieved by the Department, and therefore the question of gaining false seniority and suppression of facts or misleading does not survive.

5. Per contra, learned P.O. in reference to stand taken in Affidavit-in-Reply sought to contend that the posting of the Applicant as Tutor is not by way of nomination but it is by way of promotion and considering the

Applicant's seniority she was appointed to the post of Tutor. Attempt is also made to contend that the Applicant was not relieved by erstwhile Department in accordance to Rules, and therefore she was not entitled for the benefit of seniority. Learned P.O. further submits that Department found that the Applicant has lost seniority, and therefore her appointment order dated 14.10.2013 on the post of Tutor was cancelled.

6. In view of submission advanced at Bar issue pose for consideration whether the impugned order dated 26.11.2015 reverting the Applicant to the post of Staff Nurse is legal and valid. In our considered opinion the answer is in emphatic negative.

7. In first place let us see the Recruitment Rules for the post of Tutor which are known as Recruitment Rules for Nursing Personnel in Maharashtra Nursing Service, Class III as notified on 10.01.1964. It clearly shows that the post of Tutor is to be filled in by nomination and there is no such channel to fill in such post by promotion. As per these Rules, eligible candidates are to be selected and appointed by nomination.

8. However strangely, Respondents sought to contend that the appointment to the post of Tutor is not by nomination but it was by promotion which is totally in conflict and in contravention of Recruitment Rules. Since Recruitment Rules does not provide for appointment on promotion the question of considering seniority etc. for promotion eligibility does not survives. True, in appointment order dated 14.10.2013 there is reference of seniority of the candidates in the Department. However, when Recruitment Rules does not provide any such channel for promotion the reference of seniority in appointment order is totally irrelevant and is of no consequence.

9. Strangely Respondents however seems adopted method of promotion to the post of Tutor though it is not contemplated in Recruitment Rules. Learned P.O. could not point out any provisions or Rules permitting to fill in the post of Tutor by promotion. However, Respondents seems adopted method to filling in the post of Tutor by promotion and the Applicant also participated in the process. She got appointment on the post of Tutor by this method and benefitted. Therefore she may not raise grievance of the method adopted by the Respondents but this aspect is of little assistance to the Respondents as the order of reversion is passed without following due process of law.

10. Thus, once the Applicant is appointed on the post of Tutor by order dated 14.10.2013 and has completed more than two years service in such situation even assuming for a movement that the Appointment was by way of promotion in that event also there could not be any such order of reversion without following due process of law i.e. initiation of regular D.E. as contemplated under Rules 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Reversion is one of the major punishment and it requires full fledged D.E. in accordance to law by framing proper charges, appointment of enquiry officer, recording of evidence etc. with observance of principles of natural justice. However strangely, the Applicant has been reverted from the post of Tutor only after giving Show Cause Notice. This course of action adopted by the Respondents is totally in conflict with the law and there is denial of opportunity to defend oneself in D.E.

11. Once posting on the post of Tutor is by nomination there could be no question of reversion on lower post or different post. In service law it is only in the case of promotion the Government servant can be reverted to the lower post where he is found guilty in D.E. However, in present case no such D.E. has been initiated and only on the basis of Show Cause Notice the Applicant is reverted. Such course of action is totally

unknown to law. It is more so as the Applicant has already completed one year service of probation on the post of Tutor.

12. Thus once the Applicant has completed one year period of probation she could not have been given such punishment of reversion only on the basis of Show Cause Notice and if there was any such suppression facts or gaining wrong seniority as alleged by the Respondents initiation of D.E. was must.

13. The totality of the aforesaid discussion leads us to conclude that the impugned order dated 26.11.2015 reverting the Applicant from the post Tutor to the post of Staff Nurse is totally arbitrary and unsustainable in law and same is liable to be quashed and set aside.

**ORDER**

- A) The Original Application is allowed.
- B) Impugned communication dated 26.11.2015 reverting the Applicant from the post of Tutor to the post of Staff Nurse is quashed and set aside.
- C) Respondents are directed to reinstate the Applicant on the post of Tutor within six weeks from today.
- D) It is clarified that the Applicant will not be entitled for the difference in pay and allowance of the intervening period. She will be entitled for the pay and allowance on the post of Tutor from the date of joining the duties as a Tutor.
- E) No order as to costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date: 13.06.2023.

Dictation taken by: N.M. Naik.

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