

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 911 of 2023 (S.B.)**

Dr. Sunil S/O Vitthalrao Mankar,
Age-59 years, Occ- Medical Officer, (retired on superannuation from
Ayurvedic Dispensary Kanshivni, under P.H.C. Kurankhed, Tq.Akola,
Dist. Akola at present residing at Sant Tukaram Chowk,
Telecom Nagar, Near Khamkar Industries, Akola-444004.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary, Public Health Department,
10th floor, G.T. Hospital Bldg, New Mantralaya, Mumbai-1.
- 2) The Commissioner of Health service & Director (N.H.M.),
3rd floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
- 3) Deputy Director Of Health Services,
Akola Circle, Akola.
- 4) The Chief Executive officer,
Zilla Parishad, Akola.
- 5) The District Health officer,
Zilla Parishad, Akola.
- 6) The Accountant General(A & E),
Civil Lines, Nagpur.

Respondents.

Shri J.S. Deshmukh, Advocate for the applicant.
Mrs. Aditi Warjekar, learned P.O. for respondent nos.1 to 3 & 6.
Shri B.N. Jaipurkar, learned Advocate for respondent nos.4 & 5.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 22/08/2024.

J U D G M E N T

Heard Shri J.S. Deshmukh, learned counsel for applicant, Mrs. Aditi Warjekar, learned counsel for respondent nos.1 to 3 and 6 and Shri B.N. Jaipurkar, learned counsel for respondent nos.4 and 5.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Medical Officer, District Technical cadre, Group-C in the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500/- under the Zilla Parishad, Akola as per rules prevailing at the relevant time vide order dated 24/10/1990. Similarly situated Medical Officers entered in the service under various Zilla Parishads in District Technical Services, Group-C. However, respondent no.1 was pleased to issue G.R. dated 28/05/2001 thereby conferring gazetted status of Group-B upon all persons like them working as Medical Officer. The applicant was also granted status of Group-B as per G.R. dated 28/05/2001. The applicant and others similarly situated employees were granted pay scale of Rs. 8000-13,500 (Group-A). The Government has issued Notification dated 18/07/2013 by which the services of applicant and other similarly situated employees are absorbed in Group-A category.

3. The applicant is retired on 31/10/2022. After the retirement, the respondents have issued recovery order of Rs.4,30,861/- in respect of excess payment. The respondents have

already recovered the said amount from the pensionary benefits of the applicant. Hence, the applicant approached to this Tribunal for the following reliefs –

“(19) (a) This Original Application may kindly be allowed.

(b) The action of recovery of alleged excess payment of Rs.4,30,861/- (Rupees Four Lakh thirty thousand Eight Hundred & Sixty one only) from applicant on account of alleged excess payment paid to him for the period 01.01.06 to 28.02.2015 in VI th pay may kindly be quashed and set-aside.

(c) The Respondents be directed to repay the amount of Rs.4,30,861/- (Rupees Four Lakh thirty thousand Eight Hundred & Sixty one only) which is recovered from applicant on account of alleged excess payment paid to him for the period 01.01.06 to 28.02.2015 to applicant forthwith.”

4. The O.A. is opposed by the respondents. In the reply, it is submitted that the applicant was absorbed in Group-B, but the applicant was granted excess payment of Group-A and therefore recovery was made by the respondents. Hence, the O.A. is liable to be dismissed.

5. During the course of submission the learned counsel for applicant has pointed out Govt. G.Rs. issued from time to time in respect of absorption of Medical Officers working in Zilla Parishad. Now they are Gazatted Officers working in the state cadre. The Notification / G.R. dated 18/07/2013 shows that “selection of the Medical Officers in the District Technical Services, Group C possessing the qualifications mentioned in Sub-clause (b) of clause

(II) of sub-rules (c) of Rule 3 shall be made by absorption subject to fitness and eligibility as per the terms and conditions mentioned Govt. Regulation Public Health Department No. SANGHAT 1093/C.R. 96 / SEVA-6, dated 28th May 2001, as applicable on the day of commencement of the Maharashtra Medical and Health Services Group A (Recruitment) (Third Amendment) Rules, 2013, and also subject to the provisions of the first proviso under rule 5 of the Principal Rules."

6. The learned counsel for applicant has pointed out the Judgment of the M.A.T., Principal Bench, Mumbai in O.A.469/2012 with connected O.As., decided on 04/01/2022. The Hon'ble Chairperson, M.A.T. Principal Bench, Mumbai has held as under -

"(27) (a) The Original Applications are partly allowed.

(b) All the Applicants who are District Technical Service Medical Officers, placed in Group-B by virtue of G.R dated 17.10.2014 with retrospective effect from 28.5.2001 are eligible and entitled to recruitment to Group-A from the date of the G.R dated 18.7.2013 when the Rules were amended. Thus, they are recruited in Group-A from 18.7.2013 with all consequential benefits.

(c) The applicants are entitled to pay scale in the pay band of Rs.15600-39100 with Grade pay of Rs.5400, with effect from 18.7.2013.

(d) The payments made, if any, earlier from 2006 in the pay band of Rs.15600-39100 with grade pay of Rs.5400, should not be recovered from the applicants."

7. The learned counsel for applicant has submitted that after the Judgment of M.A.T., Mumbai, the Government has issued the G.R. dated 03/01/2024. The material part of the G.R. is reproduced below –

“शासन निर्णय-

विधि व न्याय विभाग, वित्त विभाग, सामान्य प्रशासन विभाग यांचे अभिप्राय लक्षात घेऊन आणि मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांनी मूळ अर्ज क्रमांक ४६९/२०१२, मुळ अर्ज क्र. ६८२/२०१३ आणि मुळ अर्ज क्र. ८७९/२०१५ यामध्ये दिनांक ४.१.२०२२ रोजीच्या (असेच आदेश मा. न्यायाधिकरण, औरंगाबाद यांनी मुळ अर्ज क्र. १५९/२०१०, डॉ. प्रकाश सावंत व इतर या प्रकरणी दि.०७.०६.२०२३ रोजी दिलेले आहेत) न्यायालयीन आदेशाचे पालन करण्यास्तव खालीलप्रमाणे कार्यवाही करण्यास मान्यता देण्यात येत आहे.

१. कार्यरत वैद्यकीय अधिकारी यांची न्यायालयीन आदेशानुसार दि.१८.०७.२०१३ पासून गट-अ मध्ये नियुक्ती/थेट समावेशन झाले असे समजण्यात येत आहे. त्यांना वित्त विभागाच्या शासन निर्णय दिनांक २७.२.२००६ व दि.११.२.२०१३ अनुक्रमांक ४३ (ब) अन्वये अनुक्रमे ५ व्या वेतन आयोगामध्ये रु.८०००-१३५०० आणि ६ व्या वेतन आयोगामध्ये रु. १५६००-३९१०० अधिक ग्रेड पे रु.५४०० अशी वेतनश्रेणी लागू राहिल. त्यांची वेतननिश्चिती वित्त विभागाच्या शा.नि.दि.२७.०२.२००६ व दि.११.०२.२०१३ मधील अनु.क्र.४३ (ब) मधील तरतूदीनुसार करण्यात यावी. सदर कार्यरत वैद्यकीय अधिकारी यांना समावेशनानंतरची गट-अ पदावर पदस्थापना देण्याची कार्यवाही सेवा-१ या कार्यासनामार्फत करण्यात येईल.

२. सेवानिवृत्त झालेल्या वैद्यकीय अधिकारी यांना दि.१८.०७.२०१३ पासून गट-अ मध्ये नियुक्ती देणे/थेट समावेशन करणे शक्य नाही. त्यामुळे त्यांच्या बाबतीत वरीलप्रमाणे वेतननिश्चिती करावी व त्यांना त्याप्रमाणे निवृत्तीचे लाभ अदा करण्यात यावेत.

३. सदर निर्णय हा केवळ दिनांक २८.५.२००१ च्या शासन निर्णयान्वये राजपत्रीत दर्जा देण्यात आलेल्या व शासन निर्णय दिनांक १७.१०.२०१४ अन्वये जिल्हा तांत्रिक सेवा वर्ग-३ मधून सार्वजनिक आरोग्य

विभागामध्ये समावेशन झालेल्या वैद्यकीय अधिकारी यांनाच लागू होईल. अन्य कोणत्याही वैद्यकीय अधिकारी गट-ब यांना हा निर्णय लागू असणार नाही.

४. वरीलप्रमाणे कार्यरत व सेवानिवृत्त वैद्यकीय अधिकारी यांना वेतन व अनुषंगिक लाभअदा करावेत व त्यांना दि. १८.७.२०१३ पूर्वी वेतनाचे काही अतिप्रदान झाले असल्यास त्याची वसूली करण्यात येऊ नये.

५. वरील तरतूदी लागू करण्यापुरते वाचा क्र.७ च्या दि. १७.१०.२०१४ शासन निर्णयामध्ये सुधारणा झाली असे समजण्यात येत आहे.

विधि व न्याय विभागाच्या क्र. ६८१-२०१६/संकिर्ण/ई, दि. २८.२.२०१७ च्या परिपत्रकानुसार सेवाविषयक बाबीशी संबंधित न्यायनिर्णय समान स्वरूपात समस्थित कर्मचा-यांना एकसारखा लागू करावा लागतो. त्यामुळे जिल्हा तांत्रिक संवर्गातून या विभागात दि. १७.१०.२०१४ च्या शा.नि. अन्वये समावेशन झालेल्या सर्व कर्मचा-यांना वरील निर्णय या आदेशाच्या दिनांकापासून लागू राहील.

सदर शासन निर्णय वित्त विभागाच्या अनौपचारिक संदर्भ क्रमांक २०४/सेवा-७ दिनांक १४.०६.२०२३ प्रमाणे प्राप्त अभिप्रायानुसार आणि विधि व न्याय विभागाच्या अनौपचारिक संदर्भ क्रमांक ८५६-२०२२/ई दिनांक ०२.१२.२०२२ प्रमाणे प्राप्त अभिप्रायानुसार तसेच शासनाच्या मान्यतेने निर्गमित करण्यात येत आहे. ”

8. The name of applicant is at Sr.No.447, (Sunil Vitthalrao Mankar). The applicant is / was absorbed in Group-A service of gazetted officer in the state cadre. The applicant is retired on 31/10/2022. The recovery is not permissible as per Clause-4 of the G.R. dated 03/01/2024.

9. The respondents have recovered the excess payment of Rs.4,13,861/- in the month of March,2023 i.e. after the retirement. It is also not permissible in view of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White**

Washer) reported in AIR 2015 SC 696. The Government itself issued G.R. dated 03/01/2024. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The decision of the respondents for recovery of Rs.4,30,861/- in respect of excess payment is hereby quashed and set aside.
- (iii) The respondents are directed to refund the amount of Rs.4,30,861/- within a period of three months from the date of receipt of this order.
- (iv) No order as to costs.

Dated :- 22/08/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/08/2024.