

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.792 OF 2019

DISTRICT : PUNE

- 1) Dr. Dattatraya Baburao Bamane,)
Working as Medical Supdt.)
Sub District Hospital, Bhore, Dist. Pune.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department, Having Office)
At Mantralaya, Mumbai-400 032.)
- 2) The Deputy Director,)
Health Services, Pune Circle, Pune.)
- 2) The Director of Health Services,)
M.S., Mumbai, Having Office at Arogya)
Bhavan, In the campus of Saint Georges)
Hospital, P.D'Mello Road, Mumbai-400 001.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 22.12.2020.

JUDGMENT

The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 challenging

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the order dated 18.06.2019 issued by the Respondent No.1 – Government whereby the period of unauthorized absence from 28.06.2007 to 09.11.2014 (7 years & 5 months) was treated as extraordinary leave in terms of G.R. dated 02.06.2003 read with Rule 63(6) of Maharashtra Civil Services (Leave) Rules, 1981 (herein after referred to as 'Leave Rules 1981' for brevity).

2. Shortly stated facts giving rise to the Original Application are as under:-

In the year 2007, the Applicant was serving as Medical Officer (Group-A) at Sub District Hospital, Bhore, District Pune. By order dated 31.05.2007, he was transferred to Indapur, Dist. Pune and was relieved on 27.06.2007. However, the Applicant did not join at Indapur. He contends that because of serious illness, he could not join at Indapur. He further contends that he informed the concerned authorities about his inability to join and made applications for leave. After recovery from illness, he made an application on 05.08.2011 requesting the Respondent No.2-Deputy Director Health Services, Pune to allow him to join. On receipt of it, the Respondent No.2 forwarded a letter to the Respondent No.1 – Government on 06.08.2011 stating that the Applicant was absent unauthorizedly for long period, and therefore, without the orders from the Government, he was not allowed to join and requested to take necessary action but it was not responded by the Government. The Deputy Director, Health Services, Pune again sent reminders dated 29.03.2012 and 30.10.2012 but in vain. In the meantime, Superintendent, Sassoon Hospital, Pune also forwarded medical fitness certificate to the Deputy Director of Health Services, Pune on 19.12.2012. Thereafter, again the Applicant sent various letters to the Respondents requesting them that he is kept without posting orders for a long time despite his willingness to join and requested to issue necessary orders of appointment so that he could join.

3. Ultimately, Respondent No.1-Government issued order dated 10.11.2014 by granting permission to the Applicant to join at Bhore subject to condition that he should execute bond that his absence period will be treated without pay and allowances. Accordingly, the Applicant had to execute bond on 15.11.2014 and joined at Bhore on 17.11.2014. After joining, again he made various representations to the Respondents stating that despite of his willingness to join, he was kept out of service for the period from 05.08.2011 to 09.11.2014 without any fault on his part and requested to treat the said period as waiting period for grant of pay and allowances.

4. It is on the above background, the Respondent No.1-Government by order dated 18.06.2019 treated the entire absence period from 28.06.2007 to 09.11.2014 (7 years & 5 months) as unauthorized absence and treated the said period as extra ordinary leave (without pay) stating further that the same should not be considered for pension purpose in terms of G.R. dated 02.06.2003 read with Rule 63(6) of 'Leave Rules, 1981'.

5. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order dated 18.06.2019 contending that after the transfer of the Applicant from Bhore to Indapur due to ill health, he was not able to join and had informed about his illness to the department from time to time, and therefore, his absence cannot be treated as unauthorized absence and it should have been granted as medical leave. He further submits that in any case, once the Applicant reported for duty on 05.08.2011 and was willing to join, he ought to have been allowed to join within reasonable time but he was kept waiting for the period for more than three years without any fault on his part. It is only on 17.11.2014, he was allowed to join on the condition of execution of bond. He submits that the Applicant had executed bond in duress, and therefore, it should not be used to his detriment. He further pointed out that between 05.08.2011 to

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09.11.2014, Respondent No.1 and 2 indulged in exchange of communication but no effective step was taken in the reasonable time and the Applicant, thereby kept waiting for orders without any fault on his part. According to him, it is because of sheer laxity and negligence on the part of the Respondents, he was kept out of service, and therefore, the period from 05.08.2011 to 09.11.2014 ought to have been treated as waiting period.

6. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents submits that the Applicant was unauthorisedly absent after his transfer to Indapur and despite relieving on 27.06.2007, he did not join at Indapur and remained absent without any intimation or communication to the department. She further submits that by executing bond, the Applicant admits that his absence period will be treated as unauthorized absence, and therefore, now he cannot resile from the contents of the bond, and not entitle to pay and allowances for the absence period. She further submits that the impugned order is in consonance with G.R. dated 02.06.2003 and needs no interference. In alternative submission, she submits that at the most, his absence period from 05.08.2011 to 09.11.2014 can be considered as waiting period but he is not entitled to claim that entire period should be considered as a leave for service benefits.

7. In O.A., the Applicant has sought two reliefs. First, to treat the entire period of absence from 28.06.2007 to 09.11.2014 as extraordinary leave with all service benefits or in alternative at least the period from 05.08.2011 to 09.11.2014 should be treated as compulsory waiting period with all consequential service benefits since he was kept out of service in this period without any fault on his part.

8. Admittedly, while the Applicant was serving at Sub District Hospital, Bhore, by order dated 31.05.2007, he was transferred to Indapur and was relieved on 27.06.2007. As such, he was to join at Indapur on 28.06.2007 but admittedly he did not report for duty at Indapur and remained absent. Though in O.A. (Ground No.6.3), the Applicant contends that he was on medical leave due to arthritis of lower limb and sent leave application dated 01.07.2007 to 15.01.2010 along with medical certificates surprisingly in O.A., no such documents are produced. In this behalf, specific query was made to the learned Counsel for Applicant that no such applications or medical certificates are forthcoming on record to which he had no satisfactory answer. Needless to mention that leave cannot be claimed as of right as provided under Rule 10 of 'Leave Rules, 1981'.

9. It was incumbent on the part of Applicant to submit an application for leave supported by medical certificate and to get it sanctioned prior to proceeding on leave. He was to join at Indapur on 28.06.2007 but did not join and remain absent for four years. It is only on 05.08.2011, he wrote a letter to Deputy Director showing his willingness to join and requested to get him join. Suffice to say, no record either in the form of leave application or representation or letter is forthcoming to substantiate that before proceeding on leave, he had applied for grant of leave. Had any such application was made as the Applicant tried to contend, he would have filed the copies of all these applications to show his bonafides. In absence of any such record, it is obvious that he remained absent unauthorisedly for the period of four years. It is only on 05.08.2011, he made an application to Deputy Director, Health Services, Pune to request to get him join. As such, the conduct of the Applicant and non production of any such record leaves no room of doubt to hold that he did not bother to apply for grant of leave and unilaterally remain absent from duty for long period of more than four years. This being the position, the period from 28.06.2007 to 05.08.2011 has to be treated as an extra ordinary

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leave without pay and without considering the same for pension purposes in terms of Rule 63(6) of Leave Rules, 1981 read with G.R. dated 02.06.2003 and order to that extent cannot be faulted with. The Applicant renders himself ineligible for grant of any service benefits for this period and the impugned order to that extent is in consonance with Leave Rules, 1981.

10. Now, it comes period onward 05.08.2011. Indisputably, the Applicant on 05.08.2011 submitted letter to the Deputy Director of Health Services, Pune stating that he has recovered from illness and ready to join (Page 25 of PB). The Deputy Director, Pune immediately on next date, dated 06.08.2011 sent a letter to Respondent No.1 – Additional Principal Secretary, Health Services stating that the Applicant had submitted an application on 05.08.2011 for joining and since he was absent unauthorisdelly, it was not possible for Deputy Director, Health Services, Pune to get him joined without the orders from the Government. He, therefore, requested Respondent No.1 to do the needful. However, there was no response from the office of Respondent No.1 (Page 26 of PB).

11. Then, again the Deputy Director, Pune sent reminders dated 29.03.2012 and 30.10.2012 (Page 27 & 28 of PB) for issuance of necessary orders to the Government but in vain. In the meantime, the Superintendent of Sasoon Hospital forwarded medical certificate of the Applicant to Deputy Director, Pune along with the letter dated 19.12.2012 (Page 29A of PB) but nothing was done. Then again the Applicant himself issued letter to Director, Health Services on 21.03.2013 and also issued letter to Respondent No.1 on 09.06.2013 as well as on 06.10.2013 by RPAD (Page Nos.30 to 33 of PB). Not only that, the Applicant again sent reminders to Director Health Services on 16.10.2013, 13.11.2013 and 02.01.2014 (Page No.34, 35 and 38 of PB). In the meantime, the Deputy Director, Health Services again sent a letter to Director Health Services on 16.12.2013 for issuance of

necessary orders to get the Applicant join in view of delay on the part of Respondents but no order was issued. The Deputy Director again addressed letter to Respondent No.1 on 21.02.2014 for issuance of necessary order (Page 40 of PB) but nothing was communicated to the Applicant. Then again the Applicant had sent D.O. letter to the then Principal Secretary by RPAD conveying his agony and loss of pay and allowances because of inaction on the part of Government for issuance of necessary orders.

12. It is on the above background, eventually the Government has passed order on 10.11.2019 (Page 43 of PB) stating that the Applicant be allowed to join at Sub District Hospital, Bhore subject to execution of bond by the Applicant that his absence period shall be treated as unauthorized absence without pay. The Applicant having no option had executed the bond on 15.11.2014 as dictated by the Government and then only he was allowed to join on 17.11.2014. Even after joining, the Applicant made several representations dated 28.11.2014, 12.12.2014, 17.05.2015, 17.08.2015, 07.09.2015, 16.09.2015 & 26.01.2017 to the Government which is at page nos.47,48,49,50,51, 52,53 & 54 of O.A. requesting the authorities that he was kept out of service for more than four years without there being delay on his part and the said period should be treated as compulsory waiting period. Having no response from the Respondents, he then filed O.A.No.438/2018 which was disposed of by this Tribunal on 24.05.2019 with directions that necessary orders be issued about the claim of compulsory waiting period.

13. Ultimately, the Respondent No.1 has passed order dated 18.06.2019 stating that his entire period from 28.06.2007 to 09.11.2014 was unauthorized absence and secondly since he had executed bond in favour of the Government his entire absence from 28.06.2007 to 09.11.2014 shall be treated as extra ordinary leave without pay, further stating that the said period will not be considered

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for pension purposes in terms of Rule 63(3) of Leave Rules 1981 read with G.R. dated 02.06.2003.

14. Thus, what transpires from the record that admittedly the Applicant by his letter dated 05.08.2011 requested the Deputy Director Health Services, Pune to get him joined and thereafter there was only exchange of correspondence between the departments. The Applicant as well as Deputy Director, Pune Health services made reference to the Government from time to time and brought to its notice that the Applicant is waiting for joining orders but the same are delayed by the Government. Thus, it clearly exhibits total inaction and lapses on the part of Respondent No.1 for issuance of necessary order of the posting of the Applicant. One month period could have been reasonable for issuance of necessary orders of posting. However, the same has been delayed by more than three years which rather shows administrative negligence on the part of Respondent No.1 for which the Applicant who was willing and ready to join should not suffer. The Respondent No.1 was free to take appropriate decision either to get the Applicant joined or to initiate the departmental action for remaining absent unauthorisedly and whatever action Government wanted to take, it should have been within a month so that the Applicant should not suffer and in case such orders issued against him those could be challenged by taking recourse of law. In any case three years delay is totally inexplicable and cannot be countenanced. The Respondent No.1 being model employer was supposed to pass necessary orders in accordance to law in transparent manner without loss of time. Suffice to say, the Respondent No.1 cannot avoid its responsibility and certainly liable for the loss of pay and allowances of the Applicant which is more than four years. The Applicant had expressed his agony and suffering in his various representations addressed to Respondent No.1 that despite his frequent visits to the office of Director of Health Services, Pune no action was taken for issuance of necessary orders of posting and on contrary he was

subjected to mockery by the staff. As such, there is no escape from the conclusion that there was total laxity and negligence on the part of Respondents particularly the office of Respondent Nos.1 and 3 for not taking follow up of the matter and to issue necessary orders without loss of time. In such situation, the Applicant cannot be allowed to suffer for loss of pay and allowances when buck lies with the Respondent Nos.1 and 3.

15. Learned P.O. for the Respondents tried to make much capital of the bond executed by the Applicant for waiver of pay and allowances of entire period and to treat it as unauthorized absence without pay. Whereas, the Applicant contends that he was compelled to execute the bond as condition precedent for joining, and therefore, it should not be used against him.

16. The issue posed for consideration is whether the bond is legal and valid in the light of provisions of Contract Act. As per Section 10 of Contract Act all agreements are contract if they are made by free consent for a lawful consideration and with lawful object and not expressly declared as void. As such, if the bond needs to be treated as contract then it must be established that it was with free consent. As per Section 14 of Contract Act, the consent is said to be free when it is not caused by coercion as defined in Section 15 or undue influence as defined in Section 16 or fraud as defined in Section 17 or misrepresentation as defined in Section 18 or mistake subject to provisions of Section 20, 21 and 22. Thus, consent is said to be caused by coercion when it would not have been given but for the existence of such coercion, compelling circumstances, duress etc. When there is a compulsion to do something or threat and the person was compelled to do so, it constitutes duress. If such threats or compulsion is immoral, irrational and unconscionable it constitutes duress in law.

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17. Now turning to the facts of the present case, despite willingness to join and various representations, the Applicant was kept out of service for more than three years and was suffering from economic distress and he was under duress. The Government compelled him to execute the bond which is amounting to threat and in absence of execution of bond, he was not allowed to join. In such situation, execution of bond cannot be said with free consent or voluntary. This being the position, the bond cannot be used to the detriment of the Applicant.

18. Learned P.O. could not point out any provisions of law in support of legality or permissibility of getting such bond executed from the employee. It appears that the Respondent No.1 had adopted novel method only to cover up its lapses for keeping the Applicant out of service for the period of more than three years. Suffice to say, such bond have no sanctity in law and does not amount to contract on the touch stone of the provisions of Contract Act.

19. Respondent No.1 was free to take any such decision of treating the period of absence as unauthorized and to issue necessary orders in accordance to law but it should have been issued within reasonable time and one month's time from 05.08.2011 was enough to take appropriate decision as the Respondent No.1 deems fit. In any case, the act of Respondent No.1 to not take any decision for the period more than three years and then to come with a contention that in view of bond executed by the Applicant he is not entitled to pay and allowances is totally arbitrary and unsustainable in law.

20. In this view of the matter, I have no hesitation to conclude that the impugned order to the extent of treating absence period at least from 05.09.2011 (one month after application dated 05.08.2011) to 09.11.2014 as extra ordinary leave without period is not sustainable

in law. The period from 05.09.2011 to 09.11.2014 ought to have been treated as compulsory waiting period for all service benefits.

21. In so far as the period from 28.06.2007 to 04.09.2011 is concerned. It has to be treated as extra ordinary leave without pay. The said period shall not be considered for pension purpose in terms of Rule 63(6) of Leave Rules, 1981 read with G.R. dated 02.06.2003 which inter-alia states that in case of unauthorized absence, the said period shall not be considered even for pension purpose.

22. As stated above, the facts brought on record clearly exhibit undue delay, lapses and negligence on the part of Respondent No.1 and enquiry needs to be held by the Respondent No.1 about delay caused in the matter and to fix responsibility. Mere grant of pay and allowances for the period from 05.09.2011 to 09.11.2014 would not suffice as the said amount would be from tax payers pocket. The Respondent No.1 is therefore under obligation to conduct enquiry and to fix the responsibility upon concerned officials who are responsible for the delay in issuance of necessary orders in the matter and to recover the said amount from them after following due process of law.

23. The cumulative effect of the aforesaid discussion leads me to conclude that the order dated 18.06.2019 to the extent of denial of pay and allowances to the Applicant from 05.09.2011 to 09.11.2014 is liable to be quashed and set aside. O.A. deserves to be allowed partly. Hence the following order:-

ORDER

(A) Original Application is allowed partly.

(B) The Applicant's absence from 28.06.2007 to 04.09.2011 shall be treated as unauthorized absence and extra ordinary leave without pay and the said period shall not be considered for pension purpose.

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- (C) The Applicant is held entitled for pay and allowances from 05.09.2011 to 09.11.2014 with all consequential service benefits by treating the said period as compulsory waiting period and monetary benefits be paid within two months from today.
- (D) Respondent No.1 is directed to cause enquiry into the matter and to fix the responsibility upon person responsible for delay in issuance of necessary order and shall recover the amount now payable to the Applicant from them in accordance to law.
- (E) Respondent No.1 is directed to submit compliance report within two months from today.
- (F) Though the matter is disposed of it be listed before the Tribunal on 22.02.2021 for compliance of order.
- (G) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 22.12.2020

Dictation taken by : Vaishali Mane

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