

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1226 OF 2023**

Dr. Ajay Sahebrao Chandanwale, )  
Working as Director, )  
Office of the Directorate Medical )  
Education and Research, Mumbai )  
Residing At : Flat D-401, Pride, )  
Near Guru Ganeshnagar, Kothrud )  
Pune 411 038 )

**....APPLICANT**

**VERSUS**

1. State of Maharashtra )  
Through Principal Secretary, )  
Medical Education & Drugs )  
Department, 9<sup>th</sup> floor, New )  
Mantralaya, G.T. Hospital )  
Premises, Lokmanya Tilak )  
Road, Mumbai 400 001 )
2. Dr. Dilip Mhaisekar, )  
Dean, Dr. Shankarrao )  
Chavan, Government )  
Medical College, Nanded )

**...RESPONDENTS.**

Dr. Ajay Sahebrao Chandanwale, Applicant in person.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Mr. M.D. Lonkar, learned Counsel for the Respondent No.2.

**CORAM** : **Justice Mridula Bhatkar, Chairperson**  
**Shri Debashish Chakrabarty, Member-A**

**RESERVED ON** : **05.04.2024**

**PRONOUNCED ON** : **07.05.2024**

## **J U D G M E N T**

1. The Applicant who was holding the Additional Charge as Director, DMER Mumbai challenges the Order dated 21.09.2023 issued by the Respondent No.1 of giving back the Additional Charge of post of Director, DMER to Respondent No.2.

2. The very important post of the Director, DMER, Mumbai is not filled up on regular basis since 02.02.2019. During the period from 02.02.2019 to 30.06.2021 the Additional Charge of this post was held by Dr. T.P. Lahane. After his superannuation the Additional Charge of the said post of Director, DMER was given to Respondent No.2 by Order dated 01.07.2021 of Respondent No.1. He was holding Additional Charge of the post of Director, DMER till 13.07.2023. The Respondent No.1 then gave Additional Charge of post of Director, DMER on 13.07.2023 to the Applicant who was then working as Joint Director, DMER, Mumbai. It is the case of the Applicant is that when he was holding the Additional Charge of the post of Director, DMER, the Respondent No.1 again by order dated 21.09.2023 assigned back the Additional Charge to Respondent No.2 who was posted as Incharge Dean of Dr. Shankarrao Chavan, Government Medical Hospital, Nanded.

3. The Applicant is not challenging the order of giving Additional Charge of the post of Director, DMER to the Respondent No.2 during the earlier period from 01.07.2021 to 13.07.2023, but, he is now challenging the order dated 21.09.2023 by which Additional Charge of post of Director, DMER has been given back to Respondent No.2.

4. The Applicant appeared in-person and put up his case mainly on the ground of seniority and the guidelines which were required to be observed by the Respondent No.1 while handing over Additional Charge of the post of Director, DMER. Applicant argued that he was more

qualified and eligible than Respondent No.2 to be given substantive appointment to post of Director, DMER and for that purpose he placed reliance on the Recruitment Rules dated 28.05.1973 wherein it is mentioned that the post of Director, DMER can be filled by two options, one by way of 'Nomination' and other by way of 'Promotion'. The Feeder Cadre for the post of Director, DMER is the Joint Director, DMER i.e., the post which the Applicant is holding. He claims that he is the 'Senior Most' in the category of 'Dean' as well as the 'Joint Director', which is the only Feeder Cadre for the post of Director, DMER. Applicant argued that the Respondent no.2 is very junior to him and yet he is given the Additional Charge of the post of Director, DMER by violating all the principles and guidelines laid down in Government Circular dated 05.09.2018 issued by G.A.D regarding handing over the Additional Charge. The Applicant further submitted that he was therefore rightly given the 'Additional Charge' of the post of Director, DMER on 13.07.2023, however, by Order dated 21.09.2023 Respondent No.1 the Additional Charge was abruptly withdrawn from the Applicant without any reason and it was handed back to Respondent no.2. This act of the Respondent No.1 is Arbitrary and Illegal and hence is challenged by Applicant. Applicant contended that the Additional Charge of post of Director, DMER was abruptly withdrawn only because of Political Interference in administrative decisions of Respondent No.1 and Political Influence brought by Respondent No.2.

5. The Respondent No.1 had defended its action by filing the Affidavit-in-Reply dated 09.11.2023, through Mr. Dinesh Tarachand Waghmare who is serving as Principal Secretary, Medical Education and Drugs Department. Learned C.P.O. has submitted that the Applicant has no legal right to claim any remedy before the Tribunal. Though the post of Director, DMER, Mumbai was required to be filled up as per the Recruitment Rules dated 28.05.1973, the M.P.S.C. has given remarks to amend these Recruitment Rules as they were old and framing of new

Recruitment Rules is under consideration by Respondent No.1. However, revising the Recruitment Rules takes time and therefore due to administrative exigencies the Additional Charge of the post of Director, DMER was required to be given initially to Dr. T.P. Lahane from 02.02.2019 to 30.06.2021 and after his retirement it was given from 01.07.2021 to Respondent No.2. Learned C.P.O. submitted that Director, DMER is required to deal with Admission of Students in Government Medical Colleges, Approval of New Medical/Dental Colleges as well as Nursing Colleges, Procurement of Drugs and Equipment as well as Administrative Subjects related to Government Medical College are dealt by Director, DMER. Thus, various important responsibilities are discharged by the Director, DMER, so the person who is even holding Additional Charge should have been faculty member with rich experience of administrative work. She submitted that the Respondent No.2 was appointed as Vice Chancellor of Maharashtra University of Health Service, Nashik by order dated 07.02.2016 by His Excellency Governor of Maharashtra and Chancellor of Maharashtra University of Health Science, Nashik. He has served as Vice-Chancellor of Maharashtra University of Health Science, Nashik during the period from 11.02.2016 to 10.02.2021. His contribution to the 'Medical Field' was appreciated and he was also made Member of Medical Council India representing Maharashtra. She has further submitted that the Respondent No.2, by Order dated 08.04.2022 on the basis of the recommendations received from the Civil Services Board was also appointed as 'Dean' of Dr. Shankarrao Chavan, Government Medical Hospital, Nanded and at the same time held this Additional Charge of the post of Director, DMER, Mumbai. She submitted that the Respondent No.2 earlier was also given Additional Charge of Director, DMER by Order dated 01.07.2021, which he held for nearly for two years but at that time the Applicant did not file any complaint or court case making grievance against the Respondent No.1 and Respondent No.2. The decision of giving Additional Charge to

Respondent No.2 was taken by the highest competent and appointing authority i.e. the Hon'ble Chief Minister of Maharashtra.

6. The learned C.P.O. contended that Respondent No.2 had to proceed on Medical Leave during the period from 14.07.2023 to 21.09.2023 and therefore 'Additional Charge' of the post of Director, DMER was given to the Applicant only as a Stop Gap Arrangement by Respondent No.1. She has further submitted that Respondent no.2 has a wide experience in the field of Medical Education and Research and his career is noteworthy while on the other hand complaints have been received against the Applicant regarding his Disability Certificate by which he was appointed to the post of Joint Director, DMER. Moreover, when the Applicant was working as Dean in B.J. Government Medical College Pune complaints were received against him about corruption of 150 Crores of funds under Corporate Social Responsibility (CSR). So the Respondent No.1 has submitted by way of Affidavit-in-Reply dated 09.11.2023 that it is not administratively appropriate to give Additional Charge of important post of the Director, DMER to the applicant. In order to conduct fair enquiry regarding the charges of corruption against Applicant and also validity of his 'Disability Certificate' and taking into consideration administrative exigencies the Additional Charge of Director, DMER was withdrawn from the Applicant on 21.09.2023 and handed back to Respondent No.2.

7. The learned C.P.O. further relied on the Additional Affidavit-in-Sur-Rejoinder dated 19.01.2024 on behalf of Respondent No.1, through Mr. Shivaji S. Patankar, Joint Secretary, defending action of the Respondent No.1 of giving the 'Additional Charge' of the post of Director, DMER to Respondent No.2, Dr. Dilip Mhaisekar. It was submitted that the enquiry in respect of corruption charges is in progress at the level of 'Commissioner, Medical Education and Research' and Enquiry Report is awaited by Respondent No.1. She has submitted that approval was

given to establish 8 New Government Medical Colleges with Admission Capacity of 100 Students and Hospital Capacity of 430 Beds in Palghar, Thane (Ambernath), Jalna, Amravati, Buldhana, Washim, Wardha, Bhandara and Gadchiroli Districts. Further another 11 New Government Medical Colleges and Hospitals are being made operational during the tenure of the Respondent No.2 holding Additional Charge of post of Director, DMER.

8. The learned Counsel Mr. M.D. Lonkar appearing for Respondent No.2 relied on the Additional 'Affidavit-in-Reply' dated 30.10.2023 and further Affidavit-in-Sur-rejoinder filed on 05.12.2023. Learned Counsel Mr. M.D. Lonkar has adopted the submissions made by learned C.P.O. on behalf of Respondent No.1 and additionally submitted that this Original Application should be dismissed on the ground of acquiescence and waiver as the Applicant did not raise any grievance in respect of Respondent No.2, being given Additional Charge of the post Director, DMER from 01.07.2021 to 13.07.2023. Applicant has no statutory right to approach the Tribunal. Thus, the Applicant is estopped from making any grievance now in respect of this Order dated 21.09.2023. He has also submitted that the status of the Applicant whether he is from Disabled Category is under cloud with challenge to validity of his Disability Certificate. On the other hand Respondent No.2 is having excellent career background and his contribution towards the field of Medical Education and Research has been acknowledged by the State Government. He argued that the guidelines mentioned in the G.A.D. G.R. dated 05.09.2018 does not confer any right, much less, legally enforceable right upon the Applicant to challenge the Order dated 21.09.2023. It was also argued that the Applicant had approached the Tribunal by filing O.A.No.670/2021 claiming reservation under 'Locomotive Disability'. The said matter is pending. He has submitted that when the initial order of appointment of Respondent no.2 was issued on 05.07.2021 the case of Applicant was considered along with

the case of another 40 Officers and after following professional norms, conscious decision was taken at highest level of the Hon'ble Chief Minister of Maharashtra that Additional Charge of the post of Director, DMER be entrusted to Respondent No.2. Learned Counsel Mr. M.D. Lonkar refuted that Respondent No.2 had used any Political Influence but on the contrary the Applicant himself indulged in using Political Influence to somehow secure the Order dated 13.07.2023 at the fag end of the tenure of then 'Hon'ble Minister' holding portfolio of Medical Education Drugs Department and there was no approval given at that time by the Hon'ble Chief Minister of Maharashtra. Therefore rightly by Order dated 21.09.2023 of the Hon'ble Chief Minister of Maharashtra the Respondent No.2 was again given back Additional Charge of the post of Director, DMER

9. The learned Counsel for Respondent No. 2, Mr Lonkar, has relied on the following case laws:-

- (1) Judgment of the Hon'ble High Court, Bench at Nagpur in The State of Maharashtra Vs. Dinesh Jagannath Khonde, W.P 421/2023.
- (2) Bichitrananda Behera Vs. State of Orissa, 2023 SCC Online SC 1307.
- (3) Mohd. Masood Ahmad Vs. State of U.P (2007) 8 SCC 105.
- (4) Ramakant Shripad Sinai Advalpalkar Vs. Union of India & Ors, 1991 Supp (2) SCC 733.
- (5) Yogesh Pratap Singh Vs. Government of Maharashtra, 1997 SCC Online Bom 313.
- (6) Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra, 2012 SCC Online Bom 1514.
- (7) Sri Pubi Lombi Vs. The State of Arunachal Pradesh & Ors Civil Appeal No. 4129 of 2024 (Arising out of SLP (C) No. 22074/2023).
- (8) M.C Mehta Vs. Union of India & Ors, (1999) 6 SCC 237.
- (9) Raj Kumar Soni & Anr Vs. State of U.P & Anr, (2007) 10 SCC 635.

10. The entire case is based on only one issue; what procedure or the rules of handing over Additional Charge of any post to Government Servants are to be followed. It is admitted that there are no specific rules. However, certain procedure is laid down by way of guidelines in G.A.D. G.R. dated 05.09.2018 which was as follows:-

“२) उपरोक्त परिस्थिती विचारात घेऊन अतिरिक्त कार्यभार कोणास देण्यात यावा यासंदर्भात खालीलप्रमाणे मार्गदर्शक सूचना देण्यात येत आहेत :-

१) महाराष्ट्र नागरी सेवा वेतन नियम १९८१ मधील नियम ५६ नुसार शासकीय कर्मचाऱ्यांकडे त्याच्या स्वतःच्या पदाव्यतिरिक्त दुसऱ्या पदाचा अतिरिक्त कार्यभार सोपविण्यात येतो. असा हा दुसऱ्या रिक्त असलेल्या पदाचा अतिरिक्त कार्यभार एकाच प्रशासकीय विभागांतर्गत प्रशासकीय सोय व निकड लक्षात घेवून शक्यतो त्याच कार्यालयातील त्याच संवर्गातील सर्वात सेवाज्येष्ठ, अनुभवी व कार्यक्षम अधिकारी / कर्मचाऱ्यांकडे सोपविण्यात यावा. जेथे असे अधिकारी/ कर्मचारी उपलब्ध नसतील तेथे संबंधित पदाला लागत असलेल्या निम्न संवर्गातील सर्वात ज्येष्ठ अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्यात यावा, काही बाबींमुळे सर्वात ज्येष्ठ अधिकारी/कर्मचारी यांना डावलून नंतरच्या व्यक्तीला अतिरिक्त कार्यभार द्यावयाचा असेल तर सर्वात ज्येष्ठ व्यक्ती अतिरिक्त कार्यभारासाठी का अपात्र आहे त्याची लेखी कारणे अभिहितपणीत नमूद करावीत.

२) अतिरिक्त कार्यभार दिलेला अधिकारी/कर्मचारी, त्याच्या मूळ पदाच्या कर्तव्य व जबाबदारीसह, त्याच्यावर अतिरिक्त कार्यभार सोपवलेल्या पदाची कर्तव्ये व जबाबदाऱ्या पार पाडू शकेल याची संबंधितांनी खातरजमा करावी.

३) प्रशासकीय सोय व निकड लक्षात घेऊन, प्रशासकीय विभागाच्या अधिपत्याखालील कार्यालयातील रिक्त पदाचा अतिरिक्त कार्यभार देण्याकरिता, वरील (१) नुसार, त्याच कार्यालयात अधिकारी/कर्मचारी उपलब्ध नसतील अशा वेळी, प्रशासकीय विभागास त्यांच्या अधिपत्याखालील अन्य कार्यालयातील त्याच संवर्गातील सेवाज्येष्ठ व अनुभवी अधिकारी/कर्मचाऱ्यांचा विचार करता येईल. तसेच, जेथे एका जिल्ह्यात एकच कार्यालय असेल अशावेळी लागून असलेल्या जिल्ह्याच्या कार्यालयातील अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्याबाबत विचार करता येईल. तथापि, असे करताना, अतिरिक्त कार्यभार दिलेला अधिकारी/कर्मचारी, त्याच्या मूळ पदाच्या कर्तव्ये व जबाबदारीसह त्या पदाची कर्तव्ये व जबाबदाऱ्या पार पाडू शकेल याची संबंधितांनी खातरजमा करावी.

४) विभागीय चौकशी सुरु असलेल्या अधिकारी/कर्मचाऱ्यांस अतिरिक्त कार्यभार दिल्यामुळे त्याच्या स्वतःच्या विभागीय चौकशीवर प्रभाव पडण्याची वा विभागीय चौकशीमध्ये अडथळा आणण्याची शक्यता असल्यास, अशा अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्यात येऊ नये.

५) अतिरिक्त कार्यभार दिलेले रिक्त पद तातडीने भरण्याची कार्यवाही संबंधित प्रशासकीय विभागाने करावी.

६) महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील नियम ५६ नुसार अतिरिक्त वेतन/विशेष वेतन देण्यासंदर्भात वित्त विभागाने वेळोवेळी दिलेल्या शासन आदेशानुसार प्रशासकीय विभागांनी कार्यवाही करावी.

३) सदर शासन परिपत्रकातील तरतूदींची अंमलबजावणी होईल याची सर्व प्रशासकीय विभागांनी दक्षता घ्यावी.

४) या शासन परिपत्रकान्वये प्रसूत केलेल्या सूचनांचा अंतर्भाव यथावकाश म.ना.से. (वेतन) नियम १९८१ मध्ये करण्याबाबत, वित्त विभागामार्फत स्वतंत्रपणे कार्यवाही करण्यात येईल.”

(emphasis placed)

The Respondent No.2 was regularly appointed as 'Dean' of Dr. Shankarrao Chavan, Government Medical College, Nanded on 08.04.2021 thereafter he was given this Additional Charge.

11. Though there is no bar in giving the junior additional charge than to person who is senior, it cannot be done arbitrarily, randomly in Government service or in a pick and choose manner. Similarly being senior cannot get right to hold the additional charge of a particular post. In the present case one very important factor is required to be underlined that the post of Director, DMER is a single post and there is no equivalent post available to whom the charge is of the post can be given. Thus, necessarily the person who is going to be given the additional charge is not from the same cadre. Thus, handing over the additional charge to a person who is below in rank is a kind of upliftment of the position in his regular cadre. Therefore, on this background the guidelines mentioned in the Circular dated 5.9.2018 are required to be scrutinized.

The fact of handing over the Additional Charge to the Respondent No.2 as the post of Director, DMER first on 01.07.2021 thereafter handing over the Additional Charge to the Applicant by Order dated 13.07.2023 for three months and thereafter again handing it over to the Respondent in September, 2023 is admitted by Respondent No.1. The

notings made available by the Medical Education and Drugs Department before issuing these two orders are important. It is further admitted that Respondent No.2, Dr. Dilip Mhaisekar was much junior to the present Applicant. In Seniority List of the year 2021, the name of the Applicant was shown at Serial No.2 and in the Seniority list of the year 2022, the name of Respondent No.2 was shown at Serial No.63. Out of these 63 officers, 32 officers have retired and there were these 31 officers senior to Respondent No.2. Out of that, 5 officers were given promotion on the post of 'Superintendent'. So according to the Respondent-State about 25 officers were senior to the Respondent No.2 in the year 2021. However, it is mentioned in the notings that the 25 officers senior to Respondent No.2 had no experience of 'State-Level HOD' in dealing with 'Administrative Matters' and therefore name of Respondent No.2 was suggested to the Hon'ble Minister In-charge of Medical Education and Drugs Department on 01.07.2021. On the same day the file was moved through the Principal Secretary, Medical Education and Drugs Department and Hon'ble Minister In-charge has written note as follows:-

"Dr. Dilip Mahasekar is recommended to be appointed as Vice-Chairman (In-charge)."

The Hon'ble Minister, In-charge has signed in the noting wherein the names of 12 officers who were senior to Respondent No.2 are seen and against each officer, the details and remarks are available. We fail to understand why the name of remaining 13 officers who were also senior to Respondent No.2 were not considered and no remarks recorded about them. The details of 12 officers are as follows:

अ. क्र.	नाव व पदनाम	ज्ये. क्र.	तपशील
१	डॉ. विवेक पाखगोडे, सहसंचालक (दंत)	१	डॉ. पाखमोडे हे अधिष्ठाता शासकीय दंत महाविद्यालय, मुंबई या पदावर कार्यरत होते. त्यांना दिनांक १९.०३.२०२१ च्या आदेशान्वये सहसंचालक (दंत) या पदावर पदोन्नती मिळाली आहे संचालक, वैद्यकीय शिक्षण व संशोधन, मुंबई यांना वैद्यकीय विषयातील सर्व तपशील तसेच प्रशासकीय कामकाज माहित असणे आवश्यक आहे.

२	डॉ. अजय चंदनवाले, अधिष्ठाता	१	अधिष्ठाता संवर्गात ज्येष्ठ आहेत मात्र त्यांनी कुलगुरु, महाराष्ट्र आरोग्य विज्ञान विज्ञापीठ, नाशिक या पदाकरिता अर्ज केला असून त्यासंदर्भात मुलाखत झाली असून पुढील प्रक्रिया सुरु आहे.
३	डॉ. चंद्रकांत म्हस्के	५	डॉ. म्हस्के यांनी त्यांचे मागील ५ वर्षांचे गोपनीय अहवाल सादर केलेले नाहीत.
४	डॉ. पल्लवी सापळे	६	अधिष्ठाता, शासकीय वैद्यकीय महाविद्यालय, मिरज या पदावर कार्यरत असताना डॉ. मिलिंद केसरखाने व स्वतःच्या नावावर एचडीएफसी बँकेमध्ये शासनाची पूर्वपरवानगी न घेता, खाते उघडून या खात्यामध्ये प्लाझ्मा विक्रीतून मिळालेल्या पैशातून ॲम्ब्युलन्स खरेदी केली त्यासाठी शासनाची पूर्वपरवानगी घेण्यात आली नाही. तसेच सदर रक्कमेतून खरेदी केलेली ॲम्ब्युलन्स स्वतःच्या मातोश्री श्रीमती सुप्रिया सापळे यांच्या देणगीतून रुग्णालयात दिल्याबाबत सांमजस्य करार केला. याप्रकरणी शासकीय निधीचा अपव्यय व शासनाची दिशाभूल या मुद्याच्या अनुषंगाने शिस्रागण विषयक कार्यवाही प्रस्तावित आहे. त्याचप्रमाणे अधिष्ठाता, ग्रॅन्ट शासकीय वैद्यकीय महाविद्यालय, मुंबई या पदावर गनर्यरत असताना कोवीडच्या काळात मुंबई विमानतळावर प्रवाशांचे स्क्रिनिंग करण्यासाठी पथक नियुक्त करण्याबाबत चरिष्ठ स्तरावर सूचना देवूनही कर्तव्य परायणता राखली नाही, यासंदर्भात देखील शिस्तभंग विषयक कार्यवाही प्रस्तावित आहे.
५	डॉ. काननबाला येळीकर (कोरपे)	७	दिनांक ३०.०९.२०२१ रोजी नियतवयोमानानुसार सेवानिवृत्त होत असल्याने अल्प कालावधी शिल्लक आहे.
६	६ डॉ. मिनाक्षी गजभिये (वाहणे)	८	डिसेंबर, २०१६ मध्ये लाचेच्या सापळा प्रकरणामुळे त्यांच्याविरुद्ध अभियोग दाखल करण्यास परवानगी देण्यात आली असून तसेच त्यांच्याविरुद्ध विभागीय चौकशी देखील आदेशित करण्यात आली आहे.
७	डॉ. सुधीर नणंदकर	९	दिनांक ३०.०९.२०१८ पासून अधिष्ठाता पदावर कार्यरत आहेत.
८	डॉ. अजय केवलिया	१०	दिनांक ३०.०६.२०२१ रोजी रोजी नियतवयोमानानुसार सेवानिवृत्त झाले आहेत.
९	डॉ. संजीव ठाकूर	११	दिनांक २९.०६.२०१९ पासून अधिष्ठाता पदावर कार्यरत आहेत
१०	डॉ. सजल मित्रा	१२	दिनांक ११.०९.२०१९ पासून अधिष्ठाता पदावर कार्यरत मात्र दिनांक २८.०४.२०२१ पासून स्वेच्छासेवानिवृत्ती घेतली आहे.
११	डॉ. अरुण हुमणे	१३	दिनांक २४.०९.२०२० रोजी अधिष्ठाता पदावर नामनिर्देशनाने नियुक्ती. शावैम, चंद्रपूर येथे कार्यरत असताना कोवीड-१९ विषाणू बाधित रुग्णांवर उपचार संदर्भात प्रशासकीय जबाबदारी योग्यरित्या पार न पाडल्यामुळे शासन आदेश दिनांक १६.०४.२०२१ अन्वये अधिष्ठाता पदावरून बदली करण्यात आली.
१२	डॉ. सुधीर गुप्ता	-	दिनांक ११.०९.२०१९ च्या शासन आदेशान्वये अधिष्ठाता पदावर

		पदोन्नतीने शासकीय वैद्यकीय महाविद्यालय, गोंदिया येथे पदस्थापना देण्यात आली. मात्र सदर पदावर रुजू होण्यास मुदतवाढ मागितल्यानुसार शासन आदेश दिनांक ०८.०२.२०२१ अन्वये एक विशेष बाब म्हणून पुढील आदेश मुदतवाढ देण्यात आली आहे. राद्यस्थितीत शासन आदेश दिनांक २३.०२.२०२१ अन्वये अधिष्ठाता, शासकीय वैद्यकीय महाविद्यालय, नागपूर या पदाचा अतिरिक्त कार्यभार देण्यात आला आहे.
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12. We have gone through the noting dated 05.07.2021 by which the Additional Charge of the post of Director, DMER was given to the Respondent No.2. This document reveals important facts of the entire matter. In Paragraph 3 of the said noting it is mentioned that the Recruitment Rules dated 28.05.1973 were required to be revised and then the post of Director, DMER will be filled up by option of 'Nomination'. This would be done on priority basis. It would take approximately 'Six Months' time; so in view of the administrative exigency the Additional Charge the post of Director, DMER was required to be given. The guidelines are issued by the G.A.D. G.R. dated 05.09.2018 and it seems suitability of 12 senior officers were considered. It was expected that Additional Charge of the post of Director, DMER was to be given to an officer who was working as Joint Director or Superintendent in the Government Hospital or Government Establishment.

13. It is to be noted that in the guidelines given by G.A.D., G.R. dated 05.09.2018 as per Paragraph 4, if the Additional Charge is required to be given by superseding the senior most officer then it is necessary to mention the reasons in writing in the noting why that senior most officer was found to be disqualified. The vernacular word used is 'अपात्र'. In Marathi when the word 'अपात्र' is used in context with in service candidate under consideration, then it has a flavor of stigma or discarding. Thus, it is not merely an ineligibility or disqualification, but somebody in service was found not competent hence discarded. Rightly as per the guidelines it is not required to give reasons why a junior person is to be

appointed, but it is necessary that the reasons for not entrusting Addition Charge to the seniors are to be recorded. If only the reasons for appointing a particular junior person would have been required to be noted down then the window would have been open to the elements like nepotism, favouritism, quid pro quo and may other extraneous considerations. Hence, the reasons for discarding the senior persons are to be stated. Out of these 25 senior persons, remarks does not show reasons for discarding the names of Dr Vivek Pakmode, Sr. No. 1, Dr. Ajay Chandanwale (applicant in person), Sr. No. 2, Dr Sudhir Nanandkar, Sr. No. 7 and Dr Sanjeev Thakur, Sr. No. 9 and no adverse remarks are shown. The reasons given for others like Dr. Pallavi Saple, Sr. No.4, Dr. Meenakshi Gajbhiye, Sr. No.6, Dr. Arun Humane, Sr. No.11, are clear that they have committed certain wrong or under the cloud of misconduct, hence, found 'अपात्र'. It is to be noted the word unsuitable 'अयोग्य' is not used but the word is used as 'disqualified' i.e. 'अपात्र'. The word 'योग्य' has different connotation.

14. Shri Lonkar, learned counsel for Respondent No. 2 has submitted that while handing over the additional charge of any post the State has to consider the administrative convenience and need not follow the rule of seniority. On this point, he relied on the Judgment of the Hon'ble High Court, Bench at Nagpur dated 2.2.2023, The State of Maharashtra Vs. Dinesh Jagannath Khonde, W.P 421/2023. In the said Writ Petition the Respondent who was original applicant has prayed before the Tribunal that he be permitted to hold additional charge of the post of Chief Electrical Inspector till the substantive promotions were given. Since the seniority list of Superintending Engineer which was a feeder cadre to Chief Electrical Inspector was not published, the Respondent/Original Applicant being the senior most Sectional Engineer in the department and was entitled to the post of Chief Electrical Inspector was given the additional charge of the said post. So he

approached the Tribunal that till the appointments were made substantively after fixing the seniority list he be allowed to hold the charge. The Original Application was allowed by the Maharashtra Administrative Tribunal, Nagpur Bench giving directions to the State to allow the applicant to continue with the additional charge of the post of Chief Electrical Inspector till regular order of promotion of Chief Electrical Inspector be issued. The Respondent-State challenged the said order. The Hon'ble High Court pointed out that in fact in the order dated 23.4.2020 of handing over the additional charge by the Respondent, it was mentioned in the order that Respondent continued to hold the said additional charge until further orders. So there was no occasion for the Respondents to seek further directions. However, in that matter, the Hon'ble High Court further held that :-

“It would be for the Department to consider the manner in which such ad hoc arrangement is to be made and do not confer any legal right on such appointee.”

Thus, for want of cause of action the Writ Petition was allowed. The facts in the said Writ Petition are different than the present case. However, the point is required to be noted that it is the concerned department on considering its administrative convenience and the requirements may give the charge to any person senior or junior in the que when such additional charge is handed over. It does not create any right in favour of such appointee though he is senior. The points in this judgment are to be noted. In the judgment in Khonde also the G.A.D. Circular dated 5.9.2018 giving guidelines for handing over of the additional charge is referred. It is true that those guidelines do not put bar on any department for not handing over the additional charge to even the junior most person in the same cadre, however, it lays down certain procedure that it is to be done in a particular manner. On the said aspect of following certain procedure the Judgment dated

02.02.2023 in Writ Petition No.421/2023 is silent as the said issue was not argued before the Hon'ble High Court. These guidelines in G.A.D. Circular dated 05.09.2018 are enabling provisions for not handing over charge to the senior most person if he is not found qualified and eligible. About the procedure we will discuss further.

15. In the service jurisprudence a golden thread of 'Rule of Seniority' is to be followed especially when the appointments are made, promotions given or even temporary charge is to be handed over. So, in the handing over Additional Charge the 'Rule of Seniority' is generally to be observed. Rule 4 of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (herein after referred as 'MCS Seniority Rules 1982' for brevity) reads as below:

“4. General principles of seniority:- (1) Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein”

Thus, the seniority of a Government Servant based on the length of continuous service to be maintained while preparing the Seniority List. Hence, the seniority list in a Government Office is required to be prepared and declared as on the 1<sup>st</sup> day of January every year. It underlines that generally a person should not be superseded and that assurance is given by the 'Rule of Seniority'. However, this 'Rule of Seniority' is flexible only when on the basis of merit any other Government Servant can supersede his / her seniors. There should be some reasoning consistent with the Recruitment Rules or Administrative Guidelines allowing to do so and that reasoning should be transparent. In Government Service the steel framework of the Acts, the Rules, the Administrative Guidelines govern decisions and Office Procedure and that is required to be observed. No matter the façade of steel framework though apparently may give impression that it is very rigid, but it

provides a safe assured reliable administrative structure for the Government Servants. Therefore, even if senior officer may be retiring within a short period of 'Three Months' still, the Additional Charge is generally given to him adhering to the 'Rule of Seniority'.

16. In this context, we would like to refer to the noting of DMER dated 25.01.2019 when Dr. T.P. Lahane was given Additional Charge of the post of Director, DMER. In the said noting it is found that in the Seniority List Dr. T.P. Lahane was at Serial No.2 and it was stated that Dr. Tulsiram Wakode was to retire within Six Months and therefore he was not given Additional Charge of post of Director, DMER. However, Dr. Tulsiram Wakode from the said Seniority List at the relevant time did not challenge appointment of Dr. T.P. Lahane. Thereafter, a further decision to give Additional Charge to Respondent No.2, Dr. Dilip Mhaisekar as a successor of Dr. T.P. Lahane by superseding more than 20 persons was not challenged nearly for two years. However, it is challenged now by the Applicant.

17. The Respondents have objected this action of not challenging the Order for two years of Additional Charge of Director, DMER given earlier to Dr. Dilip Mhaisekar, but only the further order dated 21.09.2023 of handing over Additional Charge back to Respondent No.2, Mr. Dilip Mhaisekar. On the point of acquiescence, he relied on the decision of the Hon'ble Supreme Court in the case of Bichitrananda Behera (supra). This pertains to the management's, approval & continuation of a teacher as a Physical Education Teacher. The appointment of original Respondent No. 5 as a Physical Education Teacher was challenged. The Hon'ble High Court has relied on many authorities on the principles of delay, laches and acquiescence which are overlapping and interconnected and explained the distinction between these three concepts and held that there can be acquiescence, but no laches. Acquiescence is a tacit or passive acceptance. It held that:-

“When acquiescence is followed by delay, it may become laches. Here again we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

In the said judgment the Hon'ble Supreme Court while explaining the delay, laches and acquiescence has relied on the case of Union of India Vs. N. Murugesan (2022) 2 SCC 25. The Applicant has argued that due to fear of political pressure and apprehension that something would go wrong if the Additional Charge of Director, DMER to Dilip Mhaisekar was challenged, made him to keep quiet when it was earlier handed over upon retirement of Dr. T.P. Lahane. Moreover, the Applicant was hopeful that there would soon be regular appointment for the post of Director, DMER and he would get fair chance of promotion. His expectation to a certain extent was fulfilled when he was given Additional Charge of post of Director, DMER after it was taken away from Dr. Dilip Mhaisekar by Order dated 13.07.2023 but then within three months it was taken back from him and again given to Dr. Dilip Mhaisekar and that was the trigger point to approach this Tribunal. It was submitted by the Respondent No.1 that Dr. Dilip Mhaisekar was on Medical Leave for about three months and so it was only by way of stop gap arrangement 'Additional Charge' of the post of Director, DMER was given to the Applicant.

18. We are not satisfied with these submissions of Respondent No.1. After going through the record of handing over the Additional Charge to Dr. T.P. Lahane till further orders i.e. till his retirement and then again the Additional Charge of the post of Director, DMER was given to Respondent No.2, Dr. Dilip Mhaisekar by Order dated 01.07.2021 with the reasons that the Recruitment Rules are being framed and it was to take place on the basis of priority and it would take Six Months. Now though two years are over still the Additional Charge of post of Director, DMER is being kept with Respondent No.2, Dr. Dilip Mhaisekar. We really fail to understand why the State Government has not made

regular appointment of Director, DMER. It is a very important and key post. A very strange answer to our query was given by the State Government that they did not come across suitable officer to appoint on promotion to the post of the Director, DMER. We wonder if there is dearth of the competent senior officers amongst the feeder cadre of Joint Directors in DMER or is it a total apathy of the administration in Medical Education and Drugs Department and lack of political will thereby disclosing a classic example of unfair practices in Public Administration.

19. The Affidavit-in-Reply dated 09.11.2023 filed on behalf of Respondent No.1, Mr. Dinesh T. Waghmare, Principal Secretary, Medical Education and Drugs Department states that the Applicant was involved in the alleged corruption of 150 crores in using Corporate Social Responsibility (CSR) Fund. We were aghast to come across that though as per Respondent No.1 the Applicant was facing alleged serious corruption charges and yet no Departmental Enquiry has been initiated till today. We pointed out this fact to the Respondent No.1 and to know why action to institute Departmental Enquiry was not initiated against Applicant we also called Mr. Dinesh T. Waghmare, the Respondent No.1 to remain present during hearing. Unfortunately, he could not answer our query for not initiating the Departmental Enquiry or registering FIR against the Applicant for such grave corruption charges he was facing when working as Dean in the Government Medical, College, Pune. Thus, the reasons given by Applicant that he could not come forward to challenge the earlier order of giving Additional Charge of Director, DMER of the Respondent No.1 from 2021 onwards because of political pressure and vindictive attitude and his fear that he would be victimized out of vengeance may now appear to be true. The silence thus cannot be called acquiescence.

20. It is true that when the Additional Charge of the post of Director, DMER was given to the Applicant by note dated 12.07.2023 which was

approved by the Hon'ble Minister of Medical Education and Drugs Department on 13.07.2023 no reasons were mentioned. The Applicant was at Serial No.2 and so it was expected to give reasoning of not handing over the Additional Charge to Dr. Vivek Pakmode following the 'Rule of Seniority'. The said note and the approval also appears to be given by not following the proper procedure as per G.A.D. Circular dated 05.09.2018. Further it is pointed out that Respondent No.2, Dr. Dilip Mhaisekar was on duty and holding the Additional Charge till 13.07.2023. He proceeded on 'Medical Leave' on the next day i.e. 14.07.2023 and again the said Additional Charge of post of Director, DMER was handed over back to Respondent No.2, Dr Dilip Mhaisekar i.e. after three months and one week i.e. on 21.09.2023. At that time again the procedure in G.A.D. Circular of 05.09.2018 was required to be followed by giving reasons as to why other senior officers are not competent or disqualified, hence they could not be considered instead of Respondent No.2, Dr Dilip Mhaisekar. We make it clear that if a particular procedure is laid down it is necessary for the State Government to do the things in that manner only. On this point we rely on the judgment in the case of **Nazir Ahmad Vs. Emperor, 1936 Privy Council 253 (1)**, wherein it is observed as under:-

"The rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

We are aware in the present case there are no rules and the guidelines cannot be substituted for rules. However, when there are no rules then the guidelines / procedure is to be observed. We do not find good reasons to ignore the guidelines. The only mention of 'Additional Charge' under Rule 56 of Maharashtra Civil Services (Pay) Rules is in context of Additional Pay/Special Pay to be given to Government Servants holding 'Additional Charge'.

21. The reason of 'administrative purpose' or 'exigency' is always coined to justify such orders. The reasons should appear genuine and should not be an eye wash. The appointment to such important post of Director, DMER even though temporary should truly serve the public interest and no political whim or agenda should be the motive. On this point we would like to rely on the Affidavit-in-Sur-Rejoinder dated 19.01.2024 filed by Mr. Shivaji Sampatrao Patankar Joint Secretary in the office of Principal Secretary, Medical Education & Drugs Department, in Paragraphs 11 and 11.1. The Respondent No. 1 gave Respondent No.2, Dr. Dilip Mhaisekar the Additional Charge of the post of Director, DMER on the ground that he was holding experience in the field of Medical Education & Research and therefore the credit was given to him when 9 New Government Medical Colleges at Palghar, Thane (Ambernath), Jalna, Amravati, Buldhana, Washim, Wardhan, Bhandara and Gadchiroli with admission capacity of 100 students was approved by National Medical Commisison. So also the initial process to obtain the essential certificate or clearance from various Government Departments, Organization & Agencies, as well as sanction of affiliation from Maharashtra University of Health Sciences, Nashik and also to submit proposal to the National Medical Council for approval were all done by the Respondent No.2, Dr. Dilip Mhaisekar. It was further stated that Respondent No.2, Dr. Dilip Mhaisekar had earlier served as Vice-Chancellor of Maharashtra University of Health Sciences, Nashik for 5 years and even when he was transferred to Nanded as the 'Dean' of Dr Shankarrao Chavan Government Medical College yet Additional Charge of post of Director, DMER was to be kept with Respondent No.2, Dr. Dilip Mhaisekar has been working as Dean in Dr. Shankarrao Chavan, Government Medical College, Nanded since 11.02.2021 and he had Additional Charge of Director, DMER during the period from 05.07.2021 till 21.07.2023 and thereafter again from 21.09.2023 till today.

22. Applicant has brought on record the report of One Man Committee of Mr. Pravin Dixit. Applicant has pointed out on the affidavit and argued that one MLA Mr. Balaji Kalyankar from Nanded had requested the Hon'ble Chief Minister for giving Additional Charge to Respondent No. 2, Dr. Dilip Mhaisekar of post of Director, DMER and accordingly as per the remark on this letter the Hon'ble Chief Minister directed Respondent No.1 to put up the proposal of giving Additional Charge of post of Director, DMER to Respondent No.2, Dr. Dilip Mhaisekar.

23. In the case of **Mohd. Masood Ahmad (supra)**, on the point of transfer which was made at the instance of an MLA and it is held that:-

“There can be no hard and fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case.”

We have discussed specifically the facts of the present case. The simple letter given by MLA Mr Balaji Kalyankar and pursuant to that it appears that the Hon'ble Chief Minister has taken decision to hand over the Additional Charge of Director, DMER back to Respondent No.2, Dr. Dilip Mhaisekar. It is true that this itself will not vitiate the procedure of handing over of the Additional Charge. However, it was necessary for the State Government to follow the guidelines given in the same G.A.D. Circular dated 05.09.2018 to justify how the recommendations made by MP or MLA is found acceptable to the Hon'ble Chief Minister and it is necessary and appeals to the executives to give back Additional Charge of Director, DMER to the Respondent No. 2, Dr. Dilip Mhaisekar only and not others. Nowhere, the Hon'ble Bombay High Court in the judgment dated 02.02.2023 in Writ Petition No.421/2021 of Dinesh Jagannath Khonde has expressed or held the view that the procedure laid down by the said guidelines in G.A.D. Circular dated 05.09.2018 is arbitrary and hence not required to be followed by State Government.

24. In the case of **Ramakant Shripad Sinai Advalpalkar (supra)**, it is held that when additional charge is given to the higher post and person is directed to discharge duties of the higher post it does not create any right in his favour. He may get some charge allowance. It is essentially a stop gap arrangement. Even if at all the person continues to hold the said post for a long time and so also in-charge arrangement is not a recognition of or is necessarily based on seniority and therefore no rights, equities or expectations could be built upon it.

25. In **Sri Pubi Lombi's case (supra)**, pertains to transfer of Government Servants. In the said matter, the Division Bench of the Hon'ble High Court set aside the order of transfer observing that the note of MLA was approved without application of mind and any remark of administrative exigency by the department to substantiate that it was in public interest or in exigency of service. Thus, the scope of judicial review in the matter of transfer was questioned. On the point of judicial review in the case of transfers of Government Servants it held as under:-

“13, In view of the stand taken by the Government and in absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, interference as made by the Division Bench setting aside the well-reasoned judgment of the Single Bench is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA. In our view the Division Bench has committed an error in setting aside the judgment of the learned Single Judge.”

26. In **M.C Mehta's case (supra)**, no notice was given and that issue was addressed and the Hon'ble Supreme Court held that it is not always necessary for the Court to strike down any order merely because the order has been passed against the Petitioner in breach of 'Natural Justice'. We make it clear that Respondent No. 2 may be very competent

to discharge the functions under this additional charge of the promotional post. We are not in a position to pass any remarks on his capability and competency. We are only on the point that the handing over of the charge to Respondent No. 2 initially and thereafter again to the applicant for a period of 3 months and then again to the Respondent No. 2, when other senior Doctors who have no bad record were not considered and no reasons for not giving this additional charge of the promotional post by superseding them are not recorded. We are of the view that the entire process reveals the arbitrariness on its face. We refer to and rely on the decision of the Hon'ble Supreme Court of India in the case of **East Coast Railway & Another Vs. Mahadev Appa Rao & Ors (2010) 7 SCC 678** has unequivocally emphasized on 'Application of Mind' and recording of reasons by 'Public Authority' so that there is no scope of arbitrariness in taking decisions. The Hon'ble Supreme Court of India had observed the following:-

"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

27. In **Sanjeev B. Kokil's case (supra)**, the transfer was challenged on the ground that proper opportunity was not give and reasons are not recorded when the transfer is made on the basis of complaint. We do not find any relevance of this ruling to the facts of the present case.

We do not find any relevance of these rulings to the facts of the present case.

28. Undoubtedly the representative of people can very well give suggestions to any Hon'ble Cabinet Minister or the Hon'ble Chief Minister to improve 'Public Administration'. However, it is to be tested and accepted purely as per yardstick of 'Public Interest' and by following proper procedure for 'Good Governance' and not just to appease any MLA. The objectives of 'Good Governance' cannot be sacrificed at any cost. Further shocking fact was brought to our notice by the Applicant that in the month of October, 2023 in, Dr. Shankarrao Chavan Government Hospital at Nandad where the Respondent No.2, Dr. Dilip Mhaisekar was serving as 'Dean; there was grievous incident of sudden deaths of atleast 35 patients including 16 infants regarding which fact finding One Man Committee of Mr. Pravin Dixit as Rapporteur has submitted the report to National Human Rights Commission that to a certain extent Respondent No.2, Dr. Dilip Mhaisekar was also responsible for negligence of his onerous duty as 'Dean'. The subject is pending before the Human Rights Commission. Hence, we do not comment further. It was submitted by the State Government that they have not received such report from National Human Rights Commission and therefore State Government did not comment on it. However, it is a basic that if Additional Charge is not given to Government Servant serving on equivalent post, but from feeder cadre; then it is to be given to only such junior Government Servant who is capable and competent enough to perform duties and functions of Additional Charge without ignoring or neglecting responsibilities and duties of his Substantive Charge.

29. Thus, under such circumstances we are of the view that Respondent No.1 for reasons in the realm of the unknown has been

avoiding to make regular appointment to important post of Director, DMER which is required to be done on the priority basis for better 'Public Administration'. In **Yogesh Pratap Singh (supra)**, the Hon'ble Supreme Court while deciding the transfer issue held that there is no right in the Government Servant to insist that both the spouse can be posted at one and the same place as claimed and held that there is no reach of Maharashtra Police Manual though as far as possible 'Husband and Wife' who are both employed should be posted at the same station. It is a matter of desirability, but it is not a rule. Ultimately, it is matter of 'Administrative Exigency'.

30. Hence, we allow partially Original Application with following orders:- :-

### **ORDER**

- (A) The Order dated 21.09.2023 of Respondent No.1, for giving Additional Charge of post of Director, DMER to Respondent No.2, is hereby quashed and set aside.
- (B) The Additional Charge of post of Director, DMER if required to be given in the interregnum should be strictly done by observing the procedure in G.A.D. Circular dated 05.09.2018.
- (C) The Respondent No.1, is further directed to take definitive steps to fill up post of Director, DMER on substantive basis for better Public Administration within period of Eight Weeks and put to an end the uncertainty relating to temporary appointments by giving 'Additional Charge'.

(D) No Order as to costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member(A)**  
**07.05.2024**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**  
**07.05.2024**

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**7.05.2025:-**

1. Shri M.D. Lonkar, Ld. Advocate for Respondent No.2 prays that this order be stayed as Respondent No.2 wants to challenge this order before the Hon'ble Bombay High Court. He states that Respondent no.2 has been holding the charge of the post of Director of Medical Education & Research, Mumbai for more than 2 years, barring a period of 3 months, when the applicant was given the additional charge of this post. He submits that this post is important and it cannot be kept vacant. Therefore, Respondent no.2 be allowed to continue on the said post and this order be stayed till 17.6.2024. He submits that there is summer vacation and the period of four weeks cannot be counted.

2. Applicant in person opposes the stay.

3. Considered the submissions of both the sides. We have considered the prayer for stay. Stay cannot be granted for such a long time till 17.6.2024. In view of the reasoning given by us in the order and so also one should get opportunity to challenge the order, in our considered view we stay our order till 22.5.2024.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member(A)**  
**07.05.2024**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**  
**07.05.2024**

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