

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.474 OF 2023

DISTRICT: SATARA
Subject : Leave Period

Shri Umesh Aba Karande)
Age: 62 yrs, Occ: retired as Pharmacy).....**Applicant**
Officer (Class 3), R/at Asmi 321/1/3,)
Babar Colony, Karanje, Satara.)

VERSUS

- 1] The State of Maharashtra, through)
Additional Chief Secretary, Health)
Department, MS, Gopaldas Tejpal)
Hospital Complex, 10th floor, B Wing)
Mumbai.)
- 2) The Director of Health Services,)
Commissionerate of Health Services,)
Central Building, Pune.)
- 3) The Deputy Director of Health Services)
Kolhapur Circle, Central Building)
Kasaba Bawada Rd, Bawada, Tal.)
Karveer, Kolhapur.)
- 4) The Deputy Director of Health)
Services, Pune Circle, 301, 3rd floor,)
New Administrative Building,)
Sasson Road, Pune.)
- 5) The Chief Medical Officer, State TB)
Training & Demonstration Centre,)
(Chest Hospital Building), Aundh,)
Pune.).....**RESPONDENTS**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent

CORAM : Shri Ashutosh N. Karmarkar, Member (J)

DATE : 24.10.2024.

J U D G M E N T

1. The Applicant has prayed for quashing and setting aside the communication dated 22.07.2022 of Respondent No.1 whereby absence/leave period of 728 days of the Applicant between 04.06.2010 to 31.05.2012 was treated as 'Non-Dies'. He has also prayed for directing the Respondents to treat the said period of 728 days as duty period for all purposes.

2. The Applicant was appointed as 'Pharmacist' in Rural Hospital Pimpode Budruk, Tal. Koregaon, District Satara on 15.02.1982 then his designation was changed as 'Pharmacy Officer' in 2010. He was transferred at the District Hospital Satara. On 04.01.2010, he submitted representation seeking transfer at Rural Hospital Phaltan on the ground of spouse convenience. On 29.05.2010, he was transferred at Rural Hospital, Chandgad, Tal. Kagal, Dist. Kolahpur and was relieved on 04.06.2010.

On 09.06.2010, the Applicant submitted representation seeking his posting at Kolhapur Warehouse. On 09.05.2011, 25.08.2011, 18.10.2022, 21.10.2011 and 30.08.2011, the Applicant submitted representations before the Respondent No.3 for seeking transfer at Rural Hospital, Medha, District Satara. In response to show cause notice dated 06.07.2011 of Respondent No.3, the Applicant submitted his representation on 01.08.2011. On 31.05.2012 ultimately the Applicant's request for transfer at Rural Hospital Medha was considered. But, in meantime, the said post was filled up. So, the transfer order of the Applicant was modified and he was transferred to Rural Hospital Dhebewadi, Taluka Patan, District Satara. He joined there on

28.07.2012. After joining at Rural Hospital Dhebewadi, Tal. Patan, Dist. Satara, he submitted representation along with medical certificate.

3. On 31.12.2018, the Applicant retired by superannuation from the post of 'Pharmacy Officer'. At the time of retirement, the Applicant did not grant pensionary benefits. Being aggrieved by it, he has filed O.A.No.38/2022. Wherein, after hearing both sides, the Tribunal has directed by order dated 25.02.2022 to grant pensionary benefits to Applicant. Despite, Tribunal's order Applicant was not given any benefits and therefore, he was constrained to file Contempt Application No.35/2022. On 22.07.2022, the Respondent No.1 issued communication and treated absence of 728 days as 'Non-Dies'. The Applicant has raised the ground that without exhausting leave at credit of Applicant, the period from 04.06.2010 to 31.05.2012 was treated as 'Non-Dies'.

4. The Respondent has filed Affidavit in Reply. According to them, the Applicant is seeking the period of absence for 728 days as duty period for all purposes. But he was willfully absent from duty in between 04.10.2012 to 31.05.2012 and it is amounting to misconduct. It was violation of Rule 3(1)(2)(3) of Maharashtra Civil Services (Conduct) Rule 1979. Since the Applicant has completed normal tenure, he was transferred on administrative ground. The Applicant has submitted representation for transfer at Rural Hospital Phaltan. But there was no vacancy and therefore, he was transferred to Rural Hospital Chandgad, Taluka Kagal, District Kolhapur and was relieved on 04.06.2010. The Applicant has not joined immediately at Rural Hospital Chandgad and failed to obey the order of transfer. He also failed to submit leave application to regularize period of

absence. The Applicant submitted representations dated 09.05.2011 & 25.08.2011, but no post vacant to accommodate him. Reply of Applicant to show cause notice was not satisfactory. So, his absence from 04.10.2010 to 31.05.2012 is treated as extra ordinary leave without pay. The Respondent has not considered the request of Applicant favorably in the interest of better administration of their department. According to Respondents, the Applicant should have joined at the place of transfer and then should have forwarded representation in view of principles laid down by the Hon'ble supreme Court in case of **Gujrat Electricity Board & Anr. V/s Atmaram Sungomal Poshani, 1989 (2) SCC 602**. The Respondents have grievance redressal machinery by which representations are investigated and settled. But the Applicant has not resorted to such remedy. Petitioner is given all pensionary benefits as per directions of this Tribunal in O.A.No.38/2022 and C.A.No.35/2022. Unauthorized absence of Applicant caused obstacle in administration. The Applicant has availed leave encashment facilities and there is no leave at his credit, nor he has applied for Extra Ordinary Leave. So, the absence period was treated as Extra Ordinary Leave without pay.

5. Learned Advocate for Applicant has submitted that as per contents and grounds raised in petition in support of his case. He has relied in case of **Ramesh Motilal Khandelwal V/s Zilla Parishad Akola, 1992 MAH.LJ 1325**.

On the other hand, learned Presenting Office has also submitted as per contentions in Affidavit in Reply. For that purpose, they have placed reliance in case of **Gujrat Electricity Board** (cited above) and **the State of Punjab V/s Dr. P.L. Singla, Civil Appeal No.4969/2008** and in case of

Deputy Commissioner of Police v/s Sanjay Govind Parab, W.P. No.10200/2022 of High Court of judicature at Bombay.

6. It is undisputed fact that earlier the Applicant had filed O.A. No.38/2022 for directing Respondents to release retiral benefits and that O.A. was disposed of with directions to Respondents for passing for order of leave application of Applicant within specific period and to pass appropriate orders about retiral benefits in accordance with rules. Subsequently, the Applicant has filed C.A.No.35/2022 in O.A.No.38/2022. Since, the order of payment of pensionary benefits to the Applicant was complied, the C.A. seems to have been disposed off.

7. It is undisputed fact that Applicant was serving as 'Pharmacy Officer'. It appears from his application Exhibit 'A' dated 04.01.2010 that he was working at District Hospital, Satara from July 2003 and he has completed six years on day of that application. It is also undisputed fact that as per order dated 29.05.2010, the Applicant was transferred to Chandgad, Tal. Kagal, District Kolhapur and was relieved on 04.06.2010. According to Applicant, he had submitted representation on 04.01.2010 for getting posting at Rural Hospital Phaltan on the ground of spouse convenience. But, the representation (Exhibit 'A') dated 04.01.2010 does not reveal the said ground.

It is clear that the Applicant was transferred at Rural Hospital Chandgad on administrative ground on completion of period of six years. Admittedly, the Applicant did not join at the place of new posting. On the contrary, it is also admitted that as per modified order dated 18.07.2012,

the Applicant joined at Rural Hospital Dhebewadi, Taluka Phaltan, District Satara on 28.07.2012.

8. It appears that Applicant has placed on record the copy of representation Exhibit 'D' dated 09.06.2010, 09.05.2011, 25.08.2011, 30.08.2011 and 18.10.2011 for his transfer at Rural Hospital Medha. The Applicant has not raised the ground in 1st representation dated 09.06.2010 about his illness and that he is patient of Diabetes and Hypertension. Subsequently, he has raised the ground of illness. The Applicant has moved application for leave after joining at Rural Hospital, Dhebewadi.

9. Learned Advocate for Applicant has invited my attention to Certificate of Dr. Chougule at page 37 of this petition wherein it is mentioned that Applicant is suffering from Diabetes w.e.f. 04.06.2010. Surprisingly, the Applicant has not mentioned the ground of such illness at the first available opportunity when he filed representation immediately after five days vide Exhibit 'C' dated 09.06.2010 after he was relieved. So, it creates doubt about the ground of his illness raised in subsequent representation. If really the Government employee having any difficulties, he is expected to join the duty first at the place where he posted and then to forward representation or to challenge the order of transfer, if grounds are available. In this matter, the Applicant did not bother to join new place of posting nor has forwarded application for leave. Even after getting show cause notice from Respondent Exhibit 'E' dated 06.07.2011, the Applicant did not join his duty at new place of posting. In view of Rule 3 of Maharashtra Civil Services (Conduct) Rules, every Government servant needs to maintain devotion to duty and should maintain discipline in discharging his duties. So, the act of

Applicant of not obeying transfer order and remaining absent from duty from long period can be said to be act of indiscipline.

10. The impugned order shows that Applicant remained absent from duty for the purpose of getting of posting as per his choice. His services were not available for public at large due to his absence and it caused inconvenience in official work. It is also observed in impugned order that during long absence of Applicant, he has not forwarded application for leave nor file medical certificate with counter signature by Civil Surgeon. It is not a case of Respondents that they have taken any action in respect of absence of Applicant for long period. But the Applicant should have taken care to join duty immediately or to forward leave application. It is clear from the document page 35 of petition that Applicant has forwarded application for leave from 04.06.2010 to 31.05.2012 after joining at Rural Hospital Dhebewadi in July 2012. The Applicant has filed several documents along with leave application (Page 35) to Medical Superintendent Rural Hospital Dhebewadi. The Medical Superintendent, Dhebewadi forwarded said leave application (Exh. N) to Deputy Director Health Services Kolhapur. One letter of Petitioner (Page 49) is filed with leave application (Exh. N). Petitioner has specifically mentioned in it that he was trying for request transfer and so he did not join at Chandgad, Tal.Kagal, Dist. Kolhapur. It supports the contention of Respondents that in order to get choice posting, the Applicant did not join at Chandgad, Tal.Kagal, Dist. Kolhapur

11. The Applicant has raised the ground that absence of Applicant for 728 days should have been adjusted by Respondents in his Earned Leave or Commuted Leave. It is clear from impugned order that due to unauthorized

absence of Applicant his absence for 728 days was treated as 'Non-Dies' period. It is also held in impugned order that the said period is not to be counted for any purpose including pay and allowances. It has to be noted before filing of this petition all the retiral benefits including leave encashment seems to have been given to the Applicant. So, it will be difficult to accept on the date of impugned order, any 'Earned Leave' was at credit of the Applicant. It is already discussed in forgoing paragraphs that Applicant has not maintained discipline in discharging of his duties. Therefore, it will be difficult to accept that impugned order passed by Respondents is illegal.

12. Learned Presenting Officer has relied in case of ***Deputy Commissioner of Police v/s Sanjay Govind Parab, W.P. No.10200/2022*** of High Court of judicature at Bombay in which the Hon'ble High Court has held as under :-

"9. At the outset, it must be noted that the respondent is holding the post of Police Head Constable (Wireless) and is a member of the disciplined force. Being aggrieved by his order of transfer dated 30/05/2019, he had challenged the said order by approaching the Tribunal and had prayed for interim relief. The Tribunal refused to grant any interim relief by its order dated 12/06/2019. The respondent did not choose to challenge that order any further. On the contrary, he preferred to remain absent from duty without permission. His absence continued for 271 days till his Original Application was allowed on 20/01/2020. We may in this regard refer to the observations made by the Supreme Court in S. C. Saxena (supra) that a Government servant cannot disobey a transfer order by not reporting at the post of posting and then going to a Court to ventilate his grievances. It is his duty to first report for work at the place of transfer and make a representation in case he has any personal problem. It was further observed that the tendency of not reporting at the place of posting and indulging in litigation was required to be curbed.

In our view, there was no justification whatsoever on the part of the respondent for not complying with the order of transfer even after his prayer for interim relief was refused by the Tribunal. The respondent chose, at his own will, to defy the order of transfer and preferred to remain absent. His conduct reveals scant regard for the due process of law especially when he himself had approached the

Tribunal for challenging the order of transfer. This conduct of the respondent of failing to report for duty at the place of transfer even after being denied interim relief deserves to be deprecated.

13. It is also necessary to bear in mind that permitting an employee to disregard his order of transfer despite having failed to obtain any interim relief from the Tribunal would result in serious consequences. Having approached the Tribunal for quashing the order of transfer and having failed to obtain any interim relief, such employee having disregarded the order of transfer cannot seek pay and allowances for the period of his unauthorized absence. Rule 29 referred to above treats such willful absence from duty as misbehavior. His joining at the place of transfer would have been subject to final outcome of the proceedings. However, granting him the benefit of pay and allowances for the period of unauthorised absence would amount to granting premium for such conduct of disobedience of the order passed by the Tribunal.

13. In this regard, Rule 29 of Maharashtra Civil Services (Joining Time, foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 is also relevant which reads as under :-

“29. Overstayal – A Government Servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Willful absence from duty after the expiry of joining time may be treated as misbehavior for the purpose of Rule 27 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

In view of judgement of the Bombay High Court (cited above), Rule 29 of Maharashtra Civil Services (Joining Time, foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 198, it is difficult to accept that impugned order is improper or illegal.

14. The Applicant has relied on **Ramesh Motilal Khandelwal** case (cited above). In that matter, the employee was holding the post of Stenographer and he was transferred to post of Senior Assistant. It is held that while transferring the pay of said employee was protected but nonetheless, it is

clear that transfer is from Higher Post or Grade to Lower Post Or Grade. So the fact in that case appears to be different.

15. The learned Presenting Officer has also placed reliance in case of ***the State of Punjab V/s Dr. P.L. Singla, Civil Appeal No.4969/2008*** It is held in Para 8 as under :-

“8. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

16. Learned Presenting Officer has also placed reliance in case of ***Gujrat Electricity Board*** (cited above). It is held in Para 4 as under :-

“ Transfer of a Government servant appointed to a particularlar cadre of transferable posts from one place to other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public Administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified, or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

17. In present matter also the Applicant has not challenged the transfer order nor joined duty at new place of posting. Even he did not bother to

sent application for leave. In view of judgments relied upon by learned Presenting Officer, it is difficult to accept that impugned order is improper and illegal. There is no need to interfere in impugned order.

18. In view of above facts and circumstances, Original Application deserves to be dismissed. Hence, the following order :_

ORDER

- (A) Original Application is dismissed.
- (B) No Order as to Costs.

Sd/-
(**Ashutosh N. Karmarkar**)
Member (J)

Place: Mumbai
Date: 24.10.2024.
Dictation taken by: VSM
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