

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.552 OF 2016

DISTRICT : NASHIK

Smt. Gajara Rajendra Gujrathi.)
Age : 56 Yrs, Occu. Asstt. Matron,)
R/o. C-1, C-Wing, Spring Valley Society,)
Tapovan Link Road, Bodhale Nagar,)
Nashik - 11.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)
2. The Directorate of Health Services,)
Arogya Bhavan, St. Georges Compound)
P Demello Road, Mumbai 400001.)
3. Dy. Director of Health Services,)
Nashik Circle, Nashik District Civil)
Hospital Compound, Opp. Rajdoot)
Hotel, Nashik 422 001.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

**Ms. A.B. Kololgi with Mrs. K.S. Gaikwad, Presenting
Officers for Respondents.**

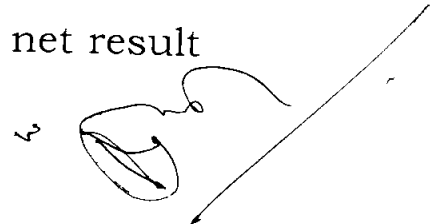


P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 17.01.2017

JUDGMENT

1. This Original Application (OA) seeks directions with regard to treating a certain block of periods for the purposes of Pay and Allowances and arises out of an order of transfer which ran into several difficulties.
2. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Mrs. A.B. Kololgi with Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.
3. It is not really necessary for me to set out the facts in extenso barring those that are strictly necessary for the purposes of deciding this particular OA. The Applicant initially came to be transferred on 31.5.2016 from Manmad to Nashik. However, she having been relieved from Manmad could not join at Nashik because one Smt. Shalini B. Udiwal moved this Tribunal by way of **OA 487/2014 (Smt. Shalini B. Udiwal Vs. The Secretary, Public Health Department and 2 others)**. I presiding over Vacation Bench on 5.6.2014 directed by way of an interim order that she be not relieved. The net result



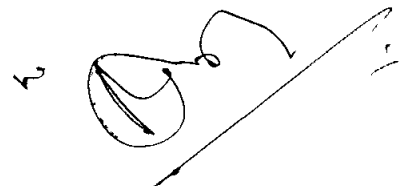
was that having been relieved from Manmad and not in a position to join at Nashik, the Applicant was practically in the manner of speaking stranded. The things then went on and ultimately, the period from 10.6.2014 to 31.10.2014 and 1.11.2014 to 6.3.2015 remained in contention. In the meanwhile, the Applicant moved the Hon'ble Bombay High Court with Writ Petition No.9350/2014 and Their Lordships by the order dated 5th April, 2016 gave certain directions but found that for all practical purposes, the said Writ Petition had become infructuous.

4. In the meanwhile, the Applicant was allowed to join Sub District Hospital at Pen on 7.3.2015.

5. Now, as far as the two blocks of periods viz. 10.6.2014 and 31.10.2014 and 1.11.2014 and 6.3.2015 are concerned, the first block was treated as compulsory waiting period and that aspect of the matter has achieved finality and no contention remains thereabout. The dispute, if one might say so remains for the period from 1.11.2014 to 6.3.2015 by the order herein impugned which is at Exh. 'S' (Page 37 of the Paper Book (PB)). The said period has been treated as 'Extra Ordinary Leave Without Pay'. The Applicant is aggrieved thereby and Mr. Kolge, the learned Advocate for the Applicant contended that such an



order is both unwarranted and illegal and in that connection, he invited reference to Rule 63 of Maharashtra Civil Services (Leave) Rules, 1981 (Leave Rules). The said Rule inter-alia provides that Extra Ordinary Leave may be granted to a Government servant in special circumstances – (a) When no other leave is admissible and (b) When other leave is admissible but the Government servant applies in writing for the grant of Extra Ordinary Leave. The Applicant having not made any written application, that Clause is also out of question. Mr. Kolge, the learned Advocate for the Applicant has pointed out from Para 6.11 (Page 9 of the PB) that the Applicant has to her credit 107 of Medical Leave and 300 days of Earned Leave which certainly is more than the period covered from 1.11.2014 to 6.3.2015. It appears to be his contention that any of these leaves could have been debited but the Respondents instead of have resorted to the treatment of the said period as 'Extra Ordinary Leave Without Pay'. Now, in my opinion, whatever the learned PO might say, there can be no hitch if the course of action canvassed by Mr. Kolge were to be adopted. Although on instructions Mr. Kolge informs that an application for leave was already made, but I make it clear that if that application is pending so much the better, but if such an application was not made, the Applicant shall do so, seeking a particular head of



leave for a period from 1.11.2014 to 6.3.2015 within a period of two weeks from today and the said application when made, the concerned Respondent shall make an appropriate order thereon within three weeks thereafter and intimate its outcome to the Applicant within one week thereafter. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
17.01.2017

Mumbai

Date : 17.01.2017

Dictation taken by :

S.K. Wamanse.

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