

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.779 OF 2016

DISTRICT : SANGLI

Dr. Prashant Kulkarni.)
Age : 46 Yrs, Occu.: Veterinary Doctor,)
R/o. Prajakta 42, Parshwanath Nagar,)
Kupwad Road, Sangli (Livestock)
Development Officer, Veterinary Dispensary)
Karnal , Tal.: Miraj, District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Department of Agriculture, Animal)
Husbandry, Dairies Dept. & Fisheries)
Dept, Mantralaya, Mumbai-400 032.)
(Copy to be served P.O. MAT, Mumbai)
2. Commissioner of Animal Husbandry)
Office of Animal Husbandry)
Commissionerate, MS, Pune 07.)
3. The Regional Joint Commissioner,)
Animal Husbandry, Opp. Spicer)
College, Bhau Patil Road, Aundh,)
Pune 411 007.)
4. Assistant Commissioner,)
Animal Husbandry, Taluka Veterinary)
Polyclinic, Near New Court Building,)



Kolhapur Road, Jaysingpur,)
Tal.: Shirol, Dist : Kolhapur.)

5. Dist. Deputy Commissioner (A.H.))
Mangalwar Peth, Kolhapur.)...**Respondents**

Mr. Y.P. Narvankar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 05.04.2017

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant, a Veterinary Doctor hereby raises a dispute about the non-payment of salary and other allowances during the leave period of 3.5.2015 to 31.5.2015 and also other emoluments for the period from 1.5.2015 to 31.8.2015 as set out in Annexure 32 (Page 74 of the Paper Book (PB) hereof).

2. At the outset, I must mention that there is nothing to feel happy about the dispute like the present one being brought before the Tribunal when a little matured approach to the same was possible to be adopted by the authorities concerned. The 1st Respondent is the



State of Maharashtra in the Department of Agriculture, Animal Husbandry, Dairies Department and Fisheries Department, the 2nd Respondent is the Commissioner of Animal Husbandry, the 3rd Respondent is the Regional Joint Commissioner, Animal Husbandry, the 4th Respondent is the Assistant Commissioner, Animal Husbandry against whose immediate control, the Applicant was at the relevant time functioning. The 5th Respondent is the District Deputy Commissioner, Animal Husbandry, Kolhapur.

3. The Applicant has been working as live Stock Development Officer. The fact that he had been suffering from Cervical and Lumbar Spondylosis with the symptoms of degenerative changes in Oncho-Vertebral Joints and minimal diffuse osteoporosis is indisputable. He has annexed to the OA the relevant medical record, but more important is the fact that, apart from that Medical Report, which in the context of the present facts provides unassailable evidence of his health condition, the relevant averments in Part-II have not been traversed at all in the Affidavit-in-reply filed by Mr. Ashok V. Shinde, Senior Administrative Officer in the 3rd Respondent who has filed the Affidavit-in-reply on behalf of all the Respondents. Therefore, by the principle of absence of traverse, the facts pertaining to the health condition of the Applicant have to

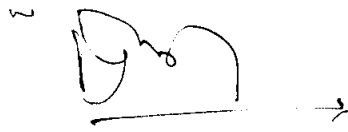


be admitted either expressly or by constructive admission. No further discussion on that aspect of the matter is really necessary. The “manifestation” of the decease or deformity that the Applicant suffers from is, for a layman, acute backache and the attended difficulties in locomotion.

4. As on 7.4.2015, the Applicant was working in the capacity above referred to, at a place called Kothadi in Taluka Shirala, District Kolhapur. He applied for leave for the period from 5.5.2015 to 15.5.2015 and requested for its sanction. The Applicant at that point in time was under treatment of Dr. Shyam Kadam. Now, before we proceed further, it needs to be noted that ultimately, it came about that Dr. Kadam’s credentials as a Doctor came under heavy cloud and there is some material on record to suggest that he was found to be what can commonly be described as “bogus Doctor” or a quack. At Annexure 30 (Page 72 of the PB), there is a communication to the Applicant from Maharashtra Council of Indian Medicine, dated 20th August, 2015. It appears therefrom that on 16th July, 2015, the Applicant wrote to the said Council about the genuineness of Dr. Kadam’s claim as a Medical Practitioner. The Council could not act against him, but the Applicant was free to make a Police complaint against him. I express no opinion as regards the credentials of the



said Mr. Shinde. It needs to be clearly understood that the Applicant claims that at some point in time, he was under treatment of the said "Doctor". The Respondents in the Affidavit-in-reply as well as at the time of the addresses by Mrs. A.B. Kololgi, the learned PO, gave an impression as if, they poked fun at the Applicant in so far as Dr. Kadam was concerned or they were so minded as to suggest that there was some collusion between the said "Doctor" and the Applicant. I am not too sure, if this kind of an attitude from responsible authorities reflects the kind of good grace that is expected from such authorities. There is a clear material to suggest that the present dispute, if it can be so called got degenerated into a personal one and that is not something that one expects from the authorities like the parties hereto including the 4th Respondent. I may again mention that I proceed on the assumption that "Dr. Kadam" was not a genuine Doctor, but then, he was practicing medicine all the same. He represented to all concerned that he held the degree of B.A.M.S. There is absolutely no material on record to suggest that the Applicant was in cohorts with the said "Doctor" and in fact, why should he be. Like any other patient, he also attended his clinic for treatment and in my opinion, it can never be successfully argued that, any adverse view could be taken against the Applicant because of the failure of the "Doctor"



to come true to the anvil of genuineness. In fact, once he came to know that there was some doubt about the "Doctor's" credibility, he wrote to the Medical Council quite promptly and that is what, in the ultimate analysis, he could have done. The patients have no means to check such credentials of the Doctors that they go to who are practicing in the open view of all and it would be highly unrealistic to expect the patients to enquire about the basic credibility details of a Doctor before they go under him. How I wish such a simple practical aspect of the matter was appreciated by the Respondents and/or their advisors. The Respondents strongly relied upon a Certificate issued by none other than "Doctor" Shyam Kadam himself where he addressed a communication to the Respondents complaining therein that the Applicant went away with some blank letter heads of the said "Doctor" probably implying thereby that he fabricated the documents pertaining to "Doctor" Kadam. Now, to me, it appears to be a thoroughly reprehensible attempt on the part of the Respondents to act in a manner which is unbecoming of people holding such high positions. It is their own case that "Doctor" Kadam had come under heavy clouds, and therefore, to turn around and rely upon the same "Doctor's" Certificate in trying to paint the Applicant black can hardly carry conviction. It in fact points out to



the fact that in duress that the said "Doctor" was, somebody on behalf of the Respondents took advantage of his situation so as to be used against the Applicant. The said "Doctor" had no option but to oblige in anticipation. This is not a particularly honourable attempt and it needs to be denounced.

5. At Annexure 'A-9' (Page 36 of the PB), there is a communication dated 2.5.2015 which shows that the Applicant cancelled his earlier leave application dated 7.4.2011 discussed above and instead he made another application vide Annexure 9 accompanied by prescribed proforma of the leave application. He informed that he was taking treatment in Civil Hospital, Sangli. He had been advised to take rest from 27/5/2015 to 31/5/2015 and he had annexed papers from the Civil Hospital, Sangli. He, therefore, requested for leave for the period from 3.5.2015 to 31.5.2015.

6. Now, whatever one might say about the Medical Report pertaining to these documents, they cannot be questioned because after-all, they are from the Civil Hospital, Sangli.

7. Before proceeding further, another fact facet of this particular matter can be adverted to. It so happened that in his earlier posting, the Applicant was given an



additional charge of a particular post at a place which was situated, some distance away from his usual place of posting. The Applicant was, in the manner of speaking, unwilling to take that post. In that connection, there was acrimonious exchange of correspondence between him and the incumbent that held the post of the 4th Respondent. It becomes very clear that the things got heated up. The Applicant was so minded as to allege personal grudge because according to him, a person nearer to that place of additional charge could safely have been posted there while according to the 4th Respondent, the Applicant had no business to teach him how to run administration. The Applicant wrote to the still higher authority and the matter remained hanging fire as it were. But in the meanwhile, by an order of 12.6.2015 (Annexure 16, Page 49 of the PB), the Applicant came to be transferred to Karnal, Taluka Miraj, District Sangli and ultimately, he came to be relieved from his earlier post to take up his new assignment which he eventually took. However, the salary and emoluments for the period above referred to, was an issue that remained pending. I do not feel called upon to render any decision on the merit of the matter of the additional charge in the earlier posting of the Applicant. I shall not express any view thereupon and proceed further.



8. The Respondents started insisting on the Applicant to go before the concerned Medical Board. To concentrate only on the relevant aspect of the matter in the ultimate analysis, the standing Medical Board of Rajarshi Chhatrapati Shahu Maharaj Government Medical College and C.P.R. Hospital, Kolhapur examined the Applicant and issued a Certificate of Fitness. That Certificate is at Annexure 22 (Page 61 of the PB). But then, on 1st June, 2015 itself, the Applicant had joined his post after the expiry of leave.

9. I have already mentioned above that the Applicant's earlier application for leave was withdrawn by him and he made another application. The 4th Respondent addressed a communication, a copy of which is at Annexure 10 (Page 39 of the PB) which was received by the Applicant on 2.5.2015. There it was mentioned that in so far as the issue of sanction of leave was concerned, there was some discrepancy. However, for all one knows, that particular application had already been withdrawn by the Applicant. To his joining report of 1.6.2016, a Medical Certificate issued by Dr. M.B. Sargar, a registered Medical Practitioner (MBBS-DGO) was annexed by the Applicant. That was duly countersigned by the Civil Surgeon, Sangli and for all one knows, that should have settled the matter once and for all, but sadly it did not. Then again, vide



Annexure 12, the 4th Respondent addressed a communication to the Applicant raising doubt about the leave application which had already been withdrawn. Thereby, necessary directions were also given to the Accounts Section to withhold the salary of the Applicant for the period from 5.5.2015 to 31.5.2015.

10. By his communication of 29.10.2015, the Respondent No.4 recommended to the Respondent No. 3 that the sanction of leave of the Applicant should be processed and granted.

11. Mr. Narvankar, the learned Advocate for the Applicant in the context of the above discussed facts, in the first place, contended that the insistence on the Applicant's to be put before the Medical Board on behalf of the Respondents was entirely out of place, because the leave sought was for a period not exceeding two months and there, in my view, he is right. In fact, his reliance on Rule 40 of the Maharashtra Civil Services (Leave) Rules, 1981 is also entirely apposite. It is also not possible for me to comprehend as to why this insistence was made on behalf of the Respondents. But in the ultimate analysis, since this matter is required to be decided on hard facts, in the light of several documents that I have discussed hereinabove, I am very clearly of the view that the



Respondents are not at all justified in holding up the payment of the Applicant for the period above referred to. I make it clear that I am going to grant some time to the Respondents which will not be a very long one and in case, they were to fail to comply, I am going to provide here and now that their failure to comply within the time stipulated by me would *ipso-facto* lead to the payment of interest.

12. The Respondents 2, 3 and 4 are directed to sanction to the Applicant the leave for the period from 3.5.2015 to 31.5.2015 and pay to him whatever amount of pay and allowances are withheld within a period of four weeks from today. Failure to comply would result in the liability to pay interest at the rate of Rs.12% p.a. from the original date, they became due and payable till actual payment. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(~~K.D. Malik~~)
Member-J
05.04.2017

05-04-17

Mumbai

Date : 05.04.2017

Dictation taken by :

S.K. Wamanse.

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