

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 51/2020 (S.B.)**

Dr. Virendra S/o Bhaskarrao Aswar,
Aged about 45 years,
Occ. Service Medical Officer, R/o Dev Nagar,
Pusad Road Digras, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Health,
Mantralaya, Mumbai- 400 032.
- 2) The Director of Health Services,
Arogya Seva Sanchanalaya Arogya Bhawan,
Saint George Hospital Area,
Mumbai.
- 3) The Deputy Director of Health Services,
Akola Division, Akola
Lady Hardinge Hospital,
At Akola.
- 4) The District Civil Surgeon,
District Hospital, At Yavatmal.

Respondents

Shri A.V.Wankhede, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 20th March, 2024.

Judgment is pronounced on 18th April, 2024.

Heard Shri A.V.Wankhede, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant was appointed as Medical Officer on 25.11.1999 for a period of one year. He joined at P.H.C., Manikwada, Tah - Ner, District - Yavatmal. He was given a technical break for a day on 25.11.2000. Second appointment order for one year was issued on 26.11.2000. Again a technical break for a day was given on 26.11.2001. He continued to work on the post. He was thereafter selected through M.P.S.C. as Medical Health Officer. An order was issued on 01.07.2002. He completed period of probation of two years on 30.06.2004 and his services were regularized w.e.f. 01.07.2002. On completion of service of 12 years scale of the applicant was revised by way of extending benefit of Assured Career Advancement Scheme w.e.f. 25.11.1999. The applicant obtained a degree of M.D.. On the basis of aforesaid pleading the applicant seeks following reliefs:-

1) To issue directions to the respondents 1 to 3 to give a benefit of regularization and continuity of service from the date of appointment i.e. 25-11-1999 till his regular appointment.

2) Issue directions to the respondents 1 to 3 to condone the technical breaks in the services of the applicant as per rule 33 of MCS Pension Rules 1982 and to extend the benefit of Assured Career Advancement

Scheme from the date on which he has completed 12 years service i.e. w.e.f. 24-11-2012 and he be given revised a pay scale in the interest of justice.

3. Stand of respondent no. 3, in brief, is as follows:-

After successful completion of probation period the applicant's regular service by nomination be considered for all benefits. It is submitted that the applicant's alleged period of service from 1999 till his appointment by nomination was temporary service. The applicant as such is not entitled to get benefit since 25.11.1999.

4. In support of aforesaid prayers the applicant has relied on the judgment of Principal Bench of this Tribunal dated 14.06.2023 in O.A. Nos. 553 & 554/2022. In this case it is held :-

5. Indeed, the issue posed for consideration in the present O.A. about the entitlement of the Applicant for consideration of their ad-hoc service for the purpose of increments, Earned Leave by condoning technical break is no more res-integra in view of several decisions rendered by the Tribunal and upheld by Hon'ble High Court as pointed out by learned Advocate for the Applicant.

6. The learned Advocate for the Applicant has pointed out that the decision rendered by M.A.T, Aurangabad Bench dated 17.07.2015 in O.A.No.678/2014 granting the same relief to the Medical Officer was upheld by Hon'ble High Court in Writ Petition No.798/2016 decided with connected Writ Petitions on 23.11.2017. He has further pointed out that one more decision rendered by this Tribunal in O.A.No.167/2020 decided on 07.10.2021 has also attained finality. Lastly, he made reference to the decision rendered by this Tribunal in O.A.No.1047/2021 decided with connected O.A.Nos.1048 and 1049/2021 on 14.11.2021. The learned P.O. was not in a position to state as to whether the decision rendered by the Tribunal on 14.11.2021 is challenged before higher forum. On the other hand, learned Advocate for the Applicant made statement that it is not challenged and Government is about to implement it.

7. As the issue involved here has already attained finality and implemented by the Respondents, the Applicants being similarly situated persons are entitled to the same benefit on the principles of parity and equality.

8. As regard parity, the Hon'ble Supreme Court in 2015 (1) SCC 347 in *State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava* has laid down the said principle as under:-

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore,, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

9. In fact the Government of Maharashtra had also issued Circular dated 28.02.2017 informing all the departments to apply the principle of parity to the similarly situated persons in view of the decision of the Hon'ble Supreme Court in *Arvind Kumar Srivastava's* case.

10. Unfortunately, despite consistent decisions and issuance of Circular dated 28.02.2017, the Respondents neglected and ignored the claim of the Applicants to which they are entitled since the issue is now no more res-integra in the light of various decisions rendered to above.

11. The learned P.O, however, made feeble attempt in reference to decision of Hon'ble Supreme Court in (2003) AIR SCC 1132 [*Dr. Chanchal Goyal Vs. State of Rajasthan*] and Judgment of Hon'ble High Court in Writ Petition No.4969/2011 [*State of Maharashtra Vs. Dr. Jyotsna S. Potpate*] decided on 07.04.2017. The perusal of decision in Chanchal Goel's case reveals that it was pertaining to termination from service, since appointment was on purely temporary basis or till the candidate from Rajasthan Public Commission is available. In that case, Appellants were terminated on the ground that the candidate from Public Service Commission was available. Thus, it was a case of termination which was found legal. In that case, there was no such appointment through MKCL or MPSC and appointment was continued on purely temporary basis. This being so, the decision in Chanchal Goyal's case is totally distinguishable and it is of no assistance to learned P.O.

12. Insofar as decision in Writ Petition No.4969/2011 is concerned, it reveals that O.A. was filed before MAT, Nagpur Bench which was allowed

by granting increment. The matter was challenged before Hon'ble High Court. Hon'ble High Court observed that regular employee only would be entitled to increment and other benefits and set aside the order passed by the Tribunal. In that case also, there was no such appointment either through MKCL or through MPSC. Whereas in the present case, after initial appointment, appointment on ad-hoc basis, the Applicants were appointed through MKCL and MPSC. This being so, the decision in Writ Petition No.4969/2011 is also quite distinguishable and of no help to the learned P.O.

13. Indeed, it appears that another Judgment of Hon'ble High Court Bench at Nagpur (Coordinate Bench) delivered in Writ Petition No.3484/2005 [State of Maharashtra Vs. Sangita Phatale] decided on 27.11.2008 which was holding the field was not brought to the notice of Hon'ble High Court while deciding Writ Petition No.4969/2011.

14. The learned Advocate for the Applicant has further referred to the decision in Writ Petition No.9427/2022 [State of Maharashtra Vs. Dr. Deepak A Wani] decided with connected Writ Petitions on 14.09.2022 in which decision rendered by the Tribunal in O.A.Nos.821 to 826 of 2019 by order dated 08.01.2020 was challenged. Wherein Hon'ble High Court in Para No.10 referred the decisions in the matter of Dr. Jyotsna S. Potpate as well as Sangita Phatale. In Para Nos.10, 11 and 12, Hon'ble High Court held as under :-

"10. That apart, we cannot ignore that the coordinate Bench (Bench at Nagpur) while deciding Dr. Jyotsna Potpate (supra), did not have the occasion to consider the other coordinate Bench decision dated 27th November 2008 of this Court (Bench at Aurangabad) in Writ Petition No.3484 of 2005 (State of Maharashtra Vs. Sangita Raghvir Phatale). We are, therefore, not persuaded to follow the decision in Dr. Jyotsna Potpate (supra) at this stage.

11. Mr. Rajpurohit complains that the Tribunal did not give an opportunity to the State to file reply affidavit. Such a submission is hardly relevant having regard to the fact that the Tribunal has not passed its order on the merits of the rival contentions.

12. In such view of the matter, we are of the opinion that the Government ought to implement the order of the Tribunal. We make it clear that all contentions on merit are left open for being looked into by the State for taking an appropriate decision on the basis of the judgments and orders which are governing the field, within three months from date."

Hon'ble High Court accordingly dismissed the Writ Petition.

5. The applicant has also relied on the judgment of this Bench dated 25.08.2023 in **O.A. No. 06/2021 (Dr. Abhay Kumar S/o Hanumantrao Mange Vs. State of Maharashtra & 3 Ors.)**. In the said O.A. reliance was placed on following judgments :-

(1) Dr. Rutwik R. Patil- Vs/- State of Maharashtra & 4 Ors. & Dr. Pralhad P. Gaikwad -Vs/- State of Maharashtra & 3 Ors. in O.A. Nos.553 and 554 of 2022, passed by the Maharashtra Administrative Tribunal, Mumbai Bench Mumbai.

In this case, inter-alia following relief was granted :-

"The Respondents are directed to count ad-hoc services of both the Applicants for grant of increments, Earned Leave by condoning technical breaks in service and for no other purpose"

2) Shri (Dr.) Dhondba S/o Pandoji Bhurke -Vs/- State of Maharashtra & 4 Ors. & Smt. (Dr.) Ashwinin D/o Vijaykumar Takalkar -Vs/- State of Maharashtra & 3 Ors. in O.A. Nos.673 of 2013 with O.A. No.69 of 2014, passed by the Maharashtra Administrative Tribunal, Aurangabad Bench.

In this case, it is held -

"In short, during the ad-hoc service, the Applicant would be eligible to earn annual increments, and condonation of technical breaks in service."

3) Dr. Bhima S/o Fakira Dodke -Vs/- State of Maharashtra and 3 Ors. & Dr. Abhaykumar S/o Balajirao Dhanorkar - Vs/-State of Maharashtra & 4 Ors. in O.A. Nos. 530 & 531 of 2015, passed by the Aurangabad Bench.-

In this case, it is held -

11. The learned Advocate for the applicants has placed reliance on the judgment delivered by this bench of the Tribunal O.A. no. 118/2012 (DR. ASHOK VISHWANTHRAO BIRADAR VS. THE STATE OF MAHARASHTRA & ORS.). In the said case, similar issue was involved wherein technical breaks were regularized and the services were treated as continuous service for grant of benefits of Assured Progress Scheme, since the date of initial appointment

prior to regularization. In the said case, this Tribunal had considered the judgment delivered by this Tribunal in O.A. no. 467/2007 and the judgment delivered by Hon'ble High Court in W.P. no. 4455/2009 so also the judgment delivered by this Tribunal in O.A. no. 644/2011.

This Tribunal has observed in O.A. no. 118/2012 as under :- "

5. The learned counsel for the applicant submits that the similar claim was raised by one Dr. Pushpalata P. Sonawale in O.A. NO. 467/2007 and vide judgment dated 29.8.2008, the Principal Bench of this Tribunal at Mumbai allowed her application and the respondents are directed to consider her case for granting benefit of Assured Progress Scheme as per G.R. dated 20.7.2001.

6. Against the judgment in O.A. No.467/2007, the Government of Maharashtra had filed W.P. No. 4455/2009, which came to be dismissed by the Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction on 22.07.2009, as the Hon'ble High Court did not find it is a fit case to interfere. In view of such dismissal of the said Writ Petition the benefit of Assured Progress Scheme was given to Smt. P.P. Sonawale vide Government order dated 6.11.2009.

7. The learned counsel for the applicant also placed reliance on the judgment delivered in O.A. No. 644/2011 in the case of Dr. S.R. Bagde Vs. State of Maharashtra and others dated 1.8.2012. In the said judgment the benefit of A.C.P.S. as per G.R. dated 20.7.2001 was granted. The learned counsel for the applicant submits that in view of the said judgment the case of the applicant be considered."

It has been further observed in para 9 as under :-

"9. Perusal of the said judgments, on which the learned counsel for the applicant has placed reliance, clearly shows that in all these judgments, the question of effect of regularization of technical breaks was considered by the Tribunal and also by the Hon'ble High Court and it was found that in spite of the fact that the applicants who were given technical breaks, were considered for Assured Progress Scheme by regularizing technical breaks. In the

present case also, the technical breaks have been regularized and therefore, the judgments delivered in the said O.As. are applicable to the present case also. In view thereof, I pass following order:

ORDER

"1. The Original Application is allowed.

2. The respondents are directed to place the case of the applicant before the D.P.C. to consider the benefits of A.C.P.S. as per G.R. dated 20.07.2001, if the applicant is otherwise eligible, within a period of three months from the date of receipt of copy of this order.

There shall be no order as to costs."

12 The facts of both the cases show that in the present cases also initially both the applicants were appointed as Medical Officer on ad-hoc basis and were continued on the said posts. They were also given benefit of annual increments as per the orders passed by this Tribunal in the previous O.As. filed by them and the technical breaks were also condoned. In such circumstances it was necessary for the respondents to consider the applicants claim for giving them benefit of Assured Progress Advancement Scheme as promulgated by the Govt. vide G.R. dated 20.7.2001, provided the applicants satisfy all the prerequisites for getting such benefit"

Operative part of this Judgment reads as under :-

"(i) The O.A. nos. 530 & 531 of 2015 are allowed.

(ii) The respondents are directed to place the cases of both the applicants before the Departmental Promotion Committee to consider their cases for grant of benefits of Assured Progress Advancement Scheme as per G.R. dated 20.7.2001, if the applicants are otherwise eligible, within a period of three months from the date of receipt of copy of this order.

There shall be no order as to costs."

6. The respondents, on the other hand, sought to rely on the judgment of **Hon'ble Bombay High Court (Nagpur Bench) dated**

07.04.2017 in W.P. No. 4969/2011 (State of Maharashtra Vs. Dr. Jyotsna S. Potpate). This judgment was considered by the Principal Bench in paras 12 to 14 of the judgment which are quoted hereinabove.

7. In view of factual and legal position discussed above, the applicant is held entitled to condonation of technical breaks in ad-hoc service, and consequential benefits. Amount of accrued consequential benefits shall be paid to the applicant within three months from today.

The O.A. is allowed in these terms with no order as to costs.

Member (J)

Dated :- 18/04/2024

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 18/04/2024
and pronounced on

Uploaded on : 19/04/2024