

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO.143/2024(S.B.)**

Dr. Dilip S/o Vasant Rao Dhokey,  
aged 74 years, Occ. Retired,  
R/o Loni Road, Risod,  
Tq. Risod, Dist. Washim.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through Its Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.
  
- 2) The Directorate of Health Services,  
Having its Office Arogya Bhavan,  
St. George's Hospital Compound,  
P. D'Mello Road, Mumbai-400 001.

**Respondents**

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Shri S.P.Palshikar, Ld. Counsel for the applicant.  
Smt.S.R.Khobragade, Ld. P.O. for the respondents.

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**Coram:-** Hon'ble Shri M.A.Lovekar, Member (J).  
**Dated:-** 16<sup>th</sup> July, 2024.

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**JUDGMENT**

**Judgment is reserved on 10<sup>th</sup> July, 2024.**

**Judgment is pronounced on 16<sup>th</sup> July, 2024.**

Heard Shri S.P.Palshikar, learned counsel for the applicant and Smt.S.R.Khobragade, learned P.O. for the respondents.

2. Admitted facts may be stated thus. The applicant was holding a post of Medical Officer at Primary Health Centre, Risod, District Akola. A criminal case was registered against him, one more Medical Officer Dr.Vasantrao Shinde and three others whereupon, by order dated 25.01.1984 (Annexure A-1) the applicant was placed under suspension. Sessions Court, Akola acquitted the applicant and all the co-accused by Judgment dated 09.04.1984. Appeal filed by the State against the Judgment and order dated 09.04.1984 was dismissed by the Hon'ble Bombay High Court on 25.01.1989 (Annexure A-2). Eventually, by order dated 07.10.1999 (Annexure A-3) the applicant was reinstated. He was posted at P.H.C. Kawatha, District Washim. On the ground of unauthorised absence from 30.11.2000 the applicant was unilaterally relieved on 05.12.2001 and posted at P.H.C. Valleri, District Nandurbar where he did not join till the date of his superannuation i.e. 31.12.2007. A show cause notice dated 20.10.2018 (Annexure A-5) was issued to him to which he gave reply dated 13.12.2018 (Annexure A-6). On 02.05.2019

the impugned order (Annexure A-7) was passed relevant part of which reads as under-

डॉ. धोपे यांना दिनांक २५.०१.१९८९ च्या न्यायालयीन आदेशान्वये निर्दोष घोषित करण्यात आले. तथापि त्यांचे निलंबन दिनांक ०७.१०.१९९९ च्या आदेशान्वये रद्द करून त्यांना सेप्टेत पुनर्स्थापित केल्याचे दिसून येते. डॉ. धोपे यांनी त्यांचे निलंबन रद्द करून पुनर्स्थापित होण्यासाठी स्वतःहून कोणतेही प्रयत्न केल्याचे दिसून येत नाही. त्याचप्रमाणे त्यांचे निलंबन दिनांक ०७.१०.१९९९ आदेशान्वये रद्द करून त्यांना पुनर्स्थापित करूनही ते दिनांक ०४.१२.२००१ ते नियतप्योमानाने सेवानिष्ठ होण्याच्या दिनांक ३१.०१.२००७ पर्यंत अनधिकृतपणे गैरहजर होते. तसेच अन्य कुटुंब शस्त्रक्रिया प्रकरणी पहार केल्याबाबत, त्यांना त्यांच्या सेवानिष्ठतेतून दरमहा रु.५०० इतकी रक्कम पाच वर्षांकरिता कपात करण्यात यावी, अशी शिक्षा दिनांक १९.०९.२०१५ च्या आदेशान्वये देण्यात आली आहे. यावरून त्यांचा संपूर्ण सेवा कालावधी हा वादग्रस्त असल्याचे दिसून येते.

महाराष्ट्र नागरी सेवा (पदग्रहण अर्धी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी आणि सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम, १९८१ मधील नियम ७२(५) नुसार, शासकीय कर्मचाऱ्याला निलंबित करण्यात आले नसते, तर तो जे वेतन अर्भते मिळण्यास हकदार झाला असता, त्यापैकी सक्षम प्राधिकारी निश्चित करू शकेल एवढीच (संपूर्ण नव्हे) रक्कम, पोटनियम (८) अ (९) च्या तरतूदी लक्षात घेऊन, त्या कर्मचाऱ्याला देण्यात येईल. तत्पूर्वी, असा प्रस्तापित हिस्सा किती, हे तो प्राधिकारी शासकीय कर्मचाऱ्याला नोटीस पाठवून कळविल आणि नोटीसीत निनिर्दिष्ट करण्यात येईल, इतक्या म्हणजे कोणत्याही परिस्थितीत नोटीस बजावण्यात आलेल्या तारखेपासून साठ दिवसांपेक्षा अधिक असणार नाही, अशा मुदतीच्या आत, त्या कर्मचाऱ्याने यासंबंधी काही अपिदेन दिल्यास, ते विचारात घेईल. याबाबत डॉ.धोपे यांना दिनांक २०.१०.२०१८ अ न्वये नोटीस बजावण्यात आली. त्यानुषंगाने डॉ.धोपे यांनी त्यांचे अपिदेन दिनांक २३.१२.२०१८ च्या पत्रान्वये सादर केले आहे. उपरोक्त अस्तुस्थिती विचारात घेता, डॉ.धोपे यांचा निलंबन कालावधी नियमित करण्याच्या प्रकरणी शासनाने पुढीलप्रमाणे निर्णय घेतलेला आहे.

### निर्णय:-

डॉ.दिलीप संतरा धोपे, तत्कालीन वैद्यकीय अधिकारी, प्राथमिक आरोग्य केंद्र रिसोड, जि. णाशिम यांचा दिनांक २५.०९.१९८४ ते दि. ०७.१०.१९९९ हा निलंबन कालाधी महाराष्ट्र नागरी सेवा (पदग्रहण, अधी स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी आणि सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम, १९८१ च्या नियम ७२(५) च्या न्वये निलंबन कालाधी म्हणून समजण्यात यावा च सदर कालाधी फक्त सेवानिवृत्ती षिष्यक लाभासाठी ग्राह्य समजण्यात यावा. तसेच या कालाधीत त्यांना अनुज्ञेय सलेले देतन च भत्ते ७५% पर्यंत सिमित ठेण्यात यावे च त्यांना देण्यात आलेली निर्वाह भत्त्यांची रक्कम त्यातून समायोजित करण्यात यावी.

Hence, this O.A. for following reliefs-

***i) quash and set aside order dated 02/05/2019 as illegal, bad in law;***

***ii) further be pleased to hold and declare that the suspension period from 25/01/1984 to 07/10/1999 be a duty period for all the purposes and grant the applicant all monetary and consequential benefits arising there from;***

3. Stand of respondents 1 and 2 is as follows. Charge of misappropriation during the period from 22.06.1981 to 20.02.1982 was held to be proved in departmental enquiry against the applicant and by order dated 19.09.2015 (Annexure R-B) following punishment was imposed-

महाराष्ट्र नागरी सेवा (शिस्त च पील) नियम, १९७९ नियम ६ च्या न्वये प्रदान केलेल्या शक्तीचा णापर करुन "डॉ.डी.व्ही. धोपे, तत्कालीन वैद्यकीय अधिकारी, प्राथमिक आरोग्य केंद्र, चतारी, जि. चकोला यांच्या

सेवानिपुत्तीपेतनातून दरमहा रुपये ५००/- (पाचशे फक्त) इतकी रक्कम पाच वर्षाकरीता कपात करण्यात यावी."

4. While passing the impugned order respondent no.1 observed –

- 1) The applicant made no attempt for reinstatement (from 1989 to 1999).
- 2) The applicant remained absent since 04.12.2001 till the date of his superannuation i.e.31.01.2007.
- 3) In departmental enquiry, on charge of misappropriation the applicant was found to be guilty and punishment was imposed (which was undergone by the applicant).

5. The only relief claimed by the applicant is that period of his suspension from 25.01.1984 to 07.10.1999 be directed to be treated as duty period for all purposes, and to grant all consequential benefits. In support of aforesaid prayer the applicant has relied on the Judgment of this Bench dated 23.07.2004 (Annexure A-8) in O.A.No.262/2002 filed by Dr.Vasantrao Shinde, the co-accused. By this Judgment period of suspension of Dr.Vasantrao Shinde from 01.11.1983 to 26.01.2000 was directed to be treated as duty period for all purposes and further direction was given to extend all consequential benefits.

6. According to learned P.O. Smt.S.R.Khobragade case of Dr.Vasantrao Shinde was distinguishable on facts. Unlike Dr.Vasantrao Shinde the applicant was subjected to departmental enquiry on charge of misappropriation in which he was ultimately held to be guilty, and for about 6 years, till the date of his superannuation, the applicant had remained absent without authorisation. It was submitted that such aggravating factors did not exist in the case of Dr.Vasantrao Shinde.

7. It was submitted by Shri S.P.Palshikar, learned Advocate for the applicant that the applicant was placed under suspension, as was done in the case of Dr.Vasantrao Shinde, only because of registration of criminal case, no departmental enquiry was held against them separately and under the circumstances order of acquittal ought to have automatically led to an order of treating suspension period as duty period for all purposes. It was pointed out that the period of misappropriation which led to initiation of departmental enquiry was from 22.06.1981 to 20.02.1982, punishment imposed in that enquiry was undergone by the applicant and hence, said proceeding and punishment cannot have any adverse bearing on the principal prayer made in this O.A. by the applicant. There is merit in the latter submission.

8. The applicant has relied on Judgment dated 23.07.2004 in O.A.No.262/2002 wherein this Bench observed-

*The first matter, which is required to be taken into consideration is the regularization of the period of suspension. Admittedly, applicant was acquitted of the criminal charges by the Sessions Court and it has been confirmed by the Hon'ble High Court. It is not the case of the respondents that any departmental inquiry etc. was contemplated. Only résistance for regularization of period is that the delay was caused by the applicant in approaching the department after his acquittal and also after the confirmation by The Hon'ble High Court thereof. Neither any pleadings or by documents, it is made clear as to when respondents received the orders of the Sessions Court as well as the High Court. The first order that was passed by respondent No. 1 about reinstatement and cancellation of suspension of the applicant is dated 7.10.1999. Applicant was given posting by order dated 27.1.2000. Respondents have not taken any decision regarding regularization of the period of suspension since 1999. Therefore, there is also delay on the part of the respondents. Respondents would have taken decision after considering the alleged delay caused on the part of the applicant. However, neither before filing of this O.A. nor after filing of this O.A. they have taken any decision. As already observed above, respondents were given opportunity to decide about the period of suspension and*

***about the notice of voluntary retirement. The said opportunity also has not been availed by the respondents. In the circumstances, respondents cannot blame the applicant for delay on his part. When the applicant is acquitted and no specific decision has yet been taken by respondents. I am of the view that the period of suspension from 1.11.1983 to 26.1.2000 will have to be treated as a period spent on duty for all purposes including the calculation of qualifying service.***

It was further held-

***Considering the total circumstances, (O.A. is partly allowed. Respondents are directed to treat the period of suspension from 1.11.1983 to 26.1 2000 as duty period and give all the benefits of the said period of service as per rules. O.A. is accordingly disposed of. No order as to costs.***

9. Perusal of Judgment dated 23.07.2004 shows that the applicant therein Dr.Vasantrao Shinde was suspended on 01.11.1983 and was directed to be reinstated by order dated 07.10.1999. It appears that in O.A.No.262/2002 the applicant had prayed for issue of direction to the respondents to treat his period of suspension as duty period, grant him consequential benefits and allow his request for voluntary retirement. The applicant i.e. Dr.Vasantrao Shinde had submitted applications to the department to redress both his grievances but the



same were not redressed and hence, the cause of action to file the O.A. arose. This Bench observed in Judgment dated 23.07.2004-

*Arguments on behalf of the applicant and respondents were heard at length. Prior to taking up the case for final hearing by order dated 5.4.2004, the pleadings of the respondents filed in November 2002 were brought to the notice of learned P.O. The decisions as to the regularization of the period of suspension and the matter of voluntary retirement were said to have been under consideration at that time. Therefore, the respondents were directed to decide the applicant's case within the period of 15 days from the date of the said order and to communicate the result to the applicant within a week thereafter. The matter was again circulated on 6.5.2004. Learned P.O. did not receive any instructions regarding compliance of the said order. Learned counsel for the applicant stated that the applicant has not received any communication regarding the decision of his any of the representations. The respondents were directed to make the position clear by next date i.e. on 11.6.2004. Even thereafter, the matter was adjourned twice. However, respondents did not care to comply with the directions or take any decision in the matter.*

From the aforequoted observations it can be concluded that till the Judgment was delivered in O.A.No.262/2002 on 23.07.2004 no

order was passed by the Government in respect of period of suspension of Dr.Vasantrao Shinde. Thereafter, this Bench passed the order directing that period of his suspension was to be treated as duty period and all consequential benefits were to be extended to him. It is not the case of the respondents that Judgment dated 23.07.2004 has not attained finality. So far as prayer made by the applicant in this O.A. is concerned, his case stands on par with that of Dr.Vasantrao Shinde. So far as the departmental enquiry against the applicant was concerned, it pertained to the period from 22.06.1981 to 20.02.1982 and the applicant had undergone the punishment which was imposed on conclusion of said departmental enquiry. So far as subsequent unauthorised absence of the applicant is concerned, the department does not appear to have initiated separate departmental enquiry against him though they could have done so. Such being the case, the unauthorised absence cannot be allowed to have any adverse impact on merits of the case with regard to the relief sought by him. It may be reiterated that so far as this relief is concerned, cases of the applicant and Dr.Vasantrao Shinde stand on par. For all these reasons the impugned order dated 02.05.2019 (Annexure A-7) is quashed and set aside. The respondents are directed to treat period of suspension of the applicant from 25.01.1984 to 07.10.1999 as duty period and extend all

consequential benefits to him within three months from today failing which the unpaid amount shall carry interest @ 6% p.a. from today till the date of payment. The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 16/07/2024  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J).  
Judgment signed on : 16/07/2024.  
and pronounced on  
Uploaded on : 18/07/2024.