

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1249 OF 2023

DISTRICT : RAIGAD

Dr. Akshay Bhagwantrao Parjane,)
Age 31 years, Occ. Service, Sub District Hospital,)
Karjat, Taluka Karjat, District Raigad)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Director of Medical Education & Drugs,)
Mantralaya, Mumbai 400032)
2. The Secretary, Public Health Department,)
Mantralaya, Mumbai)
3. The Director, Medical Education & Drugs Deptt.,)
Mantralaya, Mumbai)
4. The Director, Medical Education & Research,)
St. Georges Hospital Campus,)
Near CSMT Station, Mumbai)
5. The Director, Health Services,)
St. Georges Hospital Campus,)
Near CSMT Station, Mumbai)

6. The Commissioner,)
 Department of Health Services, Arogya Bhavan,)
 St. Georges Hospital Campus,)
 Near CSMT Station, Mumbai)..Respondents

Shri Pandit Kasar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
 Smt. Medha Gadgil, Member (A)
 DATE : 27th June, 2024

J U D G M E N T

1. The applicant seeks directions to the respondents to issue relieving certificate/no objection certificate with educational leave thereby allowing him to join the course of Master of Chirurgie (M.Ch.) in Plastic and Reconstructive Surgery at Grant Government Medical College, Mumbai, as an in-service candidate.

2. Ld. Advocate for the applicant states that the applicant passed his MBBS Examination in 2015 and then he joined the Government service on 22.11.2015 in Primary Health Centre, Kinvalli, District Thane and worked till 31.5.2017 i.e. for one year six months. Thereafter he applied for Post Graduation i.e. Masters in General Surgery. He wanted to do Masters in General Surgery as an in-service candidate. As per the requirement to allow to do Post Graduation as in-service candidate, an employee is required to complete 3 years on that post. The applicant has only completed one year six months and therefore he was declared not eligible as per Rule 1.3 of the GR dated 3.5.2011. Being aggrieved the applicant

filed W.P. No.3742/2017 in the Hon'ble Bombay High Court and by order dated 6.4.2017 the Hon'ble High Court declared the applicant as eligible for counselling for in service Post Graduation of 2017 and thus he was allowed to do the Post Graduation as in service candidate and getting incentive. He was relieved on 29.5.2017. He worked on stipend at that time and he did submit the Bond for 5 years which is required for in service candidate if at all a candidate goes for PG as in service candidate. He completed Masters in General Surgery in 3 years i.e. from 1.6.2017 to 30.9.2020. Thereafter he continued in service and worked as Medical Officer at Sub-District Hospital, Karjat, District Raigad from 3.8.2021 to 30.6.2022.

3. He appeared for NEET Super Specialty Examination and he cleared the same on 8.4.2022 with AIR 115 and he was allotted seat of M.Ch. in Plastic and Reconstructive Surgery at GMC, Mumbai. However, the applicant has not completed five years of service on his post after Post Graduation but only worked for two and half years i.e. from 1.10.2020 to 30.6.2023 and therefore the respondent-State has expressed inability to give any order/certificate relieving the applicant to join as in service candidate for Super Specialty course of M.Ch. The applicant therefore made an application on 24.4.2022 to the Director/Commissioner of Public Health Department, Mumbai requesting to relieve him and allow him to go for Super Specialty Course as in service candidate. He also mentioned that it is a 3 years course. However, there is no response. Therefore, the applicant is before this Tribunal.

4. Ld. Advocate for the applicant submits that the applicant wants to continue in Government service and at any time does not want to take outside job. Ld. Advocate submits that applicant be granted Extra Ordinary Leave. He has further submitted that if applicant leaves the job and completes the course then applicant is bound to lose his seniority and

as the applicant has put in more than 3 years' service he wants to upgrade his education and also wants to continue in service so that public at large who are treated in Government Hospitals can be benefitted from his Super Specialty course.

5. Ld. CPO while opposing the OA has relied on the affidavit in reply dated 7.11.2023 filed by Smita Ravindra Karegaonkar, Chief Administrative Officer in the office of Commissioner of Health Services, Mumbai on behalf of respondents no.2, 5 & 6 and also affidavit in reply dated 22.11.2023 filed by Sanjay Dhondu Dagale, Under Secretary, Public Health Department, Mantralaya, Mumbai on behalf of respondent no.1. Ld. CPO submits that the applicant has put in only 3 years 2 months and 22 days service as Medical Officer and therefore he is not entitled to get the benefit of study leave which is contemplated under Rule 80 of MCS (Leave) Rules, 1981. She further submitted that the respondents have apprehension that applicant may take the benefit of in-service candidate and leave the govt. job for private service when he will secure the super specialty degree. Therefore, the leave cannot be considered as Extra Ordinary Leave. She relied on the GR dated 19.3.2019 and corrigendum dated 26.3.2020 by which rules are issued for admission of in-service Medical Officers to post graduate diploma/degree course which are in the nature of specialty course. There is no provision of admission to super specialty courses as in-service candidate in the said GRs. Therefore, it was not mentioned in para 9.1 of corrigendum dated 26.3.2020. Therefore, it is implied vide para 9 of GR dated 19.3.2019 that after obtaining post graduate diploma or post graduate degree as an in-service Medical Officer the candidate must serve specified bond service or pay fine on breaking of bond.

6. We are surprised to come across that there is no provision of leave for in-service candidate for super specialty course. It is necessary for the

Government to make further changes to meet the needs of admission. We request the Government to look into the matter and do the needful.

7. We made a query to the Ld. CPO whether in the Government Hospitals is there any qualified M.Ch. in Plastic and Reconstructive Surgery. We are informed that no such qualified doctor is available in the entire State of Maharashtra in the Government hospital. Thus, considering this position we are of the view that education of the doctors in the Government hospitals are required to be upgraded for the benefit of public at large as there are number of patients in Govt. hospitals from the weaker section of the society. We therefore now advert to Rule 63 of MCS (Leave) Rules, 1981, which reads as under:

“63. Extraordinary Leave.

(1) Extraordinary leave may be granted to a Government servant in special circumstances-

(a) when no other leave is admissible;

(b) when other leave is admissible but the Government servant applied in writing for the grant of extraordinary leave.

(2) Unless Government in view of the exceptional circumstances of the case otherwise determines, no Government servant who is not in permanent employ shall be granted extraordinary leave on any one occasion in excess of the following limits.”

8. This is a case which squarely falls under the category of exceptional circumstances and therefore we accept the submission of Ld. CPO that no leave is admissible as study leave or any other leave for this applicant to pursue higher studies. We therefore for the aforesaid reasons in the

exceptional circumstances grant extraordinary leave to the applicant covered under Rule 63(1)(a) and Rule 63(2) of the aforesaid Rules.

9. Ld. CPO tried to point out that extraordinary leave cannot be granted under Rule 63(2). We are of the view that Rule 63(2) is divided in two parts and therefore the latter part of non-abstractive clause is prohibitory clause. However, first part pertains to exceptional circumstances which carves rider for the latter portion and the first part states about special circumstances. Obviously, there are exceptional circumstances and therefore the case of the applicant falls in first portion of Rule 63(2).

10. We appreciate the apprehension of the Government that applicant may not continue in government service once he gets the super specialty qualification. So, we specifically made a query to the Ld. Advocate for the applicant in the presence of the applicant who is present in the Court. Ld. Advocate for the applicant on instructions submits that indeed the applicant wants to continue in government service and requests this Tribunal to keep his lien in the Government service. He does not want to lose his seniority. He further submits that the applicant has joined the course on 5.6.2022 and has now completed 2 years. He has earlier filed W.P. No.13124 of 2022 in the Hon'ble Bombay High Court which was disposed off by order dated 13.9.2023 asking the applicant to approach this Tribunal. Thus, there is no delay.

11. Ld. CPO suggest that as the bond which is given for the PG course, in the same format the applicant be directed to give bond to the authorities as per GR dated 19.3.2019 in order to remove the doubt about continuity of the applicant. The submissions made by the Ld. CPO is very reasonable. Though there are no rules for continuing the education for super specialty course as in service candidate, we are allowing the

applicant by way of giving benefit of extraordinary leave in exceptional circumstances. We hereby clarify the Ld. Advocate for the applicant to ask the applicant whether he is willing to give such bond to the Government which is in the format of GR dated 19.3.2019.

12. Ld. Advocate for the applicant in our presence has confirmed from the applicant who is present in the Court that he is willing to give bond and he is aware of the same and he will continue the service for 5 years after obtaining the super specialty certificate. Hence, we pass the following order.

ORDER

The applicant is allowed to join the M.Ch. in Plastic and Reconstructive Surgery as an in-service candidate. This benefit is given to him for his continuity in service only for the purpose of seniority and further increments which are applicable to extraordinary leave. Applicant is getting stipend and no salary will be claimed by him. All the benefits which are available to extraordinary leave are applicable except salary of that period under Rule 63(1)(a), subject to applicant furnishing Bond as per GR dated 19.3.2019 in the office of Commissioner, Public Health Services, Mumbai on or before 10.7.2024 and the Commissioner is directed to accept it. OA is disposed off with above directions. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
27.6.2024

Sd/-
(Mridula Bhatkar, J.)
Chairperson
27.6.2024

Dictation taken by: S.G. Jawalkar.