

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 175 OF 2017
(Subject – Regularization)**

DISTRICT: AHMEDNAGAR

Shri Madhukar S/o Maroti Khamkar,)
Age: 47years, Occu. :Service,)
R/o Flat No. 202, Shriram Apartment,)
Nagar Manmad Road, Ahmednagar,)
District Ahmednagar.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through the Secretary, Home)
Department, Mantralaya,)
Mumbai.)
- 2) **The Secretary,**)
Health Department,)
Mantralaya, Mumbai -32.)
- 3) **The Inspector General of Police,)**
Nashik Division, Nashik,)
District Nashik.)
- 4) **The Superintendent of Police,**)
Superintendent Office,)
District Ahmednagar.)
- 5) **The Deputy Director,**)
Health Services, Nashik Division,)
Nashik, District Nashik.)

.. RESPONDENTS

APPEARANCE : Shri D.A. Bide, Advocate for the Applicant.

: Smt. Resha S. Deshmukh, Presenting Officer
For the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

DATE : 06.04.2018.

ORAL - ORDER

1. Heard Shri D.A. Bide, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondents.

2. The applicant has filed the present Original Application to restrain the respondent Nos. 4 and 5 to fill up the post of Compounder in the Police Hospital at Ahmednagar, wherein the applicant is working and also prayed to direct the respondent Nos. 4 and 5 to maintain status-quo so far as the applicant's service is concerned. He has also prayed to restrain the respondents from taking any adverse action in respect of services of the applicant as a Compounder in Police Hospital, Ahmednagar, by filing the present Original Application.

3. It is contention of the applicant that the applicant has possessed Diploma in Pharmacy and also requisite educational qualification required for the post of Compounder. As per the vacancy in the Police Hospital, Ahmednagar, he has applied for the post of Compounder. On 16.11.1995, he was appointed as Compounder in the Police Hospital at Ahmednagar, on temporary basis for a period of three months. Thereafter, on 20.02.1996, 15.05.1996, 14.08.1996, 15.11.1996, 15.02.1997, 19.05.1997, 26.08.1997 and 10.12.1997 his services have been continued by

the said appointment orders. It is contention of the applicant that on 06.03.1998, the respondent No. 4 terminated his services without notice. Therefore, the applicant approached this Tribunal by filing O.A. No. 430/1998 for regularization of his services. On 13.02.1999, the respondent No. 4 issued temporary order in favour of the applicant and appointed the applicant on ad-hoc basis. On 28.12.1999, the applicant moved an application and prayed to regularize his services on the said post. After hearing both sides, this Tribunal has passed the order on 31.03.2000 in O.A. No. 430/1998 and ordered that the applicant's services on ad-hoc basis be continued till M.P.S.C. candidate is made available and accordingly, O.A. was disposed of.

4. It is contention of the applicant that on 08.03.1999, the Government of Maharashtra has issued the G.R. in respect of regularization of services of the employees appointed for occasional purpose and working without break on the said post. On the basis of said G.R., the applicant made several representations to the respondents for extending benefits of the G.R. dated 08.03.1999 to him, as he is working as Compounder since the year 1995 with the respondents. The respondent No. 5 by its communication dated 16.08.2006 informed the respondent No. 4 about regularization of services of the applicant. Thereafter, again on 04.03.2008, the applicant filed a representation with the

respondent No. 1 and prayed to regularize his services with the respondent No. 4. On his representation, report was called from the respondent No. 4 and it was submitted on 28.07.2008 to the respondent No. 1 contending that in view of the order dated 31.03.2000 in O.A. No. 430/1998, the respondent No. 4 has not issued the regularization order. It is contended by the respondent No. 4 that the Health Department has to appoint the employees working in the Hospital and therefore, respondent No. 5 has to take decision in that regard. On 05.04.2010, the respondent No. 3 has issued communication to the respondent No. 4 in respect of regularization of services of the applicant.

5. It is contention of the applicant that the respondent No. 4 had given benefits in view of the said G.R. to the other employees and appointed them in the regular service by extending benefits of the G.R. It is contention of the applicant that he is also entitled for regularization on the post of Compounder on the establishment of respondent No. 4 in view of the G.R. dated 08.03.1999, but the respondents have deliberately, intentionally avoided the regularization of his services. Therefore, the applicant approached this Tribunal by filing the present O.A. and prayed to direct the respondents to regularize his services.

6. The respondent Nos. 1 to 5 have filed their affidavit in reply and resisted the contention of the applicant. They have not disputed the fact about the initial appointment of the applicant on temporary basis and thereafter, his continuation in the service from time to time. They have also not disputed the fact about filing of O.A. No. 430/1998 and order passed therein. It is their contention that in the year 1995, the applicant was appointed as a Compounder in the Hospital of respondent No. 4 on ad-hoc basis and from time to time, he was appointed by giving break, till the regular candidate is made available by the Selection Board. It is their contention that the specific terms and condition in that regard has been mentioned in each and every order of the appointment of the applicant. It is their contention that after termination of services of the applicant on 06.03.1998, he approached this Tribunal by filing O.A. No. 430/1998 claiming regularization of his services. After hearing, this Tribunal has passed the order on 31.03.2000 in that O.A. and ordered that the applicant being an Ad-hoc appointee is entitled to limited relief and hence passed the order "The applicant's services on ad-hoc basis to be continued till M.P.S.C. candidate is made available and posted on the post and be paid accordingly." It is their contention that the relief claimed by the applicant in the present O.A. has already been granted by this Tribunal in O.A. No.

430/1998 and therefore, the present O.A. is not maintainable. It is their contention that the applicant has not challenged the order passed by this Tribunal in O.A. No. 430/1998 and therefore, it is conclusive. It is their contention that the applicant has no cause of action to file the present O.A. and therefore, he prayed to reject the same.

7. The applicant has filed rejoinder affidavit and prayed to regularize his services.

8. Admittedly, the applicant has been initially appointed as Compounder on ad-hoc basis for the period of 3 months till the regular candidate selected by the selection board is available. Thereafter, after giving breaks in service, his services have been continued till 06.03.1998. On 06.03.1998 his services had been terminated by the respondent No. 4. Thereafter, the applicant approached this Tribunal by filing the O.A. No. 430/1998 claiming that the order dated 09.03.1998 terminating his services may be quashed and set aside and he may be reinstated on the post till regular candidate is available. Thereafter, the said O.A. came to be disposed of by this Tribunal on 31.03.2000 and following order has been passed therein :-

“ The applicant being an Ad-hoc appointee is entitled to limited reliefs and hence following order :-

The applicant's services on ad-hoc basis to be continued till M.P.S.C. candidate is made available and posted on the post and be paid accordingly."

9. Thereafter, on the basis of said order, the applicant's services had been continued. Meanwhile, the applicant has filed representations with the respondents with a request to regularize his services on the basis of G.R. dated 08.03.1999. There was correspondence between respondent Nos. 1, 3 and 4 in that regard as to who is the competent authority to regularize the services of the applicant. Therefore, the services of the applicant remained to be continued in view of the order passed by this Tribunal.

10. Learned Advocate for the applicant has submitted that the respondents have not regularized the services of the applicant in view of the G.R. dated 08.03.1999, though the benefit of said G.R. has been given to the other similarly situated persons. He has submitted that only because of the order passed by this Tribunal in the earlier O.A. NO. 430/1998, the respondent No. 4, as well as, the respondent Nos. 1 and 2 are not extending the benefits to the applicant. No order has been passed by the respondents in that regard and therefore, he prayed to regularize the services of the applicant in view of the said G.R. He has submitted that as the respondents are not taking decision; the

applicant approached this Tribunal by filing the present Original Application restraining the respondent Nos. 4 and 5 not to fill up the post of Compounder in the Police Hospital at Ahmednagar and to direct the respondent Nos. 4 and 5 to regularize his services.

11. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction in **W.P. No. 3199 of 1999** in case of **Sampat Pandurang Zele & Ors. Vs. Commissioner of Prohibition and State Excise, Mumbai & Ors. on 24.10.2013.**

12. Learned Presenting Officer has submitted that the applicant has approached this Tribunal earlier by filing the O.A. No. 430/1998 claiming similar relief. That O.A. was allowed and accordingly, order has been passed by this Tribunal on 31.03.2000. She has submitted that in view of the order passed by this Tribunal in O.A. No. 430/1998, the respondent No. 4 had reinstated the applicant and accordingly, his services on ad-hoc basis were continued till today. She has submitted that neither the respondent No. 4 nor the respondent No. 5 have taken any steps for filling the said post and terminated the services of the applicant. She has submitted that in view of the earlier order passed by this Tribunal in O.A. No. 430/1998, the respondents

are at liberty to appoint regular candidate nominated by M.P.S.C. and thereafter, the applicant cannot be regularized in service. She has submitted that the said issued has been decided by this Tribunal earlier and therefore, the present O.A. is not maintainable. Therefore, she prayed to reject the same.

13. On perusal of the record, it reveals that earlier the applicant has approached this Tribunal by filing O.A. No. 430/1998 claiming similar reliefs. After hearing of both the sides, this Tribunal has passed order in that O.A. on 31.03.2000, which runs as follows:-

“ The applicant being an Ad-hoc appointee is entitled to limited reliefs and hence following order :-

The applicant’s services on ad-hoc basis to be continued till M.P.S.C. candidate is made available and posted on the post and be paid accordingly.”

By the said order, the services of the applicant has been continued till M.P.S.C. candidate is made available and posted on the post. Therefore, the relief as claimed by the applicant in the present O.A. on same line cannot be granted, as the issue has already been decided by this Tribunal and the relief has been granted to the applicant. The applicant has sought direction to direct the respondents to regularize his services, but in view of the order passed by this Tribunal in earlier O.A. No. 830/1998 the

services of the applicant on the said post has been continued till regular appointment is made available by M.P.S.C. Therefore, the prohibitory relief as claimed by the applicant cannot be granted in favour of the applicant. The applicant is entitled to serve on the said post till M.P.S.C. candidate is made available and therefore, the said directions as prayed for by the applicant cannot be issued in the present O.A. Therefore, in my view, there is no merit in the present O.A. Consequently, it deserves to be dismissed.

14. In view of the discussions in foregoing paragraphs, the Original Application is dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 06.04.2018.

(B.P. PATIL)
MEMBER (J)