

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1072/2019(S.B.)

Dr. Samar Quddus Khan,
C/O. Quddas Khan, Aged about 38 years,
Occupation : Service,
R/o. Near Jama Masjid Sabanpura,
Rangarri Galli, Amravati-444601.

Applicant.

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
10th Floor GT Hospital Complex,
Mumbai-400001.
2. The Commissioner of Health Services,
National Health Mission,
3rd Floor, Arogya Bhawan,
P.D., Mellow Road Mumbai-400001.
3. Director of Health Services (MS),
Arogya Bhawan St. Jeorge's Hospital Compound
P.D. Mello Road, Mumbai-400001.
4. District Health Officer,
Zillha Parishad Amravati.
5. Deputy Director of Health Services,
Near Leady Harding Hospital Akola,
Circle Akola.

6. Medical Superintendent,
T.B. Sanitarium, Buldhana,
District Buldhana.

Respondents.

Shri D.M.Surjuse, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents 1 to 3, 5 and 6.
Shri T.M.Zaheer, Ld. counsel for the respondent no.4.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated:- 29th July, 2024.

JUDGMENT

Heard Shri D.M.Surjuse, learned counsel for the applicant,
Shri S.A.Sainis, learned P.O. for the Respondents 1 to 3, 5 and 6 and Shri
T.M.Zaheer, ld. counsel for the respondent no.4.

2. Case of the applicant in short is as under-

The applicant was appointed as a Medical Officer on 23.04.2007 for a period of 23.03.2008 to 25.02.2009. Thereafter, the applicant was selected by M.P.S.C. and her name was recommended for absorption as a Medical Officer. The applicant joined her duty as Medical Officer after recommendation of M.P.S.C. at Primary Health Centre, Aasegaonpurna, District Amravati w.e.f. 05.02.2009. Thereafter, the applicant was transferred on the post of Taluka Health Officer, Chandurbazar, District Amravati on 06.08.2011. On 30.03.2011 the

Deputy Director of Health informed her that she has completed probation period.

3. Applicant appeared for the examination of Post Graduation study. The applicant was selected to Post Graduation course of MD(Microbiology). She was directed by Dean, IGGMC, Nagpur to submit her original documents and execute bond.

4. The applicant applied for study leave on 30.08.2013 and 31.08.2013. The respondents have not considered the said period of study leave. On the other hand, the applicant was shown absent unauthorisedly along with other Doctors as per order dated 15.12.2017. They were allowed to join duty as per order dated 15.12.2017, but their services were not treated as regular and absent period was treated as break in service. Hence, the applicant approached to this Tribunal for the following reliefs-

(i) direct the respondent No.1&2 to modify the impugned order dated 15.12.2017 at Annexure -A-25 in respect of applicant, to the extent of treating her period of P.G. course study as a study leave period or to treat this period as in service doctor for prosecuting P.G. Study on deputation or extra ordinary leave instead of break in service, for a period from 29.08.2013 to 18.01.2018

(ii) direct the Respondent no. 1&2 to consider the study leave period of applicant as a continuous service period for all purpose including pay and allowance, increments, pension scheme etc.

(iii) direct the respondents to consider the ad-hoc services of applicant from 2007 till absorption as Medical Officer by condoning technical break caused in service of applicant for the purposes of

annual increments, earn leave, scheme of Ashwasit Pragati Yojna, old pension scheme and extend the benefit as per the Government resolution dated 11.01.2019 on the basis of parity to the applicant at Annexure-A-31 in the interest of justice.

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was unauthorisedly absent and therefore, there was break in service. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for the applicant has pointed out G.R. dated 21.06.2023. By this G.R., the Government of Maharashtra has taken decision to regularise the services of applicant along with other Doctors. Now there is no break in service, but study leave as provided under Section 80 of the Maharashtra Civil Services(Leave) Rules, 1981 is not decided by the respondents. The learned counsel for the applicant has submitted that direction be given to the respondents to decide the study leave as per provisions of Rule 80 of the M.C.S. (Leave) Rules, 1981.

7. The learned P.O. and learned counsel for the respondent no.3 have submitted that Government has already taken decision as per G.R. dated 21.06.2023. Hence, the O.A. is liable to be dismissed.

8. There is no dispute that now as per G.R. dated 21.06.2023, the services of the applicant along with the other Doctors were treated as regular service and the break in service was cancelled and the said period was treated as a regular period in service. The other Doctors

were absent on various grounds. The applicant was selected for P.G.course and she had applied to the respondent i.e. the Director of Health Services to grant study leave. The applicant applied on 30.08.2013, thereafter, on 31.09.2013, but till date the respondents have not decided the study leave as prayed by the applicant.

9. There is a provision in the M.C.S.(Leave) Rules, 1981. As per Rule 80, it is for the respondents to decide the study leave. The respondents have already regularised the service, but the study leave was not decided. As per Rule 80 of the M.C.S. (Leave) Rules, it is for the respondents to decide it. The applicant applied after her selection for the Post Graduation Course. The application dated 30.08.2013 for grant of study leave is placed on record. The respondents have wrongly shown her absence unauthorisedly.

10. The learned counsel for the applicant has pointed out the Judgment in O.A.No.805/2021 decided by the Principal Bench, M.A.T., Mumbai dated 23.06.2023. The operative part of the order is reproduced below-

(A) The Original Application is allowed.

(B) Applicants are entitled for counting their past service rendered from initial date of appointment on ad-hoc/contract basis till their selection through MPSC for the purpose of CAS/TBP Scheme benefits and necessary orders shall be issued within two months from today.

(C) Applicants' break in service is condoned for the purpose of pension only.

(D) Applicants are also held entitled for old pension scheme in terms of M.C.S. (Pension) Rules, 1982.

(E) The Respondents are directed to credit DCPS contribution made by the Applicants in their GPF Account by opening new GPF Account, if not opened earlier.

(F) No order as to costs.

11. The applicant was appointed temporarily on ad-hoc basis on 23.04.2007. He was continued in service. During that period, he was selected by M.P.S.C. on 23.01.2009. The applicant was continuous service as ad-hoc employee till 25.02.2009. As per the Judgment in O.A.No.805/2021, the applicant is entitled for counting his past service rendered from his initial date of appointment on ad-hoc basis/contract basis till his selection through M.P.S.C. for the purpose of C.A.S./T.B.P. Scheme benefits. Hence, the applicant is similarly situated employee like the Doctors in O.A.No.805/2021. Therefore, she is entitled for the same reliefs.

12. There is provision in M.C.S. Rule. As per Rule 80, study leave is provided. The respondents have already regularised the service, but study leave is not decided. As per Rule 80 it is for the respondents to decide the same. The applicant applied after her selection for Post Graduation Course. The application dated 13.08.2013 for grant of study leave is placed on record. The respondents have wrongly shown her absence unauthorisedly. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. The impugned order dated 15.12.2017 (Annexure A-25) is hereby quashed in respect of the applicant only.
3. The respondents are directed to decide the study leave as per the provisions of Rule 80 of the M.C.S. of Leave Rules, 1981 which was applied by the applicant on 30.08.2013.
4. The applicant is entitled for counting her past services from the initial date of appointment on ad-hoc/contract basis i.e. from 23.04.2007 till she was regularly appointed / absorbed by the respondents after selection by the M.P.S.C., for the purpose of C.A.S./T.B.P. Scheme benefits.
5. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 29/07/2024.
rsm.

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

Name of Steno : RakshaShashikantMankawde.
Court Name : Court of Hon'bleViceChairman.
Judgment signed on : 29/07/2024.
