

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10078 OF 2015

Dr.Jayashree Jagannath Kulkarni,
Age: 56 Years, Occu: Service as
Medical Officer of Health,
Aurangabad Municipal Corporation,
R/o. 18, 'Aashirwad', Sanmitra Colony,
Aurangabad – 431 001

PETITIONER

VERSUS

- 1] Aurangabad Municipal Corporation,
Aurangabad,
Through its Municipal Commissioner
- 2] State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032.
- 3] The Principal Secretary,
Public Health Department,
Mantralaya, Mumbai 400 032.
- 4] Dr. Suhas Bhagwanrao Jagtap,
Age: Major, Occ.: Service as
Medical Superintendent,
Sub-District Hospital, Murtijapur,
Dist. Akola.
- 5] Dr. Sandhya Gopalrao Takalikar
- 6] Dr. Manisha Balwant Bhondwe
- 7] Dr.Savita Deelip Ubale
- 8] Dr. Vandana Anant Tikhe
- 9] Dr. Anjali Ajay Pathrikar
- 10] Dr. Babasaheb Gangaram Unwane

- 11] Dr. Archana Namdeorao Rane
- 12] Dr.Amarjyoti Jayant Shinde
- 13] Dr. Shailaja Shripatrao Jadhav
- 14] Dr. Sangita Shrinivasrao Paropkari
- 15] Dr. Prerna Prakashchand Badera
- 16] Dr. Smita Namdeorao Bondekar Nalgirkar
- 17] Dr. Suresh Keshrinand Gosavi
- 18] Dr. Megha Madanrao Jogdand
- 19] Dr. Ujawala Ranjit Bhamre
- 20] Dr. Talat Atik Kazi
- 21] Dr. Premlata Angat Karad
- 22] Ashok Vithalrao Kamble
- 23] Ravindrakumar Rambhau Ghadmode
- 24] Jaiprakash Ramchandra Borade
- 25] Bharat Madnasingh Rathod
- 26] Trimbak Karbhani Nirmal
- 27] Chandrashekar Walmikar Sonwane
- 28] Prashant Chandrakant Galphade
- 29] Vinod Santosh Hivrale
- 30] Awchit Bhaurao More
- 31] Subhash Dattatraya Surase
- 32] Ganesh Ramesh Shinde
- 33] Vilas Punjaram Bagdane

34] Kalyan Bhaurao More

35] Rahul Pandit Chavan

Respondent Nos.5 to 35
Age Major, Occu. Service,
working as Medical Officer from
petitioner Nos.1 to 17 and
petitioner Nos.18 to 31 Para Medical
Staff in Municipal Corporation
[Health Department], Aurangabad
Tq. & Dist. Aurangabad

[Respondent Nos.5 to 35
amended as per Court's Order
dtd. 7th October, 2015]

RESPONDENTS

...
Mr. Ajay S. Deshpande, Advocate for the petitioner
Mr. S.D.Kaldate, AGP for the Respondent / State
Mr. S.S.Thombre, Advocate for the Respondent No.4
Mr. V.D.Salunke, Advocate for the Respondent Nos.5 to 35
...

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 26.11.2015
Pronounced on: 17.12.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] This Petition is filed seeking direction to respondent No.1 to allow petitioner to hold the post of Medical Officer of Health [in short 'MOH'].

2] The learned counsel appearing for the petitioner submits that, the petitioner has been substantively appointed on the said post by following

provisions of law under order dated 24th June, 2015. It is submitted that, the petitioner was awarded MBBS Degree in the Year 1981 from the Government Medical College, Aurangabad. Thereafter, the petitioner acquired Diploma in Ophthalmic Medicine and Surgery from the same College. The petitioner was appointed as an Medical Officer [Class-II] on 2nd January, 1985, by the First Respondent, and since then, the petitioner has been in permanent employment of the respondent No.1.

3] It is submitted that, the petitioner was given additional charge as MOH on several occasions during the absence / unavailability of the regular MOH from 2002 till June 2015. It is submitted that, the petitioner completed Diploma in Public Health as an in-service candidate. The said qualification is necessary for the post of MOH. There is just one post of MOH with respondent No.1. The said post of MOH is, at present, substantively occupied by the petitioner under the office order dated 24th June, 2015. It is submitted that, the petitioner filed Writ Petition No.2454/2013 and Writ Petition No.8942/2013, for seeking direction to the respondents for the substantive appointment to the post of the Medical Officer of Health. It

is submitted that, owing to strenuous drive, she had undertaken under PCPNDT Act, of conducting raids to prevent sex determination and female foeticides, interests of some of the established persons got affected and that was a major impediment in her way to get her appointment cleared through the General Body, which is the Competent appointing authority to the post of MOH. Ultimately, her appointment was required to be mandated by the respondent No.2, in exercise of the powers conferred upon respondent No.2, under the provisions of Maharashtra Municipal Corporation Act, 1949, and thereupon the respondent No.2 was required to instruct the respondent No.1 to issue orders of promotion of the petitioner by taking immediate steps. This is how the petitioner had to strive hard to have the post of the MOH, which she could ultimately get under the order of respondent No.1 dated 24.06.2015.

4] It is further submitted that, the petitioner has been honoured at the State Level under National Health Mission, Maharashtra, by issuing a Certificate to have performed best work in relation to PCPNDT Act, 1994. It is submitted that, the post of MOH has not been made

transferable and transfers of MOH is only at the request not only of the concerned candidate, but also of the concerned Municipal Corporations and that too as a special case. It is submitted that, the post of MOH is a statutory post and it has been so categorically mentioned under Section 45 of the Maharashtra Municipal Corporation Act, 1949. Holder of the post necessarily requires possessing a Diploma in Public Health conducted by the College of Physician and Surgeons of Mumbai, without which the incumbent is not eligible to be considered for appointment to the post of MOH. It is submitted that, the respondent No.4 is presently holding a post of Medical Superintendent in Maharashtra Medical Services, Class-I, which is above the post of Medical Officer under the respondent No.1. There is no equivalent post on which respondent No.4 can be offered or accommodated in respondent No.1, unless he accepts a lower post, which in the normal course seems to be difficult, as respondent No.4 is stated to have been posted under respondent No.1 on his own request. In the order issued by respondent No.3, he is shown to have been posted on deputation under respondent No.1 as Health Officer. It is submitted that, the said order of appointing respondent No.4 on deputation under respondent No.1 was brought to the notice of the

petitioner by one of her well-wisher on 3rd October, 2015, and immediately thereafter, the petitioner has filed Writ Petition.

5] It is submitted that, as a matter of fact, there is no post like Health Officer under respondent No.1. There are only two kinds of posts under respondent No.1 i.e. Medical Officer, which is a lower post, than the post of Medical Superintendent under the State and the said post is equivalent to the post of Civil Surgeon, and the post of Medical Officer of Health, which is again not equivalent to the post of Medical Superintendent, being a statutory post and having altogether different nature of duties. Eligibility for the post of MOH under respondent No.1 is different and respondent No.4 does not possess the same. An incumbent must possess a Diploma of Public Health, in order to become eligible to hold the post of Medical Officer of Health, which respondent No.4 does not possess. It is submitted that, which is an essential qualification for the post of MOH as per the Service Regulations. It is submitted that, there is method prescribed for lending services of an incumbent from other Department on deputation under the Rules. For that purpose, the borrowing department is

required to send a requisition to the lending department. In the instant case, respondent No.1 is borrowing authority and respondent No.3 is the lending authority, and necessarily therefore, respondent No.1 needs to route a proposal for borrowing services of respondent No.4 or any other incumbent to respondent No.3 through respondent No.2, and thereafter, respondent No.2 is supposed to request respondent No.3 to spare an Officer from respondent No.3 Department, for lending his services for respondent No.1, and thereupon respondent No.3 is supposed to lend the services of incumbent from its Department to respondent No.1 and send him on deputation to respondent No.1. Unilateral order of deputation being issued by lending Department directly to the borrowing Corporation i.e. respondent No.1 herein, is unheard of and de hors the provisions holding field, governing deputation on foreign service.

6] Sum and substance of the argument of the learned counsel appearing for the petitioner is that, *firstly* there is no equivalence of the post of Medical Officer of Health under respondent No.1 to that of Medical Superintendent under respondent No.3. *Secondly*, the

qualifications for the post of MOH are distinct and separate, which is different than the one prescribed for the post of Medical Superintendent. *Thirdly*, these cadres are not inter-transferable. *Fourthly*, the petitioner is a substantive holder of the post, as is clear from the Office Order at Exhibit-A, and therefore, the post on which respondent No.4 is sought to be accommodated, is not vacant as on today. *Fifthly*, although the petitioner has requested for posting her elsewhere, is not likely to be considered as it is impermissible within the framework of law, and therefore, her post not being transferable, she cannot be displaced, just to accommodate someone else, and especially to accommodate respondent No.4 herein. *Sixthly*, respondent No.4 does not hold the eligibility to hold the post of MOH, as per the Service Regulations of respondent No.1 at Exhibit-C and is inherently ineligible to hold the said post. Considering the totality of circumstances and the facts of the present case, the impugned order of deputation issued by respondent No.3, deputing respondent No.4 on a non-existent post of Health Officer on the establishment of respondent No.1, is otherwise unsustainable in the eye of law, and as such, the same deserves to be set aside, in order to afford protection to the petitioner, who has duly

appointed to substantively hold the post of Medical Officer of Health under respondent No.1, under order dated 24.06.2015.

7] It is submitted that, the petitioner, on health ground, was required to proceed on leave. However, she has resumed the duties on 5th October, 2015. The learned counsel appearing for the petitioner submits that, the petitioner joined on 5th October, 2015 at 9.00 a.m. The learned counsel appearing for the petitioner further invited our attention to the Exhibit-A Page 10 i.e. the office order issued on 24th June, 2015, by the respondent No.1 and submits that, the petitioner was working as an Medical Officer, has been promoted by the said order as MOH, in the pay scale of Rs.15,600-39,100/- Grade Pay Rs.6600/-. He further submits that, in view of the said office order, there was no question of sending requisition [Exhibit-R1 Page 29] to the Government for sending Medical Officer on deputation. The learned counsel also invited our attention to the joining report of the respondent No.4 and submits that, the said joining report is on the letter head of Aurangabad Municipal Corporation, which is impermissible. It is submitted that, signature on the said joining report

does not bear date. The learned counsel further submits that, the requirement of approval / confirmation of the services by the State Government under Section 45 [4] of the Maharashtra Municipal Corporations Act, has been considered in the Government Decision dated 25th November, 2013. As a matter of fact, the Government in its Urban Development Department, in exercise of the powers conferred upon it under Section 451 [3] of the Maharashtra Municipal Corporation Act, has rescinded the Resolution No. 345 passed by the General Body of respondent No.1 on 18th October, 2013. It is submitted that, by letter dated 13th May, 2015, issued by the Desk Officer, Urban Development Department, Government of Maharashtra, to the respondent No.1, it is abundantly clear that, the direction was issued to the respondent No.1 to promote the petitioner as MOH, and accordingly, the office order was issued by the respondent No.1 on 24th June, 2015. Therefore, there is no substance in the contentions of the respondents that, there is no confirmation to the petitioner's appointment as MOH as contemplated under Section 45 [4] of the Maharashtra Municipal Corporations Act.

8] It is submitted that, the respondent No.1 cannot claim that, it had no knowledge of the Government Resolution dated 2nd September, 2014. The communication of the respondent No.1 dated 8th May, 2015 indeed constitutes an act of insubordination. It is submitted that, once the Government rescinds the General Body Resolution No.345 dated 18th October, 2013, it was imperative upon respondent No.1 to issue an order of appointment to the petitioner as a regular and full-fledged basis as Medical Officer of Health. However, it was only after intervention of respondent No.2 and requiring respondent No.1 to issue order of promotion to the petitioner as Medical Officer of Health under communication dated 13th May, 2015, respondent No.1 has issued an order dated 24th June, 2015. It is submitted that, in the wake of Government Resolution dated 2nd September, 2014, the respondent No.1 was indeed incompetent to address the communication to the respondent No.3 directly for posting a senior incumbent as Medical Officer of Health under respondent No.1. It is submitted that, the respondent No.1 did not convey respondent No.3 about appointment of the petitioner as Medical Officer of Health on regular basis under the orders of the Government, which has been root cause for the

chaotic situation that has arisen. Had respondent No.1 conveyed respondent No.3, at least after regular appointment of the petitioner by promotion as MOH made vide order dated 24th June, 2015, there would have been no scope for the mess created. Though, the General Body is appointing and Disciplinary Authorities of the petitioner, it has no administrative control as such over day to day working, and therefore, Resolutions passed in respect of every decision by the General Body may not necessarily have any significance. The representation submitted by the Medical Officers on 10th September, 2015 is incapable of being addressed. It is submitted that, considering the totality of the facts and circumstances, it would be appropriate as also necessary in the interest of justice to allow the present Writ Petition in terms of prayer clause-B.

9] The learned counsel appearing for the respondent No.1 invited our attention to the averments in the affidavit-in-reply filed by the respondent No.1 and submits that, as the earlier Medical Officer of Health Dr. Shrikrishna Deogonkar promoted, the charge of MOH post was handed over to the petitioner in the year 2011. However, considering heavy workload and for proper

implementation of the Government Schemes, the respondent No.1 by letter dated 8th May, 2015, requested the respondent No.3 to provide competent person on deputation for the post of Medical Officer of Health. It is submitted that, general body meeting of the respondent No.1 Corporation was held on 18th October, 2013, in which Resolution No.345 was passed, thereby it is resolved not to promote the petitioner on the post of MOH. However, the said Resolution has been rescinded by the State Government under Section 451 of the Maharashtra Municipal Corporation Act. Accordingly, the Urban Development Department, Mantralaya, by exercising powers under Section 451 [4] of the Maharashtra Municipal Corporations Act has issued letter dated 13th May, 2015, to the respondent No.1 Corporation, thereby directed to take steps for issuance of promotion order of the petitioner on the post of MOH. Accordingly, the respondent No.1 has issued an order dated 24th June, 2015, thereby promoted the present petitioner on the post of MOH in the Corporation. The said promotion order is issued only as per the directions issued by the Urban Development Department, Mantralaya. The Municipal Corporation is working under the said Department, and therefore, the

directions issued by the said Department are binding on the respondent No.1. It is submitted that, the Deputy Commissioner [Revenue] intimated to the Desk Officer, Urban Development Department, Mantralaya, by letter dated 17th July, 2015 that, the petitioner has been promoted on the post of MOH as per their letter dated 13th May, 2015.

It is submitted that, there was general body meeting of the Corporation on 14th September, 2015. In the said meeting, the office bearers and Corporators of the Corporation raised issue in respect of several complaints against the petitioner. The general body meeting, considering complaints, directed to send petitioner on the compulsory leave. In response to the said issue, the Hon'ble Mayor declared that, the petitioner is sent on leave. Consequent to the development, the petitioner herself submitted an application on 14th September, 2015, for grant of leave on health ground. Accordingly, the additional charge of MOH was given to Dr. Sandhya Takalikar. The learned counsel invited our attention to the discussion of general body meeting dated 14th September, 2015, which is placed on record along with the reply. It is submitted that, there are several complaints received against the petitioner

for her conduct and attitude by the Medical Officers and other staff working under the said Department. There are several complaints by the Corporators also against the petitioner. The Medical Offices and Staff members of Health Department raised their grievances by filing application dated 10th September, 2015. The Chairman of Standing Committee of Municipal Corporation has also filed complaint against the petitioner. Moreover, the Member of Legislative Council and Member of Legislative Assembly also made complaint of the petitioner. The learned counsel invited our attention to the contents of the said complaint, which are placed on record at Exhibit-R5 collectively along with the reply.

10] It is submitted that, the petitioner also submitted her explanation in view of the complaints received against her. Accordingly, considering grievance raised by the various complainants, respondent No.1 by an order dated 21st September, 2015, constituted two Members Committee for inquiry on the said issue. The report of the said inquiry is yet not received by the Corporation. It is further submitted that, the respondent No.3 has issued an order dated 30th September, 2015,

thereby deputed respondent No.4 on the post of Health Officer, however, corrigendum is issued on 6th October, 2015, by the respondent No.3, thereby clarifying that, the deputation should be read on the post of Medical Officer of Health, Aurangabad Municipal Corporation. It is further submitted that, the present respondent No.4 as per order dated 30th September, 2015 has joined on the post of Medical Health Officer on 5th October, 2015 before noon. The respondent No.4 by his joining letter dated 5th October, 2015, intimated to the respondent No.1 about joining. As per the contentions of the petitioner, she has resumed the duties on 5th October, 2015 at 9.00 a.m. However, the respondent No.1 has not received any joining letter from the petitioner on 5th October, 2015. The official timing of the Municipal Corporation starts from 10.00 a.m., and therefore, there was no question of joining at 9.00 a.m. as stated by the petitioner. It is submitted that, the order of status-quo granted by this Court was in the afternoon session, however the respondent No.4 has joined duties in the morning session itself. Accordingly, at the time of granting status-quo, the respondent No.4 has already joined as MOH. As per the Municipal Corporation Aurangabad Recruitment Rules, the Medical Officer of

Health can be appointed by way of nomination, promotion or by way of deputation from the Government. Accordingly, the Government has issued order dated 30th September, 2015, thereby deputed respondent No.4 and he has taken charge thereafter. It is clarified that, as on today, the respondent No.4 is working as MOH of Municipal Corporation, Aurangabad, and the present petitioner has not resumed her duties.

Learned counsel appearing for the respondent No.1 also invited our attention to the contents of the letter / complaint addressed by the Medical Officers, MLA, MLC and other staff working under the Health Department of Corporation and submits that, the allegations in the said complaint would dis-entitle the petitioner from claiming any equitable relief. It is submitted that, the MOH is a statutory post having many administrative powers and responsibilities and MOH is an administrative head of the Department. The post is directly related to the public health, and therefore, keeping in view the complaints received against the petitioner, the respondent No.4 deserves to be continued on the post of MOH. At the cost of repetition, it is submitted that, Enquiry Committee

already appointed to inquire into the complaints received by the respondent No.1. He further submits that, at present pay, salary and other service benefits for which the petitioner is entitled for, remained unaffected though respondent No.4 is allowed to join on the post of MOH in Health Department of respondent Aurangabad Municipal Corporation. Therefore, the learned counsel appearing for the respondent No.1 submits that, Petition may be dismissed.

11] The learned AGP appearing for the respondent Nos. 2 and 3, relying upon the affidavit-in-reply filed by the respondent No.2, submits that, in Aurangabad Municipal Corporation, as per the present staffing pattern approved by the Urban Development Department, there is one post of Medical Health Officer and same has to be filled in as per the provisions of the Recruitment Rules by the respondent No.1. Accordingly, after recommendation of the name of the petitioner for the said post by the Committee constituted to consider promotion, the said Committee approved the name of the petitioner. However, general body of the Corporation did not approve the said proposal, thereafter, the Municipal Commissioner has requested the

Government to take appropriate action as per the provisions of Section 451 of the Maharashtra Municipal Corporation Act, 1949. Considering the report of the respondent No.1, the Urban Development Department has taken a view that, the petitioner is a senior most Medical Officer possessing all necessary qualification and selected and recommended by the Committee appointed by the Corporation, therefore, by Resolution dated 25th November, 2013 and corrigendum dated 28th November, 2013, the respondent No.2 temporarily suspended the implementation of Resolution No.345 dated 18.10.2013 issued by the general body of Aurangabad Municipal Corporation. However, said Resolution was suspended on the ground that, said has been passed without any valid reason. It is submitted that, after considering the objections and suggestions received from the concerned persons, the respondent No.2 has taken a final decision as per the provisions of the Maharashtra Municipal Corporations Act, 1949. The Section 451 [3] thereof to cancel the aforesaid Resolution and to that effect the Government Resolution dated 2nd September, 2014, has been issued.

It is submitted that, as per the provisions of Section 451 [4] of the Maharashtra Municipal Corporations Act, 1949, where any order is made by the State Government under sub-section [3], it shall be the duty of the Municipal Corporation or its authority in respect of which suspension order was made under sub-section [1] shall be deemed to be rescinded. Hence, vide letter dated 27th February, 2015 and dated 13th May, 2015, the respondent No.1 was asked to issue promotion orders of the petitioner with immediate effect, and accordingly, the Municipal Corporation has issued promotion order on 24th June, 2015. Then thereafter, the respondent No.2 has received Petition on 23rd September, 2015 from 21 Medical Officers working under the petitioner stating that, the administrative style of working of the petitioner is highly objectionable and it is not possible to work under her. Also there is another Petition received from Shri Deelip Thorat, Chairman of Standing Committee of the Aurangabad Municipal Corporation stating that, the decision taken by the Government vide Government Resolution dated 25th November, 2013, to give promotion to the petitioner may be withdrawn and an officer sent by Government on deputation may be made permanent. It is submitted that,

on receiving said Petition by the respondent No.2 from the Chairman of the Standing Committee, the respondent No.2 has called a report from the respondent No.1 vide letter dated 2nd November, 2015 and the said report is still awaiting. Meantime, the Public Health Department has appointed respondent No.4 as Medical Health Officer in Aurangabad Municipal Corporation on deputation.

12] The learned AGP, relying upon averments in the affidavit-in-reply by Shri Vivek Rambhaji Dahiphale, who is working as a Joint Secretary, Public Health Department, submits that, the Commissioner, Aurangabad Municipal Corporation, *vide* letter dated 8th May, 2015 has informed that, Dr.Shrikrishna Deogaonkar was on deputation with Municipal Corporation, Aurangabad, who is promoted *vide* Government Order dated 23th September, 2011, and accordingly, he was relieved *vide* Order of Municipal Corporation Aurangabad dated 23rd September, 2011. It is submitted that, the Municipal Corporation, Aurangabad, further informed to the respondent No.3 that, to implement the NUHM Scheme Municipal Corporation needs full time Medical Officer of Health, and accordingly, respondent No.1 requested to depute a Competent Medical Officer of Health.

It is submitted that, as per the requisition received from the respondent No.1, the respondent No.4 has been transferred on deputation to Aurangabad Municipal Corporation. Therefore, the learned AGP appearing for the Respondent-State, relying upon the affidavit-in-reply of respondent Nos. 2 and 3, submits that, Petition may be rejected.

13] The learned counsel appearing for the respondent No.4 invited our attention to the Exhibit-R2 Page 30 of the Compilation of the Writ Petition and submits that, said letter written by the Desk Officer, Urban Development Department to the respondent No.1 is without approval of the Department. The said document appears to be fabricated. It is submitted that, the Desk Officer in absence of the instructions from the Highest Authority should not have written such letter. It is submitted that, relying upon the said letter the respondent No.1 promoted the petitioner as Medical Officer of Health. However, said appointment is not confirmed by the State Government as required under Section 45 [4] of the said Act. It is submitted that, the Desk Officer is not Competent to direct the respondent No.1 to promote the petitioner on the post of MOH. In fact, the Municipal Corporation, already, by

sending a requisition letter on 8th May, 2015, requested the respondent No.3 that, the Government should appoint the Medical Officer of Health on deputation.

14] It is further submitted that, the petitioner is harping on the letter dated 13.05.2015 to contend that, the Government had approved and directed the Municipal Corporation to accord promotion to her. If the letter dated 13.05.2015 is perused, it reveals that, the same is not a decision of the Government. In fact, the letter clearly reveals that, the Resolution No.345, which was passed on 18.10.2013, was already suspended by the Government and there was clear reference to that effect, but unfortunately, the Desk Officer of the concerned Department has directed the Municipal Commissioner to grant promotion to the petitioner quoting the provisions of Section 451 [4] of the Maharashtra Municipal Corporations Act, 1949, in his letter. In fact, Desk Officer is not Competent to issue such letter and more particularly, the Municipal Corporation without verifying this, straightway issued letter dated 24.06.2015. It is further submitted that, the respondent No.4 is appointed as Medical Officer in the Year 1993 through MPSC and he is having masters degree

in Medicine [MD DGO], which is awarded to the petitioner in 2001 as well as the respondent No.4 is registered with the Maharashtra Medical Council as Additional Medical Qualification as a MD OBST and Gynecologist.

15] It is submitted that, the respondent No.4 is appointed as Maharashtra Medical Health Services, Civil Surgeon, Cadre-C1-I by Maharashtra Public Service Commission [MPSC] on merits. The learned counsel invited our attention to the copy of the Resolution dated 03.03.2011 to demonstrate that, the respondent No.4 is appointed by MPSC. It is further submitted that, there are serious complaints against the petitioner, and therefore, the Government took a decision to send the petitioner on deputation on the post of Medical Officer of Health with the Municipal Corporation, Aurangabad, *vide* Resolution dated 30th September, 2015. It is submitted that, even the House Leader of the Municipal Corporation had also issued a letter to the Director of Health Services, Maharashtra State, Mumbai and it was specifically stated that, since many years, the post of Medical Officer of Health is vacant and requested to send the Competent Officer on deputation. It is further submitted that, the Government, in its decision

dated 25th November, 2013, has suspended the Resolution No.345 by exercising the powers under Section 451 [1] of the Maharashtra Municipal Corporations Act, and thereafter, no any Resolution was passed. It is further submitted that, though the petitioner is relying on the order dated 13th May, 2015, but the said order is illegal and the said order is passed on incorrect facts and in fact, as stated in the above-mentioned para, the respondent No.4 ought not to have issued letter dated 24th June, 2015, as the Resolution to that effect is already suspended by the State Government but this mess was created by one Desk Officer and on the basis of that, the Municipal Commissioner issued a letter dated 24.06.2015.

16] It is submitted that, respondent No.4 had worked as a Medical Superintendent, Murtizapur, District Akola and in pursuant to the order of Public Health Department dated 30th September, 2015, the respondent No.4 is already relieved from that post and he has already joined on the post of MOH in Municipal Corporation, Aurangabad, on 05.10.2015 and working there since 05.10.2015. It is submitted that, as per the Recruitment Rules which are placed on record by the petitioner at

Page-15 to the Petition, it reveals that, clause-D provides that, the Government is empowered to send the Medical Officer of Health on deputation and in pursuant thereto, the respondent No.4 is eligible to work on deputation as Medical Officer of Health with the Municipal Corporation, Aurangabad.

17] It is submitted that, as the respondent No.4 is working as Medical Officer since last 24 Years with the Public Health Department, and therefore, it is not necessary for the respondent No.4 to possess Diploma in Public Health and as the respondent No.4 is eligible for appointment on the said post, and therefore, the Government has rightly sent the respondent No.4 on deputation with the Municipal Corporation, Aurangabad. It is further submitted that, on 06.10.2015, the Government has issued a Corrigendum to the Government Resolution dated 30.09.2015, thereby clarifying that, it is not a post of Medical Officer; but it is a Medical Officer of Health, on which respondent No.4 is appointed.

18] It is submitted that, as there was a request made by the Corporation for sending the Medical Officer of Health on deputation to the Corporation, therefore, in

pursuant thereto, the Government has passed a Resolution dated 30th September, 2015, whereby the present respondent No.4 is sent as a Medical Officer of Health on deputation to the Municipal Corporation, Aurangabad, and since 05.10.2015 the petitioner is working there. Therefore, relying upon the averments in the affidavit-in-reply, annexures thereto, the counsel appearing for the respondent No.4 submits that, Petition may be rejected.

19] The learned counsel appearing for the added respondent Nos.5 to 35 made following submissions:

The respondent Nos.5 to 21 are working as Medical Officers in the Municipal Corporation Aurangabad, whereas the respondent No.22 to 35 are working as Paramedical staff under the Medical Officer, Municipal Corporation, Aurangabad in the same Department. Subject matter of the Petition is challenge to the order dated 30.09.2015 issued by the respondent No.3, appointing the respondent No.4 as Health Officer on deputation at Municipal Corporation Aurangabad, whereas all the respondents are working under the Health Officer at present under the respondent No.5 i.e. original respondent No.4, and therefore, all the respondents are interested in

the present Petition, hence filed this affidavit in the Petition to assist the Court because on the face of record, original petitioner and the present respondent No.1 has suppressed several material facts from the Court.

20] It is submitted that, as the original petitioner is working as Health Officer w.e.f. 24.06.2015 and before that, original petitioner was holding charge for the post of Medical Officer Health. However, functioning of the original petitioner is not according to the Rules and Regulations, but she has acted a Dictator. There were several complaints against her, and therefore, action is taken by the Municipal Corporation Aurangabad against the petitioner by appointing Inquiry Committee. The respondents have also raised complaints against original petitioner time to time.

21] It is submitted that, there were several complaints against the original petitioner by the Medical Officers and other staff working under the said Department. There were several complaints by the Corporator against the said petitioner, and therefore, special subject was taken in the meeting dated 14.09.2015 in the General Body meeting of Municipal Corporation, Aurangabad, the respondent Nos. 1 to 17 made representation before the

General Body Meeting in writing and raised grievance personally in the said meeting; other complainants also raised their grievances in the said meeting. Issue was discussed in the General Body Meeting, considering the discussion in the General Body, the petitioner applied for Medical leave on the same day, and she is on leave w.e.f. 14.09.2015. All these facts are suppressed by the petitioner. It is submitted that, considering the grievance made by the respondents and several other affected persons, the Commissioner, Municipal Corporation, Aurangabad has taken decision to constitute a Committee to inquire into the allegations against petitioner. The petitioner has suppressed all these facts from this Court.

22] It is submitted that, since 14.09.2015, the petitioner is on medical leave and she did not join, thereafter, it appears that, in the meanwhile the Government has issued order dated 30.09.2015, and appointed original respondent No.4 as Medical Officer Health on deputation. The respondent No.4 took over the charge of the said post on 05.10.2015 at 10.00 a.m. and started his working being a Medical Officer. The respondent No.4 has started functioning at 10.30 on

05.10.2015, it appears that, the petitioner submitted a Petition before the High Court and without disclosing that, charge is already taken by the respondent No.4, prayed for *status quo* order after 4.00 p.m. when the matter appeared on production board. It is submitted that, this Court has granted *status quo*. Before passing the order of *status quo*, the respondent No.4 Dr.Jagtap resumed duties at 10.00 a.m. on 05.10.2015. The petitioner did not join till that time and she was on Medical Leave. It is submitted that, to create record that, she is working, petitioner visited Harsh Nagar Health Centre in Aurangabad and made some remarks on muster to show that, she is on duty. Learned counsel appearing for the respondent Nos.5 to 35 relying upon the averments in the affidavit-in-reply and annexure thereto submits that, all the Medical Officers and the employees earlier working under the control of the petitioner has lost confidence in her, and her promotion as MOH has never been confirmed / approved by the State Government as contemplated under sub-section [5] of Section 45 of the said Act.

23] We have heard the learned counsel appearing for the petitioner, learned counsel appearing for the

respondent No.1, learned AGP appearing for the respondent Nos. 2 and 3, learned counsel appearing for the respondent Nos.4, and the learned counsel appearing for the respondent Nos.5 to 35 at length. With their able assistance, we have perused the pleadings in the Petition, annexure thereto, reply filed by the respective parties with annexure, and also rejoinder affidavit filed by the petitioners with annexure.

It is the grievance of the petitioner that, when there is only one post of Medical Officer of Health on the establishment of Respondent No.1 – Corporation, and when she has been already promoted to the said post and has also assumed the charge of the said post, Respondent No.4 could not have been transferred/appointed to the said post. In the circumstances, the petitioner has prayed for direction against Respondent No.1 to allow her to hold the said post of Medical Officer of Health.

24] Upon careful perusal of the affidavit-in-reply of the respondent No.1, it appears that, the respondent No.1 did address the letter dated 8th May, 2015 to the respondent No.3 stating therein that, considering heavy workload and for proper implementation of the Government

Schemes, the respondent No.3 is requested to provide competent Officer on deputation for the post of MOH. The contents of the said letter shows that, one Dr. Shrikrishna Deogaonkar was earlier working as MOH, is promoted and therefore relieved from the respondent No.1 Corporation on 23rd September, 2011, however, no Officer on deputation has been appointed in his place and as a result charge of MOH has been handed over to the Senior most Medical Officer. The workload available to MOH post is heavy and in addition to it, NUHM scheme is to be implemented scrupulously, and therefore, the respondent No.1 needs MOH on deputation from the respondent No.3.

25] Upon careful perusal of affidavit-in-reply filed on behalf of respondent No.3, it appears that, relying upon the request / requisition from the respondent No.1, the respondent No.3 has issued impugned order appointing respondent No.4, Dr. Suhas Jagtap on the post of MOH, and has sent him on deputation in the Municipal Corporation, Aurangabad.

So far post of MOH on the establishment of respondent No.1 is concerned, upon perusal of the Recruitment Rules of Municipal Corporation, Aurangabad,

which are placed on record by the petitioner, there is only one post of MOH. This is also clarified in the affidavit filed by the respondent No.2. So far assertion of the petitioner that, post of MOH is not transferable and transfer of MOH is at the request, not only of the concerned MOH, but also of the concerned Municipal Corporation and that too as a special case, has not been specifically answered by the respondents. It is also stated by the petitioner that, respondent No.4 does not possess Diploma in Public Health, which is necessary for holding the post of MOH. The affidavits filed by the respondent No.3 is silent on the said aspect. It appears from the averments in the affidavit-in-reply filed by the respondent No.1 that, there is heavy workload of Health Department, and therefore, requisition was sent to the respondent No.3 to depute Competent Officer.

Upon careful perusal of the letter dated 13th May, 2015, written by the respondent No.1 to respondent No.3, it is abundantly clear that, in the said letter it is stated that, there is heavy workload of the post of MOH and also NUHM scheme has to be implemented scrupulously, therefore, full time MOH is necessary. It appears that,

respondent No.1 in adherence to the directions issued in letter dated 13.05.2015 written by the Desk Officer of Urban Development Department, has issued office Order [कार्यालयीन आदेश] wherein promotion is given to the petitioner on the post of MOH in the pay scale of Rs. 15660-39,100/- Grade Pay 6600/-. However, in the said office order, which is placed at Exhibit-A of the compilation of the Writ Petition, it is also mentioned that, there is provision under sub-section [4] of Section 45 of the said Act that, after appointment, the State Government should confirm such appointment. It is contention of the counsel appearing for the respondent No.4. and respondent Nos.5 to 35 that, the Desk Officer, without instructions at the highest level of the Government, has written a letter to the respondent No.1, to appoint / promote the petitioner on the post of MOH. It is also contended that, there is no confirmation as contemplated under the provisions of sub-section [4] of Section 45 of the said Act, to the promotion of the petitioner. However, affidavit filed by the respondent Nos.1 and 2 has not specifically mentioned about confirmation of the appointment / promotion of the petitioner on the post of MOH, as contemplated under sub-section [4] of Section 45 of the said Act. However, it is the

contention of the petitioner that, requirement of the approval / confirmation of the services by the State Government under Section 45 [4] of the said Act, has been considered in the Government Decision dated 25th November, 2013, and then directions were issued to the respondent No.1 to appoint the petitioner on the post of MOH.

26] It is also averred by the respondent No.1 that, several complaints about conduct and attitude of the petitioner have been received by the respondent No.1 and already a Committee is constituted to look into the said complaint and cause inquiry. It is also stated in the reply that, in general body meeting dated 14th September, 2015, the issue to send the petitioner on compulsory leave was discussed and the Hon'ble Mayor declared that, the petitioner is sent on leave. However, consequent to the development, the petitioner herself submitted an application on 14th September, 2015, for grant of leave on health ground. However, the aforesaid assertion of the respondent No.1 has been disputed by the petitioner stating that, the petitioner proceeded on leave on health ground.

It is stated in the affidavit-in-reply of the respondent No.1 that, as per the Aurangabad Municipal Corporation Recruitment Rules, the Medical Officer of Health can be appointed by way of nomination, promotion or by way of deputation from the Government, and accordingly, the Government has issued an order dated 30th September, 2015, thereby deputing respondent No.4 and he has taken charge thereafter. Therefore, it appears that, the order dated 30th September, 2015, deputing respondent No.4 on the establishment of respondent No.1 cannot be said to be illegal. As already observed, it is on the request of the respondent No.1, respondent No.3 has deputed respondent No.4. However, the respondent Nos. 1 to 3 have not considered and deliberated with each other on the aspect that, there is only one post of MOH on the establishment of the respondent No.1, and said post according to the petitioner is not transferable.

It is also stated in the affidavit of respondent No. 1 that, 21 Medical Officers, working under the petitioner, have filed complaint with respondent No.1 about functioning of the petitioner in the administrative capacity, which, according to the said Officers, is highly objectionable

and it is not possible for them to work under her. It appears that, there is also complaint received from the Chairman of the Standing Committee of the respondent No.1 Corporation and also other employees and representatives against the petitioner. As already observed, already respondent No.2 has called a report from the respondent No.1, about the said complaints, and also the respondent No.1 has appointed the Committee to inquire into the said complaint.

27] Upon perusal of the documents placed on record along with affidavit in reply filed by the respondent Nos.1, 4 and 5 to 35, it *prima facie* appears that, the Medical Officers and the other sub-ordinate staff in the Health Department are not ready to work under control of the petitioner. The post of MOH, as shown in the structure of the Health Department in Municipal Corporation, is second in rank after the Commissioner.

28] The petitioner has placed on record the duties and functions of Medical Officer of Health from which it is revealed that the post of Medical Officer of Health is directly related to Public Health. The MOH is a statutory post having many administrative powers and

responsibilities as a administrative head of the Department. It is described in the duties and functions of the Medical Officer of Health that, MOH is the captain of the team and has to work within the limits of Municipal Corporation area. Medical Officer of Health has to supervise and monitor all the staff in Health Department and to run all National Health Programmes through them. One of the prime functions to be performed by the Health Department under the leadership of Medical Officer of Health is to control the communicable diseases like Dengue, Chikungunya, Malaria, the water borne diseases like Cholera, Diarrhea, Gastroenteritis, Hepatitis, etc. Prevention and control of new emerging diseases like Swine Flue is also to be performed by the Health Department. The MOH is the policy maker for delivering health care in the city. The duties and functions of the Medical Officer of Health are stated as under:

Duties and functions of Medical Officer of Health:

Medical Officer of Health is a statutory post having many administrative powers and responsibilities, M.O.H. is an administrative head of the Department. He is the captain of the team. He has to work within the limits of Municipal Corporation Area. The post is directly

related to public health. He is the policy maker for delivering health care in the city. He is responsible to implement all the health policies decided by the Central and State Government as well as the local body considering the local community needs. There are three types of function and duties he has to perform; 1] Administrative, 2] Preventive and 3] Curative.

It further appears that, the MOH is responsible to develop suitable model for health care delivery system for the community. He / she has to decide objectives, goals and targets, assessment of resources, analysis of the health situation, fixing priorities, programming and implementation, monitoring, evaluation and budgeting, etc. He / she has to manage personnel management, communication information system and analysis. So far general administration is concerned, MOH has to monitor and supervise all the health staff working under him / her. He / she has to get the work done according to the situation and need of the community, to monitor all the urban family health centers and hospitals, as well as private nursing homes in the city, to maintain all the records, to collect reports from VPHCs, Municipal Hospitals and private Hospitals and consolidate them and send them to the

State / Central Government. He / she has to send proposals to State / Central Government for receiving financial grants, sensitizing and training of the staff and private practitioner. He / she has to attend administrative, standing Committee, General body meeting, inter sectoral & inter department coordination, coordination between Government, Corporation and private health sectors, community participation etc.

29] The MOH has to render preventive services, which are 15 in number as stated in the extract submitted by the petitioner showing the duties and functions of the MOH working in Health Department in Municipal Corporation. There is also task of prevention, control and Notification of communicable diseases. The MOH has also to look after curative services. Services provided in UPHC, Malaria Department, also is under the control of MOH. Therefore, MOH being an administrative head of the Department and captain of the Team has to perform aforementioned duties and functions. Considering the duties and functions of Medical Officer of Health, as described herein above, it is obvious that a person who holds such post must be commanding faith and respect of

the staff working under him and must be possessing capacity to have the total control over the staff under him, without which he cannot extract the desired work from them.

Upon perusal of averments in the affidavit-in-reply filed by the respondent No.1, it *prima facie* appears that, the Commissioner of Municipal Corporation, Aurangabad, who is administrative head of the Corporation has lost faith / confidence in the petitioner's administrative ability to perform the functions and duties of the post of MOH.

30] No one will dispute that during last few months, large number of citizens residing within the area of Respondent No.1 - Corporation have suffered with the diseases like Dengue, Chikungunya and Malaria. It will not be exaggeration, if we note that at present also there is an epidemic situation in the area of Respondent No.1 - Corporation so far as the aforesaid diseases are concerned.

31] As has come on record and as we have already noted, almost all employees, including the Medical officers, working in the Health Department under the control of

Medical Officer of Health, have expressed their reluctance to work under the control of the petitioner and have made serious complaints about the conduct of the petitioner.

32] In premise of the aspects as aforesaid, i.e. the duties and functions of Medical Officer of Health, the present epidemic situation in the area of Respondent No.1– Corporation and the fact of reluctance shown by the entire staff working in the Health Department to work under the control of the petitioner, we have considered the contentions raised by the petitioner in the present petition and the prayers made therein.

33] In the circumstances recorded above, we are unable to persuade ourselves for exercising the discretionary and equitable writ jurisdiction in favour of the petitioner. We can not be oblivious of the consequences of our order. When the possibility is writ-large that the petitioner may not be able to get the work done from her subordinate staff including the Medical Officers for the reason that they have declared their reluctance to work under her control, it would be hazardous to pass any order as sought by the petitioner. Present is not the time to see and decide whether the employees are wrong or the fault

lies with the petitioner. Under the orders of the Court no such situation can be allowed to be created that for want of proper coordination between Medical Officer of Health and the staff under her control, the public health is put to stake. In the conflict between right of an individual, i.e. the petitioner vis-a-vis the public interest, unquestionably public interest shall prevail. We are, therefore, not inclined to grant any relief to the petitioner. However, we wish to put on record that the present situation cannot be continued for an indefinite period and the issues raised in the petition cannot be kept lingering. We reiterate that Respondent No.1 – Corporation has created the present anomalous situation. We hope and trust that the Corporation and the State authorities will endeavour to expeditiously resolve the controversy and set the things in order so that public health is not jeopardized. We direct respondent Nos.1 to 3 to consider the issue raised in this Petition that, there is only one post of MOH in the Municipal Corporation, Aurangabad, and according to the petitioner, said post is not transferable. Respondent Nos.1 to 3 shall also clarify, whether there is confirmation by the State Government as envisaged under sub-section [4] of Section 45 of the said Act to the office order issued by the

respondent No.1, granting promotion to the petitioner as MOH in the pay scale of Rs.15600-39,100/-, Grade Pay Rs.6600/-. The aforesaid exercise should be done by the respondent Nos.1 to 3 in coordination with each other, and to take appropriate decision about the aforesaid aspect and also communicate the same to the parties expeditiously.

34] We make it clear that, discussion, observations and *prima facie* opinion expressed hereinbefore, in foregoing paragraphs, are strictly confined to the adjudication of the present Writ Petition.

35] Writ Petition stands disposed of accordingly.

[P.R.BORA]
JUDGE

[S.S.SHINDE]
JUDGE

DDC