

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 7681 OF 2011

1. The State of Maharashtra
through its Secretary,
Public Health Department,
Mantralaya, Mumbai.

2. Director of Health Service
Having office at Arogya Bhavan
in the compound of St. George
Hospital, Mumbai

3. Deputy Director
Health Services, Kolhapur Circle,
District: Kolhapur

....Petitioners

Vs.

Dr. Vimal Dagdu Shinde
Residing at-E-7, Vimal City,
Radhika Road, Satara,
Police Hospital, District: Satara

....Respondent

WITH

WRIT PETITION NO. 3049 OF 2014

1. The State of Maharashtra
through its Secretary,
Public Health Department,
Mantralaya, Mumbai.

2. Director of Health Service
Having office at Arogya Bhavan
in the compound of St. George
Hospital, Mumbai

3. Deputy Director
Health Services, Kolhapur Circle,
District: Kolhapur

....Petitioners

Vs.

Dr. Rajesh Anandrao Gaikwad
residing at P.H.C.Mangle,
Taluka: Shirala,
District: Sangli

....Respondent

WITH
WRIT PETITION NO. 3050 OF 2014
WITH
WRIT PETITION NO. 3051 OF 2014
WITH
WRIT PETITION NO. 3052 OF 2014
WITH
WRIT PETITION NO. 3053 OF 2014
WITH
WRIT PETITION NO. 3054 OF 2014
WITH
WRIT PETITION NO. 3055 OF 2014
WITH
WRIT PETITION NO. 3056 OF 2014
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WRIT PETITION NO. 3057 OF 2014
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WRIT PETITION NO. 3058 OF 2014
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WRIT PETITION NO. 3059 OF 2014
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WRIT PETITION NO. 3060 OF 2014
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WRIT PETITION NO. 3061 OF 2014
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WRIT PETITION NO. 3062 OF 2014
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WRIT PETITION NO. 3063 OF 2014
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WRIT PETITION NO. 3065 OF 2014
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WRIT PETITION NO. 3066 OF 2014
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WRIT PETITION NO. 3067 OF 2014
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WRIT PETITION NO. 3068 OF 2014
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WRIT PETITION NO. 3069 OF 2014
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WRIT PETITION NO. 3078 OF 2014
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WRIT PETITION NO. 3079 OF 2014
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WRIT PETITION NO. 3121 OF 2014
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WRIT PETITION NO. 3122 OF 2014
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WRIT PETITION NO. 3123 OF 2014
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WRIT PETITION NO. 3125 OF 2014
WITH
WRIT PETITION NO. 3126 OF 2014

WITH
WRIT PETITION NO. 3127 OF 2014
WITH
WRIT PETITION NO. 3128 OF 2014
WITH
WRIT PETITION NO. 3129 OF 2014
WITH
WRIT PETITION NO. 3130 OF 2014

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Mr. C.P.Yadav, AGP for the Petitioner-State in all matters.

Ms. Lata Patne a/w Mr. Vinod Joshi for the Respondents in all the matters.

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**CORAM : ANOOP V. MOHTA &
A.A.SAYED, JJ.**

DATED : 19 AUGUST 2015

ORAL JUDGMENT: *(Per Anoop V. Mohta, J.)*

Rule. Returnable forthwith. Heard finally by consent of parties.

2. A statement is made that all these Petitions can be disposed of by a common order as the issues so raised are common so do the fact. We, are, therefore, inclined to dispose of the Petitions by this common Judgment.

3. The Respondents were initially appointed as Medical Officer, Group-A in the Director of Health Services purely on ad-hoc basis. By a Notification dated 2 February 2009 issued by the Public Health Department, Government of Maharashtra for one time absorption of all the Respondents. The Respondents have executed the respective undertakings thereby

undertook to accept the terms and conditions of Notification dated 2 February 2009. In pursuance of the undertakings, Respondents have been absorbed in service permanently on the post of Medical Officer. All the Respondents filed their respective individual Original Application in Maharashtra Administrative Tribunal (MAT) , Mumbai thereby seeking direction against the Petitioners to grant them all the service benefits after completing one year service w.e.f. their initial date of appointment and also sought direction to extend the benefits of annual increment by condoning the technical breaks and to pay the arrears till date of the Application. By order dated 13 July 2009, MAT has allowed the Original Applications filed by the Respondents, only on the basis of the judgment and order dated 27 November 2008 passed by the Division Bench at Aurangabad in Writ Petition No.3484 of 2005 (State of Maharashtra v/s. Dr.Sangita Phatale) without giving opportunity to the Petitioner to file Reply and that resulted into impugned order which is similar in every matter. Hence, these Petitions.

4. The Petitioner-State Government has challenged impugned order dated 13 July 2009,whereby, in spite of Government Resolution/Notification dated 2 February 2009 in reference granting appointment/absorption to all the Respondents who worked on ad-hoc basis as a Medical Officer in the

Maharashtra Medical and Health Services of the Government of Maharashtra, Group-A in the Director of Health Service of the Government of Maharashtra service benefits have been extended to them.

5. The MAT also without assigning any specific reason overlooked the specific clause 4(v) & (vii) of the Notification dated 2 February 2009, apart from other clauses, purpose and object of such scheme which are reproduced as under:

4 (v) while making absorption, an undertaking from the ad-hoc Medical Officers regarding the acceptance of terms and conditions laid down by the Government shall be obtained. The ad-hoc Medical Officers to whom the said terms and conditions are not acceptable, they should not be considered for absorption;

(vii) the service rendered by the ad-hoc Medical Officer prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme;

6. A statement is made by the Counsel for the parties and there is no denial to the fact that all such Medical Officers, who got the service benefits of this Notification dated 2 February 2009 have given undertakings, whereby they have accepted the absorption/confirmation of their services based upon clauses/contents of the Notification in question.

7. Other relevant portion of the Notification are as under:

2 (1) In these rules, unless the context otherwise requires.-

“ad-hoc Medical Officer” means a Medical Officer, who was appointed in the Department of Public Health on ad-hoc basis and completed 3 years on 31st December 2007 and who is in the service, on the date of commencement of these rules.

(2) Words and expressions used in these rules but not defined, shall have the same meaning respectively assigned to them in the Maharashtra Medical and Health Services, Group A (Recruitment) Rules, 2000.

3 (1) Notwithstanding anything contained in these rules, every such ad-hoc Medical Officer who is continued as such on the date of commencement of these rules shall with effect from such date of commencement be absorbed on post of Medical Officer with a pay scale specified for the post in Maharashtra Medical and Health Services. ----

8. This Notification alongwith undertaking so given, in our view, are the basic documents which require to be considered while passing any order of granting service benefits, but MAT has excluded specifically in clause 4(vii) and the undertakings issues so recorded above.

9. All the Respondents, therefore, after accepting the Notification/absorption orders and having given undertakings are bound by the same for all the time to come unless by an appropriate process challenge the same. They are legally bound by their own action and the condition.

10. The submission made by the learned Counsel appearing for the Respondents that considering the facts and in similarly situated matters the State Government has, in some cases even granted the benefits to all other similarly situated persons, is unacceptable, as there is nothing on record to show that any specific challenge was raised to the Notification and its effect and the undertakings so given are remained intact till this date or not set aside and/or withdrawn. Some benefits granted to some other, in no way can be reasoned for the High Court to overlook the specific Notification and the undertaking specifically when based upon the same all the parties have already acted upon. There is no reason to overlook this.

11. To consider the case of the Petitioners based upon the other grounds/reasons so referred revolving around the Division Bench judgment of this Court dated 5 April 2011 in Writ Petition No.2158 of 2011 and other connected Petitions, (The State of Maharashtra & ors. v/s. Dr.Sachin T. Bandichhode) (P. 220) (Coram: A.M.Khanwilkar and Mrs.Mridula Bhatkar, JJ.) which according to Respondents is confirmed by the Supreme Court is also unacceptable submission. Above distinguishable facts and law was not discussed and decided. That itself, in our view, is no reason to overlook a specific agreement between the parties apart from undertaking so referred to. The issue which was specifically raised in these Petitions was not raised even in the case of State of Maharashtra v/s. Dr.Sangita R. Phatale (supra). On the contrary, in that matter there was no such undertaking and/or Notification involved. The facts and circumstances, therefore, are totally different. The benefits even if granted in some matters, in our view cannot be extended blindly by overlooking the specific provisions of the Notification and the respective undertakings. The orders passed prior to the Notification are also of no assistance to the Respondents.

12. The submissions of Respondents, therefore, that benefits ought to have been granted and/or extended to such Medical officers as already granted and extended in other matters, in the facts and circumstances and in

view of the above, we are not inclined to accept. MAT has relied upon Sangita (supra) as well as order passed by the Division Bench dated 5 April 2011 (supra), however not considered the special clauses of the Notification and the respective undertakings. That both the parties have accepted the benefits and acted upon accordingly. The Respondents could have refused the continuity or absorption of service in question. The MAT has not given any reason on these aspects, which in our view goes to the root of the matter. The Original Applications, therefore as allowed, are unsustainable so also the order in Review.

13. Therefore, taking overall view of the matter and for want of sufficient reasons the order allowing the Applications filed by the Respondents, in our view, is unsustainable and required to be interfered with.

14. We, therefore, pass the following order:

ORDER

- (i) The order/orders dated 13 July 2009 passed by the MAT in respective Original Applications and the orders passed in Review Petitions dated 23 February 2011 are set aside and the matters are remitted to MAT. We direct the parties to appear before MAT within four weeks from today.

- (ii) All the respective Original Applications of the respective Respondents are restored.
- (iii) The Petitioner-State Government to file reply within two weeks from the date of first appearance. The Respondents to file Affidavit- Counter Affidavit, if any, within two weeks thereafter.
- (iv) The hearing is expedited.
- (v) Rule made absolute accordingly. No costs.
- (vi) All contentions are kept open.

(A.A. SAYED, J.)

(ANOOP V. MOHTA J.)