

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

WRIT PETITION NO.1979 OF 2016

Smt. Jayashree d/o. Bhaskar Sonawane,
Age: 33 Yrs., Occ. : Service,
R/o. Kotul, Tq. Akole,
Dist. Ahmednagar

PETITIONER

VERSUS

- 1] State of Maharashtra,
through the Principal Secretary
to Public Health Department,
Mantralaya, Mumbai
- 2] Dy. Director of Health Services,
Nashik Circle, Nashik
- 3] Chief Executive Officer,
Zilla Parishad, Ahmednagar
- 4] District Health Officer,
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar
- 5] Medical Officer,
Primary Health Center, Kotul,
Tq. Akole, Dist. Ahmednagar

RESPONDENTS

...

Mr.P.B.Shirsath, Advocate for the Petitioner
Mr.S.B.Yawalkar, AGP for Respondent – State
Mr.S.T.Shelke, Advocate for Respondent Nos.3
to 5.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Date: 25.04.2016.

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

Heard.

2] Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

3] It is the case of the petitioner that she was appointed by respondent no. 3 on the post of Health Worker by an order dated 4th October, 2005. Respondent no.4, by communication dated 5th October, 2010, directed respondent no. 5 to recover the amount of Rs.90,659/- paid on account of tribal allowance and one step promotional pay scale to the petitioner. The petitioner was told by the then authorities that, there was mistake regarding mentioning of sub-centre of PSA, Kotul, in her appointment order, and therefore, the recovery was sought and after correction of the said mistake, the petitioner would be paid the said allowance

and one step promotional scale. The petitioner believing the advice given by the higher authorities decided to deposit an amount paid to her by the respondents on account of allowance and one step promotional scale. For depositing the said amount, the petitioner borrowed money from the relatives and deposited the same under protest on 19.11.2010 in ADCC Bank, Branch Akole.

4] It is further the case of the petitioner that under Kotul Primary Health Centre [for short 'PHC'], there are six sub-centres and one of them is Bholewadi. Under Bholewadi sub-centre, there are four villages, namely, Waghapur, Bori, Bholewadi and Nachanthav. The petitioner is working as Auxilliary Nurse Midwife in PHC, Kotul and she was required to attend the various training programmes. All communications in this regard have been addressed on Bholewadi

sub-centre. The petitioner and two other employees were appointed by the respondents for the said PHC and in the appointment letter of other employees, Bholewadi sub-centre was mentioned. The petitioner, therefore, made several representations to the authorities for correction of the mistake occurred in the appointment order as there was no Waghapur sub-centre under Kotul PHC. The petitioner also made a communication to the Taluka Health Officer, Panchayat Samiti, Akole, requesting therein for correcting the appointment order thereby mentioning Bholewadi instead of Waghapur. The petitioner was transferred from sub-centre Bholewadi to sub-centre Dhamangaon Pat under PHC Kotul in Akole Taluka. This transfer order also mentions that the petitioner was working at sub-centre Bholewadi. The petitioner, after transfer, again made representation to respondent no.3 requesting the said authority

to correct the typing mistake of sub-centre instead of Waghapur as Bholewadi.

5] It is further the case of the petitioner that the assurance was given to the petitioner that the typing mistake regarding sub-centre would be corrected as Bholewadi instead of Waghapur, as there was no sub-centre at Waghapur as such, as it was evident from the perusal of the documents placed at Exhibit-C of the compilation of the Writ Petition. The appointment orders of other employees working in the sub-centre Kotul had been issued in the name of Bholewadi sub-centre only. In spite of continuous efforts taken by the petitioner or the redressal for her grievance for correction in the appointment order, no decision has been taken by the respondents. Hence this Writ Petition.

6] The learned counsel appearing for

the petitioner invites our attention to the copy of the document placed at Exhibit-C Page-15 and submits that the said document shows the list of Primary Health Centres / sub centres functioning under the jurisdiction of Taluka Health Officer, Akole Panchayat Samiti, Akole. He submits that at serial no.4 in the said document in sub-centre Kotul, six sub-centres have been included and Waghapur is not mentioned in those 6 sub-centres. He further submits that the petitioner has been deprived of the monetary benefits of tribal allowance and one step promotional pay scale only on account of typographical mistake as Waghapur instead of Bholewadi sub-centre. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

7] On the other hand, the learned counsel appearing for respondent nos.3 to 5 relying upon the averments in the affidavit-

in-reply submits that, the Petition is hit by the delay and laches, and therefore, deserves to be dismissed in limine. It is submitted that though the sub-centre Bholewadi under Primary Health Centre, Kotul is in tribal area, Waghapur village attached to Bholewadi sub-centre is in non-tribal area. The building of sub-centre is also constructed in village Waghapur. In view of this, the tribal allowance paid to the petitioner came to be recovered as well as one step promotion is denied to the petitioner.

8] We have considered the submissions of the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent – State and the learned counsel appearing for respondent nos.3 to 5. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and the reply filed by respondent nos. 3 to 5. We have carefully perused the documents

placed on record at Exhibit-C Page-15 of the compilation of the Writ Petition. The said document shows the list of Primary Health Centre and sub-centres under the Primary Health Centre within the jurisdiction of Taluka Health Officer, Akole Panchayat Samiti, Akole. At serial no.4 of the list of Primary Health Centres, village 'Kotul' is mentioned. In another column, it is shown that there are 6 sub-centres under Primary Health Centre at Kotul, the names of the said sub-centres are Dhamangaon Pat, Chas, Bholewadi, Pangri, Pimpalgaon Khand and Lingdeo. There is no mention of village Waghapur. The contention of the learned counsel appearing for respondent nos.3 to 5 that Waghapur village is included in sub-centre Bholewadi and even building of the sub-centre is situated at Waghapur, and therefore, the petitioner is not entitled for the monetary benefits of tribal allowance and

one step promotional pay scale, cannot be accepted. There is no denial to the assertion of the petitioner that other employees who were working with the petitioner at Bholewadi sub-centre are receiving monetary benefits. It appears that instead of mentioning 'Bholewadi' in the appointment letter of the petitioner by mistake it was written as 'Waghapur'. Admittedly, 'Waghapur' is not sub-centre within the jurisdiction of Primary Health Centre, Kotul.

9] Upon careful perusal of the copy of the appointment letter placed at Exhibit-A Page-11 of the Writ Petition, while mentioning the place of appointment and while mentioning sub-centre, the same is shown at Waghapur Primary Health Centre, Kotul, Taluka Akole, District Ahmednagar. Admittedly, there is no sub-centre at Waghapur and it is not in dispute that the petitioner is rendering

services within jurisdiction of Primary Health Centre, Kotul at Bholewadi. As already observed, there is sub-centre at Bholewadi. Therefore, there is considerable force in the argument of the learned counsel appearing for the petitioner that the petitioner is also entitled for the monetary benefits of travel allowance and one step promotional pay scale.

10] In the light of discussion in the foregoing paragraphs, in the facts and circumstances of this case, we direct respondent nos. 2 to 5 to take steps to carry out the correction in the appointment letter of the petitioner by removing Waghapur and substitute Bholewadi, after verifying the record maintained by the office of respondent nos. 3 to 5, as expeditiously as possible, however, on or before 30th May, 2016. In case the respondents come to the conclusion to substitute Waghapur by Bholewadi and take

decision to that effect, the benefits which are available as per the relevant Government policy for rendering service under PHC, Kotul at Bholewadi, the petitioner be given the same benefits as were given to the other employees working within jurisdiction of the Primary Health Centre, Kotul and in particular at Bholewadi as expeditiously as possible, however, on or before 30th July, 2016. Needless to observe that, if the petitioner succeeds before the authorities, the respondents are directed to refund her the amount of Rs.90,659/- on or before 30th July, 2016, however, without any interest. However, we make it clear that on finding the petitioner entitle for the said amount, after taking afore-mentioned steps by the authorities and if the amount is not paid by the end of July, 2016, as indicated above, the petitioner will be entitled for 9% interest from 1st August, 2016.

11] The Writ Petition is allowed to the above extent. Rule is made absolute on the above terms. The Petition stands disposed of accordingly.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE