

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 5237 OF 2015**

Zilla Parishad Nandurbar
Tq. & Dist. Nandurbar
Through its Chief Executive Officer,
Prakash S/o Magan Padvi
Age : 49 years, Occ : Service,
R/o D.H.O. Office, Zilla Parishad Quarter,
At/Post. Nandurbar, Dist. Nandurbar.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Health Department, Mantralaya,
Mumbai – 32
2. The Director of Health,
Sent Jorge Hospital, Mumbai.
3. The Deputy Director of Health,
Civil Hospital, Nashik,
Tq. & Dist. Nashik.
4. Dr. Anil Gulabsing Valvi
Age : 41 years, Occ : Service,
R/o Primary Health Centre,
Kakarda, Tq. Dhadgaon,
Dist. Nandurbar.

..RESPONDENTS

WITH**WRIT PETITION NO. 5242 OF 2015**

Zilla Parishad Nandurbar
Tq. & Dist. Nandurbar

Through its Chief Executive Officer,
Age : 49 years, Occ : Service,
R/o Zilha Parishad Quarter,
At/Post. Nandurbar, Dist. Nandurbar.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Health Department, Mantralaya,
Mumbai – 32
2. The Director of Health,
Sent Jorge Hospital, Mumbai.
3. The Deputy Director of Health,
Civil Hospital, Nashik,
Tq. & Dist. Nashik.
4. Dr. Dinesh S/o Ugravaya Valvi
Age : 43 years, Occ : Service,
R/o Primary Health Centre,
Telkhadi, Tq. Dhadgaon,
Dist. Nandurbar.

..RESPONDENTS

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WITH

WRIT PETITION NO. 5248 OF 2015

Zilla Parishad Nandurbar
Tq. & Dist. Nandurbar
Through its Chief Executive Officer,
Age : 49 years, Occ : Service,
R/o Zilla Parishad Quarter,
At/Post. Nandurbar, Dist. Nandurbar.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Health Department, Mantralaya,
Mumbai – 32
2. The Director of Health,
Sent Jorge Hospital, Mumbai.
3. The Deputy Director of Health,
Civil Hospital, Nashik,
Tq. & Dist. Nashik.
4. Dr. Milind S/o Marutirao Ghuge
Age : 37 years, Occ : Service,
R/o Primary Health Centre,
Mandvi, Tq. Dhadgaon,
Dist. Nandurbar.

..RESPONDENTS

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Advocate for Petitioner : Mr. R.N. Jain
APP for Respondent nos. 1 to 3 : Mr. S.D. Kaldate
Advocate for Respondent No.4 : Mr. B.B. Yenge

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

**RESERVED ON : 24th February, 2016
PRONOUNCED ON : 2nd March, 2016**

PER COURT :-

Heard.

2. Writ Petition No. 5237 of 2015 is directed against the judgment and order dated 4th February, 2015 passed by the Maharashtra Administrative Tribunal,

Mumbai bench at Aurangabad in Original Application No. 635 of 2014. Writ Petition No.5242 of 2015 is directed against the judgment and order dated 21st January, 2014 passed by the Maharashtra Administrative Tribunal, Mumbai bench at Aurangabad in Original Application No.661/2014 and Writ Petition No.5248 of 2015 is directed against the judgment and order dated 4th February, 2015 passed by the Maharashtra Administrative Tribunal, Mumbai bench at Aurangabad in Original Application No. 580 of 2014.

3. Since the similar issue is involved in the present Petitions, the same are being disposed of by this common judgment.

4. Original applicants were appointed as Medical Officers Class-III by the petitioner by various appointment orders. It is the contention of the petitioner herein i.e. Zilla Parishad, Nandurbar that, the original applicants found guilty of misconduct on number of occasions during their service tenure. They were issued notices and were kept under suspension, by passing the appropriate orders by the

Chief Executive Officer, Zilla Parishad, Nandurbar. The original applicants filed applications before the Maharashtra Administration Tribunal and Maharashtra Administrative Tribunal allowed the said applications and set aside the suspension orders issued by the Chief Executive Officer, Zilla Parishad, Nandurbar, with further directions to the said Officer to reinstate original applicants forthwith. Hence these Petitions by the Zilla Parishad, Nandurbar.

5. The learned counsel appearing for the petitioner submits that, the Maharashtra Administrative Tribunal ignored that, the applicants by their negligence and also overt acts committed illegalities and misconduct. Due to their negligence, four children were died in the Primary Health Center, Rajbardi. It is submitted that, while passing the impugned judgment and orders, the Maharashtra Administrative Tribunal has not kept in view the service record of the applicants. It is submitted that, the said applicants are servants of the Zilla Parishad, and their services are governed by The Maharashtra Zilla Parishad District Service (Discipline and Appeal) Rules, 1964. (In short, for the sake of brevity, "the Zilla Parishad, Rules")

Rule 2(i) of the Zilla Parishad Rules defines the 'Parishad Servant'. The learned counsel appearing for the petitioner, invited our attention to the definition of 'Parishad Servant', as prescribed in Rule 2(i) and submits that, the original applicants are the Parishad servants, and therefore, the Chief Executive Officer is an appointing and disciplinary authority under Rule 11 of the Zilla Parishad Rules and to pass the appropriate orders so as to place the employees under suspension. The learned counsel appearing for the petitioner invited our attention to the provisions of Rule 11(1) of the Zilla Parishad Rules, and relying upon the pleadings in the Petition, annexures thereto, relevant Rules, submits that, the Petitions deserve to be allowed.

6. The learned counsel appearing for the Respondents invited our attention to the averments made in the affidavit in reply filed by the original applicants in the present Petitions. It is submitted that, the impugned judgment and order passed by the Maharashtra Administrative Tribunal, is after considering the provisions of the Maharashtra Zilla Parishad District Service (Discipline and Appeal) rules, 1964, and it has been rightly

held that, the said Rules are not applicable, or would not govern the services of the applicants, since they are working under the Director of Health, Mumbai. The supervision and control is by Director of Health Mumbai. The appointing and controlling authority of the applicants is State Government and the salary of the applicants is also paid by the State Government. Therefore, the learned counsel appearing for the original applicants submits that, the Petitions may be rejected.

7. We have given careful consideration to the arguments advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the respective respondents. With their able assistance, we have perused the pleadings in the Petitions, annexures thereto and also the reasons assigned by the Maharashtra Administrative Tribunal in the impugned judgment and orders.

8. While allowing the Original Applications filed by the contesting respondents i.e. original applicants, the Maharashtra Administrative Tribunal in para 10 placed

reliance on the earlier judgment delivered in Original Application No.60 of 2014 by the Maharashtra Administrative Tribunal on 26th June, 2014, wherein the question for consideration was whether the Chief Executive Officer, Nandurbar, has authority to suspend the Medical Officer. The Maharashtra Administrative Tribunal has reproduced the observations made in paragraph nos. 5 and 6 in the said judgment. Upon reading the said observations, it appears that, while disposing of the Original Application No.60/2014, the Maharashtra Administrative Tribunal has taken a view that, the Chief Executive Officer has no authority to place the Medical Officer under suspension, and accordingly in the facts of that case, the order issued by the Chief Executive Officer, Zilla Parishad was quashed and set aside.

9. Therefore, the Maharashtra Administrative Tribunal, relying upon the earlier decision referred hereinabove by the Tribunal, and also on interpretation of the Zilla Parishad Rules, 1964, held that, the Chief Executive Officer has enabling powers to issue suspension order, however, the said enabling powers does not cover the

case of the Gazetted Officer, Group `B'. The Tribunal has also considered other relevant Rules and also Government resolutions and allowed the Original Applications filed by the applicants and quashed the orders by which the applicants were kept under suspension by the Chief Executive Officer, Zilla Parishad, Nandurbar.

10. The learned counsel appearing for the petitioner has not brought anything to our notice showing that, the judgment delivered by the Maharashtra Administrative Tribunal in Original Application No. 60/2014 was assailed by the Zilla Parishad before the Higher Forum. Therefore, it appears that, the judgment and order passed in Original Application No.60/2014 dated 26th June, 2014 attained the finality. Therefore, in our opinion, the Maharashtra Administrative Tribunal, relying upon its earlier exposition in Original Application No. 60 of 2014 has reached to the correct conclusion. We do not wish to elaborate on the interpretation of the Rules and Government Resolutions discussed by the Maharashtra Administrative Tribunal. Therefore, leaving question of law raised by the petitioner in these Petitions open to be agitated in appropriate case, in

case, such occasion arises, by endorsing the impugned judgment and order passed by the Maharashtra Administrative Tribunal, without causing any interference, we dispose of these Petitions.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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