

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

**Writ Petition No. 9707 of 2016
With
Civil Application No.16582 of 2016**

* Dr. Jaishree Jagannath Kulkarni,
Age 56 years,
Occupation : Medical Officer of
Health, Aurangabad Municipal
Corporation, Aurangabad,
R/o. 18, "Ashirwad",
Sanghamitra Colony,
District Aurangabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
Urban Development Department
No.2, Mantralaya, Mumbai.
- 2) The Aurangabad Municipal
Corporation, through its
Municipal Commissioner,
Aurangabad.
- 3) The Secretary,
Department of Health,
State of Maharashtra
Mantralaya, Mumbai. .. **Respondents.**

Shri. B.L. Sagar Killarikar, Advocate, for
petitioner.

Shri. S.B. Joshi, Assistant Government Pleader,
for respondent Nos.1 and 3.

Shri. Dilip Bankar Patil, Advocate, for
respondent No.2.

Shri. S.S. Thombre, Advocate, for applicants in
Civil Application No.16582 of 2016.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 9 February 2017

ORAL JUDGMENT : (Per Nalawade, J.)

Civil Application No.16582 of 2016 filed
for intervention is dismissed. Permission to
intervene is refused.

2) Rule, rule made returnable forthwith.
Heard both the sides by consent for final
disposal.

3) The petition is filed to quash and set
aside the order of posting dated 20-8-2016 and
29-8-2016 made by respondent No.2, Municipal
Corporation Aurangabad, against the petitioner.
By this order the petitioner is directed to work
as Coordinator of "Swachh Maharashtra Abhiyan
(Urban)" and Chief of Malaria Department. There

is no such post on the establishment of respondent-Corporation. It is the case of the petitioner that she had resumed the duty of her promotional post viz Medical Officer of Health on 24-6-2015. It appears that she was on medical leave for few days in September 2015 and at that time there was some unrest in the employees working under the present petitioner. At that time by order dated 30-9-2015 of the Public Health Department, the State Government appointed one Dr. Suhas Jagtap on the post of Health Officer in the Aurangabad Municipal Corporation on deputation. Prior to that, he was working as Medical Superintendent, Sub District Hospital, Murtijapur, District Akola and on his request he was sent on deputation on the aforesaid post.

4) After availing leave, when the petitioner wanted to resume her duties, she was not allowed to resume the duty as Medical Officer of Health as aforesaid Dr. Jagtap was working on deputation on this post. It appears that Writ

Petition No. 10078/2015 was filed by present petitioner (Dr. Jayashree Jagannath Kulkarni vs. Aurangabad Municipal Corporation & Others) and this Court had advised both the local body and the Government to resolve the dispute by taking appropriate steps. This Court at that time had refused to give particular direction in favour of the petitioner. However, steps were to be taken by both the local body and the Government to see that the dispute is resolved.

5) Submissions made show that there is only one post of Medical Officer of Health in Aurangabad Municipal Corporation. It is the case of the petitioner that she was promoted to this post and she had resumed the duty on that post. Submissions made show that there is no equivalent post to the post of the Medical Officer of Health in the Aurangabad Municipal Corporation. As the petitioner was appointed by the local body, her post is not transferable. On the other hand, Dr. Jagtap has come on deputation on the post of

Medical Officer of Health. It can be said that when State Government appoints any officer on deputation, his services are only for temporary period and when the purpose is over, he needs to be withdrawn and he needs to go back to his original department. Thus it was possible for the Government to take necessary steps after making of the order by this Court in the aforesaid writ petition. Learned counsel for the Corporation submitted that in that regard proposal was submitted to the Government by the Corporation and request was made to see that appropriate decision is taken. In the present matter, appropriate decision means only to repatriate Shri. Jagtap which was possible and which ought to have been done. If the authority, the Corporation has some grievance against the present petitioner, there are different ways open to take appropriate action and there is also power for such action. But that does not mean that such employee can be asked to work on the post which is not sanctioned. Such things cannot

be allowed to be done by the local body and even by the Government. When there was way available to the Government to see that repatriation order is issued, cancellation order of deputation is made, such order is not made by the Government. This Court holds that there is only one way available to come out of the aforesaid situation and that is sending back of Dr. Jagtap to his own department.

6) Learned Assistant Government Pleader submitted that Dr. Jagtap is not before this Court and he is not made party to the proceeding. This Court holds that Dr. Jagtap has no right as such to hold the post in the Corporation. He is sent only due to the order made by the Government of deputation and he needs to be repatriated back to his own department.

7) In the result, the petition is allowed. Respondent Nos.1 and 3 are hereby directed to take steps by issuing necessary orders to see

that Dr. Jagtap is sent back to his own Department. After that the Corporation is to see that the post which the petitioner was holding is given to her. This exercise is to be done within one month from today. Rule made absolute in above terms.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1