

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

WRIT PETITION NO.11734 OF 2018

Dr. Vaishali d/o. Pandurang Deshpande,
Age : 49 years, Occ. Service,
r/o. 49/B, Dnyaneshwar Society,
Regency Estate Complex,
Kalyan-Sheel Phata Road,
Dombivli (East),
Dist. Thane

..Petitioner

Vs.

The State of Maharashtra,
Through the Secretary,
Public Health Department,
G.T. Hospital, Complex,
10th Floor, Mumbai
and others

..Respondents

Mr.Uday P. Warunjikar, Advocate h/f. Mr.R.A.Tambe,
Advocate for petitioner

Mrs.M.A.Deshpande, Addl. Govt. Pleader for respondents

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATE : NOVEMBER 28, 2018

PER COURT :

The petitioner assails the judgment and order
passed by the Maharashtra Administrative Tribunal,

dismissing the Original Application filed by the petitioner.

2. The petitioner had filed the Original Application thereby assailing the Government Resolution dated 07.06.2016 and more particularly, the terms and conditions mentioned therein.

3. We have heard learned Counsel for the parties.

4. It is strenuously contended by the learned Counsel for the petitioner that the Tribunal, in one paragraph, has dismissed the Original Application, only on the ground that the petitioner was absent from service unauthorisedly. The grounds of challenge put forth by the petitioner in the Original Application have not been considered by the Tribunal. The petitioner had assailed the terms and conditions enumerated in the Government Resolution dated 07.06.2016. The Tribunal ought to have considered the grounds put forth by the petitioner. In the Original

Application, the petitioner had given the reasons as to why the conditions enumerated under the said Government Resolution are not applicable for her. However, the same are lost sight of the Tribunal.

5. The learned Addl. Government Pleader submits that the petitioner had joined the duties and immediately from the next day, remained absent unauthorisedly. By the said Government Resolution, one more opportunity was provided to the petitioner to join her service on the terms and conditions enlisted in the said Government Resolution. The terms and conditions in the said Government Resolution are reasonable and the same are binding on the petitioner.

6. It appears from the Original Application filed by the petitioner that the petitioner had assailed the terms and conditions of the said Government Resolution. It was incumbent for the Tribunal to advert to the grounds raised by the

petitioner assailing the terms and conditions, adverse to her interest. The same was not done by the Tribunal.

7. The Tribunal has devoted one paragraph only for discussing about unauthorised absence of the petitioner and dismissed the Original Application. The point as to whether the terms and conditions of the said Government Resolution, assailed by the petitioner, are reasonable or not, has not been discussed. The Tribunal was expected to consider the grounds of challenge raised by the petitioner in its entirety and thereafter, the Tribunal should have decided the Original Application. In the light of the above, we deem it appropriate to relegate the parties to the Tribunal.

8. In the result, the impugned order passed by the Tribunal is quashed and set aside. Original Application No.272 of 2017 filed by the petitioner, is restored to its original position. The parties

shall appear before the Tribunal on 12.12.2018. As the pleadings are already complete, the Tribunal shall endeavor to decide the same expeditiously and preferably, within a period of three months from today, subject to the convenience of the Tribunal.

9. The Writ Petition is accordingly disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

kbp