

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9310 OF 2015

Dr. Ashok S. Mane ...Petitioner
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Uday P. Warunjikar for the Petitioner.
Mr. N.C Walimbe, AGP for Respondent Nos.1 to 4/State

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 3rd APRIL 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 4th February 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 1002 of 2011 instituted by the petitioner seeking the following reliefs:

“(a) to allow the Original Application.

(b) to hold and declare that the requirement that for regularization they should be in service as on 02.09.2009, is arbitrary and has no nexus to the process of regularization.,

(c) to direct the Respondents to reconsider Applicant's case and to include the name of the Applicant in the G.R., whereby doctors similarly circumstanced but appointed on ad-hoc basis are regularized retrospectively from the date of their initial appointment, as ad-hoc Medical Officer,

(d) to direct the Respondents to grant all consequential benefits including pension, etc., since the Applicant has completed 14 yrs. of service without any break.

(e) to award the cost of application.”

4] Mr. Warunjikar, learned counsel for the petitioner, submits that the petitioner has been incorrectly denied the benefit of the notification dated 2nd February 2009 in the matter of absorption of Medical Officers working on ad-hoc basis. Mr. Warunjukar submits that the petitioner, may have now, retired on attaining the age of superannuation, but since as on 31st December 2007, the petitioner, had completed 3 years of service as Medical Officer on ad-hoc basis, the petitioner was entitled to be absorbed on regular basis and awarded all benefits consequential to such absorption/regularisation.

5] Mr. Warunjikar points out that the petitioner was an earthquake affected person, who had been appointed on compassionate grounds in terms of the policy of the State Government. Taking this circumstance into consideration, the petitioner was required to be granted benefit of pension, if necessary, by relaxing the requirement of 20 years qualifying service. Mr. Warunjikar points out that the petitioner had to his credit of 14 years qualifying service and the balance service of six years was required to be relaxed by the respondents. Mr. Warunjikar submits that though this issue was specifically raised before the MAT and even specific relief was applied for, the MAT, has completely overlooked this issue. Mr. Warunjikar submits that this court should therefore, issue directions to the State Government in the matter of relaxation or in the alternate the matter could be remanded to the MAT for consideration of this issue.

6] Mr. Walimbe, learned AGP for the respondents - State, submits that the scheme in notification dated 2nd February 2009 was applicable only to Medical Officers, who were in service on the date the scheme came into force.

Mr.Walimbe submits that there is no provision for relaxation and in any case, the petitioner cannot insist upon any such relaxation in the matter of qualifying service. For these reasons, Mr. Walimbe submits that this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] As regards the first contention raised by Mr.Warunjikar reference is necessary to notification dated 2nd February 2009 which incorporates the Medical Officer in Maharashtra Medical and Health Services, Group – A (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra) (Special) Rules, 2009. These rules, provide for a scheme for absorption/regularisation of the services of Medical Officer appointed on ad-hoc basis in the State of Maharashtra.

9] The expression “*ad-hoc Medical Officer*” has been defined in Rule 2(1) of the 2009 Rules and the same reads 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.”

10] From the aforesaid, it is quite clear that for the petitioner to qualify as *“ad-hoc Medical Officer”* entitled to one time absorption, the petitioner must fulfill the following requirements:

(a) The petitioner must have been a Medical Officer who was appointed in the Department of Public Health on ad-hoc basis; and

(b) The petitioner must have completed 3 years of ad-hoc service as on 31st December 2007; and

(c) The petitioner must have been in service, on the date of commencement of these rules, i.e., on 2nd February 2009.

11] Now even if we proceed on the basis that the petitioner fulfills the first two conditions, there is no dispute

that the petitioner does not fulfill the third condition as aforesaid. This is because the petitioner attained the age of superannuation much prior to 2nd February 2009 and the petitioner was not in service on the date of commencement of the 2009 Rules. In such circumstances, we cannot accept the contention of Mr. Warunjikar that the petitioner, who was entitled to benefit of one time absorption on the ground that the petitioner had completed three years on ad-hoc service as on 31st December 2007 when he was in service. Since this is the precise ground, on which, the MAT has rejected the petitioner's contention as regards the applicability of the 2009 Rules to the petitioner, we see no good ground to interfere with the impugned judgment and order.

12] As regards Mr. Warunjikar's second contention, it is necessary to note that the relief of pensionary benefits claimed by the petitioner was a relief in the nature of "*consequential benefits*". This is clear from reading prayer clause (d) of the petitioner's O.A. Since, the petitioner has made out no case entitling him for absorption or regularization, which was in fact the main relief in his

original application, there is no question of the petitioner, being granted any consequential benefits.

13] Mr. Warunjikar, however, submits that the relief in terms of prayer clause (d) of the O.A. is required to be treated as an independent relief or as an alternate relief. Even if we were to treat such relief as alternate relief, we are afraid, we will not be in a position to issue any direction for award all pensionary benefits to an ad-hoc Medical Officer. No rules were pointed out to us in support of the contention that an ad-hoc employee, who has put in 14 years of service is entitled to for pensionary benefits. In any case, the contention was that there is requirement of 20 years of qualifying service and taking into consideration that the petitioner was an earthquake affected person, this requirement must be relaxed.

14] Since, the petitioner was an earthquake affected person, the petitioner secured employment on compassionate basis. This was itself, a concession or a relaxation granted to the petitioner taking into consideration that he was an earthquake affected person.

In the absence of absorption/regularisation, the petitioner cannot, as a matter of right, insist upon payment of any pension. Even otherwise, assuming that there exists any power of relaxation in the matter of qualifying service, the same, cannot be demanded as a matter of right.

15. Mr.Warunjikar is also not right in his submission that this issue has been totally ignored by the MAT. The MAT has considered this issue but not granted such reliefs to the petitioner since, the MAT has held that the petitioner was not entitled to benefit of absorption/regularisation under the notification dated 2nd February 2009. Again, there is no jurisdictional error or perversity in the view taken by the MAT.

16] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)