

WRIT PETITION NO. 3479/2020.

Dr. Rakesh Tarachand Nandeshwar. ... Petitioner.

-VERSUS-

1.State of Maharashtra and others. ... Respondents.

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Shri N. Thombre, Advocate for the Petitioner.

Shri A.M. Deshpande, Additional Government Pleader for the Respondent Nos.1 to 3.

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**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 10 FEBRUARY 2021.

P.C.

Heard the learned Counsel for the Petitioner and the learned Additional and Assistant Government Pleader for the Respondent Nos. 1 to 3.

2. The Petitioner who was working as Medical Officer, Class-II under the Maharashtra Medical and Health Services had approached the Maharashtra Administrative Tribunal by filing Original Applications praying that he be given benefits of old

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pension scheme treating the Petitioner as being eligible for the Scheme. The Original Application came to be dismissed by the Tribunal by an order dated 3 January 2020 and the Petitioner has challenged the said order in this petition.

3. The Petitioner was originally appointed as a Medical Officer, Class-II on temporary basis for a period of two years, some time in the year 1992. Thereafter by a notification in exercise of powers under Article 309 of the Constitution of India, the Public Health Department of State of Maharashtra on 2 February 2009, enacted Maharashtra Medical and Health Services Group-A (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra) (Special) Rules, 2009. The Petitioner was accordingly given order of absorption under the said Rules in February 2009.

4. The Petitioner was desirous of availing the benefits of old pension scheme on the ground that since the Petitioner was absorbed in service, his services from their initial date of appointment ought to have been considered and since his initial date of appointment was prior to the Government Resolution dated 31 October 2005, he should be granted the said benefits.

5. The prayers of the Petitioner were opposed by the Respondents contending that the Petitioner had accepted the terms and conditions by submitting an undertaking to abide by

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the conditions specified in the Rules. For being entitled to old pension scheme, the Petitioner ought to have been appointed prior to 01 September 2005, but, the Petitioner was absorbed in February 2009 and hence not entitled for said benefit.

6. The Tribunal has accepted the contention of the Respondents. Under the Rules of 2009, while granting absorption, an undertaking from the Medical Officer in respect of acceptance of the terms and conditions had to be furnished, as per Rule 4[v] of the Rules of 2009. Rule 4[vii] of the Rules of 2009 stipulated that the services rendered by an adhoc Medical Officers prior to their date of absorption shall not be considered for pension, leave and other benefits. The absorption order issued to the Petitioner was pursuant to the Rules in the year 2009 itself. The Tribunal was right in observing that the Petitioner accepted this condition in the year 2009, and sought to raise a challenge in the year 2018, which is grossly delayed. We find no perversity in the reasoning recorded by the Tribunal.

7. The contention of the Petitioner that he had no option but to accept the terms, is not correct. The absorption was a one time measure which the Petitioner took benefit of and was absorbed and regularized in service. The Petitioner duly gave an undertaking without protest and did not object for a period of ten years. The Petitioner was required to give the undertaking which is a precondition of absorption. The fact that the

Petitioner accepted the order of absorption, means that the Petitioner has accepted the conditions laid down therein.

8. In these circumstances, no error can be found in the view taken by the Tribunal. The Writ Petition is rejected.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Rgd

**Rakesh
Dhuriya**

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by Rakesh
Dhuriya
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