

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.1897/2021

Pritishkumar Jagalkishor Jaiswal

versus

State of Maharashtra through Principal Secretary, Public Health Department,
Mantralaya, Mumbai and five others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.B.Kasat, Advocate for petitioner.

Ms. N. P. Mehta, Assistant Government Pleader for respondent nos.1 to 6

CORAM :- A.S.CHANDURKAR AND SMT. M.S.JAWALKAR, JJ.

ARGUMENTS WERE HEARD ON : 17.03.2022

ORDER IS PRONOUNCED ON : 13.04.2022

The petitioner has challenged the order dated 06.05.2021 passed by the Maharashtra Administrative Tribunal in Original Application No.241/2021. By that order the original application preferred by the petitioner challenging the order dated 19.01.2021 issued by the Joint Director (Finance and Administration) Commissioner of Health Services, Mumbai declining to relieve the petitioner on deputation as in service candidate has been turned down.

2. The petitioner has obtained his M.B.B.S. Degree in the year 2009. After completing internship the petitioner claims to have worked as Junior Resident Doctor from 01.04.2010 to 30.06.2010 and thereafter from 01.07.2010 to 14.07.2011. The petitioner has also worked as a Medical Officer at the Sub-District Hospital, Achalpur District Amravati from

07.07.2012 to 03.02.2014. On 09.05.2015 the petitioner was appointed as Medical Officer (Group A) at the Primary Health Centre, Sategaon Taluka Anjangaon Surji, District Amravati. He worked there from 13.05.2015 to 04.12.2015. The petitioner could not attend his duty from 05.12.2015 on account of his health issues. The petitioner was issued an order of joining only on 15.12.2017. It is the case of the petitioner that being eligible to apply for post-graduation degree he sought permission from the Deputy Director of Health Services to appear in the NEET Post-Graduation Entrance Examination and such permission was granted on 25.11.2019. After the minimum qualifying percentile was revised and lowered, the petitioner was found duly qualified having secured 275 out of 1200 marks. In the select list dated 22.02.2020 the petitioner was selected from Other Backward Class (OBC) category at the Government Medical College, Nagpur. He was issued a provisional allotment letter after which he completed the necessary formalities. While seeking admission the petitioner was directed to produce a relieving and deputation letter from the concerned Department. However, on 19.01.2021 the Joint Director, issued a communication by which it was stated that since the regular service of the petitioner was only for the duration of one year and eleven months, he was ineligible for deputation under Government Resolution dated 26.03.2020 and Clause 6.5 thereof. It was further stated that if the petitioner took admission on his own, he would not be eligible for any assistance from the State and the period of the course would not be treated as period spent in service. The petitioner being aggrieved by the aforesaid communication dated 19.01.2021 challenged the same by filing Original Application No.241/2021. The Tribunal held that as

per Clause 6.1 of the Government Resolution dated 19.03.2019 the total regular service required was not less than five years. Clause 6.5 that was subsequently added did not make any difference since the petitioner was not eligible even under the Government Resolution dated 19.03.2019. The Original Application was thus dismissed. Being aggrieved the petitioner has filed this writ petition.

3. Shri J.B.Kasat, learned counsel for the petitioner submitted that the Maharashtra Administrative Tribunal erred in dismissing the Original Application preferred by the petitioner. The reliance placed upon Clause 6.5 of the Corrigendum dated 26.03.2020 was erroneous for the matter that the said clarification was issued subsequent to the Government Resolution dated 19.03.2019 which was the only relevant Government Resolution that was required to be taken into consideration. The petitioner having been granted permission by the Competent Authority on 25.11.2019 to appear for NEET Post Graduate examination and the petitioner having been held eligible on that date, it was not permissible to rely upon the subsequent Corrigendum to hold that the petitioner was duly disqualified. Since the petitioner was found to be qualified and eligible, he was issued provisional selection letter on 23.07.2020 as he stood qualified pursuant to the revised cut of score. There was also no reason to hold that there was break in service since the petitioner had discharged requisite service prescribed in the matter. As a consequence of the impugned action, the seat in question would lapse resulting in a loss being caused to the State as well as the petitioner. It was thus submitted that the impugned order passed by

the Maharashtra Administrative Tribunal be set aside and the petitioner be relieved on deputation by treating him to be an in service candidate and further permit the petitioner to re-join his services on completion of his Post Graduation Studies. The learned counsel also invited attention to paragraph 19 A in the writ petition wherein an undertaking was given that the petitioner would serve with the State Government after completion of his Post Graduate Studies.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. According to her it was rightly found that the petitioner was not eligible to be granted permission to undertake Post Graduate Studies on deputation as an in service candidate. The petitioner had remained absent from duty without permission from 05.12.2015 to 17.01.2018. It was only in view of the Government Resolution dated 15.12.2017 that about 80 Medical Officers who had remained absent without due permission were permitted to resume their duties. The petitioner had in fact filed an affidavit on 08.06.2017 accepting that his period of absence from duty would be treated as break in service as per Rule 47(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, the Rules of 1982). It was then submitted that the Tribunal had rightly found that the petitioner was not eligible as per Clause 6.1 of the Government Resolution dated 19.03.2019 and even if Clause 6.5 of the Corrigendum was excluded from consideration, the petitioner was still disqualified. As regards the amended pleadings attention was invited to the additional affidavit dated 04.03.2022 filed by the respondent no.6 in which

it was stated that only if the petitioner was relieved and an order of deputation was issued in his favour, would he be entitled to get his salary . The consequence of failure to complete the Post Graduate Studies would be attracted in the facts of the case. It was thus submitted that there was no reason to interfere with the impugned order.

5. We have heard the learned counsel for the parties at length and we have perused the relevant documents placed on record. The candidature of the petitioner for admission to the Post Graduate Course as an in service candidate pursuant to his deputation has been found to be ineligible for the reason that the minimum continuous service as prescribed has not been put in by the petitioner. In this regard if Clause 6.1 of the Government Resolution dated 19.03.2019 is perused, it becomes clear that as per that Clause total regular service should not be less than five years. In case of candidates who have not put in regular service of five years, it has been stated that their candidature as in service candidate on deputation would not be found acceptable. It is not in dispute that the petitioner has rendered service initially as Medical Officer (Group A) with Primary Health Centre, Sategaon, Taluka Anjangaon-Surji, District Amravati pursuant to the order dated 09.05.2015 from 13.05.2015 to 04.12.2015. The petitioner without prior permission of the Competent Authority remained absent from duty from 05.12.2015 till 17.01.2018. He subsequently joined duties on 17.01.2018 to 28.07.2020 pursuant to Government Resolution dated 15.12.2017. While doing so the petitioner submitted his affidavit to the Competent Authority on 08.06.2017 and stated therein that for the period of

unauthorised absence till re-joining of duties, the period of absence be considered as break in service as per Rule 47(1) of the Rules of 1982. In the light of this position on record, the Tribunal found that as per Clause 6.1 of the Government Resolution dated 19.03.2019 the total regular service put in by the petitioner was less than five years. Even if Clause 6.5 of the Corrigendum was ignored the petitioner was not eligible as per Government Resolution dated 19.03.2019. We do not find any justifiable reason to take a different view of the matter. The conclusion as recorded is based on Clause 6.1 of the Government Resolution dated 19.03.2019 in the light of actual service rendered by the petitioner.

6. Coming to the alternate prayer made by the petitioner of relieving him for pursuing Post Graduate Studies by providing him stipend and thereafter to direct the State Government to permit him to re-join his duties, it is found that the Rules in question do not permit such course to be followed. It has been clarified by the respondent no.6 that only if the petitioner is relieved pursuant to an order of deputation that he would be entitled to get the necessary stipend. As noted above, since the candidature of the petitioner as an in service candidate being sent on deputation is not found permissible in view of Clause 6.1 of the Government Resolution dated 19.03.2019, even this alternate prayer cannot be considered. Since the petitioner has been found ineligible for his own unauthorised absence, the respondents cannot be blamed for the same.

7. Hence for aforesaid reasons, we do not find any merit in the writ petition and the same is accordingly dismissed. No costs.

It would be open for the respondent no.6 to return original documents submitted by the petitioner in accordance with the prevailing procedure.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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