

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

WRIT PETITION NO.5772 OF 2023

Dr. Vaishali D/o Pandurang Deshpande)
 Age : 52 years, Occu. Services)
 R/o. At 48/B, Dnyaneshwar Society,)
 Regency Estate Complex,)
 Kalyan-Sheel Phata Road,)
 Dombivali (East) District – Thane.)... Petitioners

VERSUS

1. The State of Maharashtra)
 Through the Secretary,)
 Public Health Department,)
 G. T. Hospital Complex,)
 10th floor, Mumbai-400 001.)
2. The Director of Health Services,)
 8th floor, Arogya Bhavan,)
 St. George Hospital Complex,)
 CST, Mumbai-400 001)
3. The Deputy Director of Health)
 Services, Civil Hospital Campus,)
 Trimbak Road, Opp. Hotel Rajdutt,)
 Nashik.)
4. The Civil Surgeon,)
 Civil Hospital, Jalgaon,)
 District – Jalgaon.)... Respondents

Appearances

Mr. Sameer Nakul Patil, for Petitioners.

Mr. B. V. Samant, AGP for State.

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

DATE : 26th April 2023.

PC

1. By this petition, petitioner assails judgment and order dated 23rd February 2021 passed by the Maharashtra Administrative Tribunal (**Tribunal**) dismissing Original Application No. 307 of 2019. The Original Application was instituted by the petitioner challenging condition No.3 to 8 of the Government Resolution dated 7th June 2016. She further prayed for directions to allow her to join duties by treating the period of absence as study leave. She also prayed for directions for treatment of period from 22nd April 2014 onward as continuous service with all consequential benefits of pay and allowances.

2. Petitioner is holder of MBBS degree and possess post-graduate diploma in Developmental Neurology. She also possess International Post Graduate Pediatric Certificate. In September-October 2013, she had applied for fellowship in Neurology and was selected for the course. In the meantime, she came to be selected for appointment on the post of Medical Officer Group-A in the Public Health Department of the State Government and the appointment letter was issued to her on 9th April

2014. She joined the post of Medical Officer on 22nd April 2014. Within 8 days thereafter, she submitted an application for grant of permission to complete the fellowship in Neurology at Nair Hospital, Mumbai. On 10th May 2014 petitioner applied for leave for one month on the ground of sickness of her father stopped attending duties. She did not receive any response. She applied for permission to undergo fellowship in Neurology and submitted application in that regard on 5th June 2014. By separate application dated 5th June 2014 she applied for continuation of leave.

3. On 18th November 2014 a show cause notice was issued to petitioner in respect of her absence from duties from 10th May 2014 onwards. Petitioner replied the show cause notice on 25th November 2014 stating that her father was unwell and requested for extension of leave. Another show cause notice dated 17th December 2014 was issued.

4. Petitioner underwent the fellowship course and completed the same by 30th June 2015. She made representation dated 11th June 2015 seeking permission to join duties. The District Hospital, Jalgaon however issued communication dated 14th September 2015 to petitioner stating that she had failed to submit response to the show cause notice dated 17th December 2014. Instead of responding to the said communication, petitioner addressed letters dated 30th September 2015 and 23rd March 2016 once again seeking permission to join duties. By letter dated 30th September 2016 petitioner was communicated that a circular has been issued by the Government of Maharashtra on 13th July 2016 granting

opportunity to Medical Officers to join duties by 31st December 2016. Petitioner was accordingly called upon to join duties on or before 31st December 2016. Petitioner failed to join duties in response to the communication dated 30th September 2016 but entered into correspondence with the Respondents. By her letter dated 31st December 2016 she objected to the conditions stipulated in the Government Resolution dated 7th July 2016. Petitioner was subsequently given an opportunity to join duties as per the Government Resolution but she failed to join duties.

5. Petitioner approached the Tribunal, Bench at Aurangabad by filing Original Application No.272 of 2017 challenging condition No.3 to 8 of the Government Resolution dated 7th June 2016. The Tribunal was pleased to reject the Original Application by judgment and order dated 28th June 2018. Petitioner filed Writ Petition No.11734 of 2018 before this Court, Bench at Aurangabad challenging the decision of the Tribunal. By order dated 28th November 2018 this court was pleased to remand the Original Application for being heard *de-novo*. Petitioner sought transfer of her Original Application from Aurangabad Bench to Mumbai Bench and the same came to be transferred and numbered as Original Application No.307 of 2019 at Mumbai Bench. The Tribunal decided the Original Application of petitioner and by judgment and order dated 23rd February 2021, the Tribunal was pleased to dismiss the same. Aggrieved by the decision of the Tribunal, petitioner has filed the present petition.

6. We have heard Mr. Patil the learned counsel for the petitioner and Mr. Swami the learned AGP for the State Government.

7. After considering the rival submissions canvassed by the parties, it is clear that petitioner was appointed on the post of Medical Officer on 9th April 2014 and joined services on 22nd February 2014. She worked hardly for a period about 18 days and proceeded on leave vide application dated 10th May 2014. The leave was never sanctioned. The leave was sought on the pretext of ill health of father, however petitioner had already secured admission to fellowship course in Neurology prior to her appointment and the only motive for staying away from duties appears to be undergoing the Fellowship course. She underwent course and completed the same by 30th June 2015 and remained unauthorisedly absent from duties.

8. Nonetheless, the Government to extend an opportunity to Medical Officers like petitioners to join duties by issuing Government Resolution dated 7th June 2016. Certain conditions were stipulated in the Government Resolution for execution of bond for 5 years, non-entitlement of benefit of the period of absence, treatment of absence period as break in service, taking administrative action for absence of and extension of period of probation. Though condition No.7 was incorporated prohibiting filing of court cases, the said condition was not insisted upon. Petitioner has challenged condition No.3 to 8 before the Tribunal in Original Application. Condition No. 7 was already deleted.

The Tribunal has not found anything illegal or irregular in incorporating condition No.3 to 6 and 8 in the Government Resolution dated 7th June 2016. We have also gone through the said conditions and we do not find anything wrong with the same.

9. Mr. Patil the learned counsel for petitioner would submit that petitioner is mainly aggrieved by the condition No.6 which empowers the Government to take administrative action in respect of unauthorized absence. He would submit that petitioner was entitled to complete fellowship course in Neurology and thereafter join Government Services. That extension in joining period was permissible for the purpose of completing the fellowship course. He would submit that the only mistake committed by the petitioner was not attending the duties first and thereafter proceeding on leave to complete the course. He would therefore submit that there are genuine reasons for absence of petitioner. We have considered the effect of the said condition. As per the said condition, the employer has been empowered to take administrative action in respect unauthorized absence. For taking such action, necessary procedure of Departmental Enquiry will have to be followed. In that case, petitioner would be in a position to put forth her defence which would be taken into consideration by the appointing authority if such proceedings are initiated. Thus in the event of initiation of any Disciplinary Proceedings it is open for her to raise her defence justifying her absence and the Disciplinary Authority is bound to consider the same. Thus, there is no error in incorporating condition No.6 in the Government Resolution dated 7th June 2016.

10. Petitioner had hardly worked for 18/19 days in the year 2014 and has been unauthorizedly absent since then. Nonetheless the Government has shown magnanimity in allowing her to join duties by 31st December 2016. The Tribunal has also not closed doors on petitioner and has recorded the following statement made on behalf of the Presenting Officer:

“However, learned P. O. on instructions submits that the applicant may join, if she desires, after making representation to the Department by following the terms and conditions mentioned in the G. R. dated 7.6.2016.”

11. Thus petitioner was at liberty to join post of Medical Officer in pursuance of opportunity granted by the Tribunal on 23rd February 2021. However, despite of passage of more than 2 years from the date of the order by the Tribunal, petitioner has failed to avail the opportunity. It therefore appears that the petitioner is not at all interested in joining service as Medical Officer. She cannot put conditions before joining services. In the entire process the petitioner has also grown in age and her age now appears to be 54 years (since her age is shown as 52 years in the title of the petition). We do not know whether the State Government is still interested in permitting the petitioner to join duties. It would be open for petitioner to make a representation to the State Government to permit her to join duties by accepting condition Nos. 3 to 6 and 8 of the Government Resolution dated 7th June 2016. It is for the State Government to consider and decide such request.

12. We therefore do not find any error in the judgment and order of the Tribunal. Writ Petition is devoid of merits. It is dismissed with no orders as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ