

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10306 OF 2015

The Secretary,
Public Health Department,
Mantralaya, Mumbai and Ors.

... Petitioners

Versus

Dr.Ambadas Mahadev Devmane

... Respondent

ALONGWITH
CIVIL APPLICATION NO.51 OF 2023
IN
WRIT PETITION NO.10306 OF 2015
ALONGWITH
WRIT PETITION O.8282 OF 2015
ALONGWITH
WRIT PETITION NO.10312 OF 2015
ALONGWITH
CIVIL APPLICATION NO.52 OF 2023
IN
WRIT PETITION NO.10312 OF 2015
ALONGWITH
WRIT PETITION NO.10311 OF 2015
ALONGWITH
WRIT PETITION NO.10309 OF 2015
ALONGWITH
WRIT PETITION NO.10308 OF 2015
ALONGWITH
CIVIL APPLICATION NO.50 OF 2023
IN
WRIT PETITION NO.10308 OF 2015
ALONGWITH
WRIT PETITION NO.10310 OF 2015

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Mr.N.K. Rajpurohit, AGP for Petitioners.

Mr.Nitin Shivajirao Dhumal, Advocate for Respondent No.1 in W.P.10306 of 2015, 10312 of 2015, 10311 of 2015 and 8282 of 2015.

Ms.Rekha Musale i/b. Ms.Bhagyashree Mangale, Advocate for Respondent in W.P.10310 of 2015.

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**CORAM : NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE : 06 DECEMBER 2023.

P.C. :

Heard the learned counsel for the parties.

2 By this group of Petition, the Petitioner–State of Maharashtra has challenged the common order passed by the Maharashtra Administrative Tribunal (Tribunal) dated 28 April 2014, allowing the Original Application Nos.531, 532, 533, 604, 605, 606, 697, 338, 607 and 608 of 2013, filed by the Respondents.

3 The issue raised in these Petitions is covered by the judicial orders and subsequent steps were taken by the State in respect of identically situated employees and that is the foundation of the order of the Tribunal and the argument of Respondents–original Applicants before us. We find merit in this contention and in the light thereof, few facts necessary for the conclusion need to be noted.

4 Respondents–original Applicants were initially appointed as Medical Officers, Group “A” in the Department of Public Health for a period of 1 year/11 months on different dates and

they were continued in service by giving technical break. They were selected by the Maharashtra Public Service Commission (MPSC) on a regular basis. These Respondents–Original Applicants sought condonation of break in service as officers holding substantive posts based on Rule 30 and 48 of the Maharashtra Civil Services (Pension Rules) 1982. Since this was denied to the Petitioner, they filed the Original Applications before the Tribunal.

5 Before the Tribunal, the Respondents relied upon order passed by the Division Bench (Aurangabad Bench) of this Court in Writ Petition No.3338 of 2005, by which the challenge to the order passed by the Tribunal granting relief to identically situated employees was rejected. Reliance was also placed on the order passed in Writ Petition No.3484 of 2005 of the Division Bench (Aurangabad Bench) of this Court and the dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 2 February 2011 confirming the order of this Court.

6 Before the Tribunal, and even before us the State has relied on the order passed by the Full Bench of the Administrative Tribunal in Original Application No.214 of 2009 dated 30 March 2010. It is contended that the Full Bench of the Tribunal has held that the Ad-hoc employees cannot seek condonation of technical breaks of 2 and 3 days and are not entitled to increments and the benefits. The learned AGP submits that in spite of this binding decision of the Full Bench, the Tribunal has granted relief to the

contrary by the impugned order directing the Petitioners that technical breaks in Respondents' services be condoned and they be extended annual increments and earned leave. The learned AGP submits that the impugned order being contrary to the binding decision of the Full Bench of the Maharashtra Administrative Tribunal, Mumbai, be set aside.

7 The Tribunal has relied on the order passed in Original Application No.1284 of 2009 dated 4 March 2013, in which the Tribunal has distinguished the judgment of the Full Bench of the Tribunal holding that it applied to those employees who were never regularly selected through MPSC. The learned counsel for the Respondents submitted that in the case of the Respondents, as was in the case in Original Application No.1284 of 2009, the Respondents were selected by the MPSC in the year 2009. Furthermore, it is pointed out to us that the order dated 4 March 2013 in Original Application No.1284 of 2009 was not only not challenged by the State, but it is accepted by issuing a Government Resolution. Also, there is a Cabinet decision that the challenge pending in the Court in respect of the said employees be withdrawn. The Respondents have also placed on record orders of this Court dated 23 March 2016 in Writ Petition 11611 of 2015, whereby the challenge of the State in respect of the order granting technical break has been rejected. It is also placed before us that the Writ Petitions with identical challenges filed by the State have been withdrawn. The fact that the order dated 4 March 2013 in Original Application No.1284 of 2009 relied

upon by the Tribunal in the impugned order has not been set aside and has been accepted is not denied. No reason is placed before us for taking a different view when the State has accepted the view taken by the Tribunal in the earlier orders in respect of a large number of similarly situated employees and further issuing Government Resolutions and taking Cabinet decision in that regard. In the light thereof, we do not find any case is made out for any interference.

9 Writ Petitions are accordingly rejected and disposed of.

10 All Civil Applications are stand disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)