

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10704 OF 2023

Dr. Shivashree Mrutunjay
Nilange And Ors

... Petitioners.

V/S.

The State Of Maharashtra
Thru Chief Secretary, And Ors

... Respondents.

.....

Mr. T.D.Deshmukh a/w. Mr.Sagar Kursija a/w. Mr.H.D.Chavan a/w.
Ms.Kshama Mahuli a/w. Mr.S.Mohanty a/w Mr.Anshuman
Deshmukh for the Petitioner.
Mr.R.P.Kadam AGP for the State/Respondents.

.....

CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.

DATE : 12 October 2023.

P.C. :

Heard learned counsel for the parties.

2 Six Petitioners the Medical Officers under Employees State Insurance Scheme out of twenty one persons, have approached this Court challenging the judgment and order passed by the Maharashtra Administrative Tribunal, Mumbai dated 26 April 2023, partly rejecting the Original Application filed by them.

JYOTI
RAJESH
MANE

Digitally signed
by JYOTI
RAJESH MANE
Date: 2023.10.26
13:23:59 +0530

3 The Petitioners filed the Original Application taking exception to clause 3 (i)(ii) (vii) of the “Medical Officers in the Maharashtra Medical Insurance Services Group-A and Group-B (Gazetted) (One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra)(Special)Rules, 2014”. They were aggrieved by Clause no.3(i), 3(ii) and 3(vii) of the Medical Officer in the Maharashtra Medical Insurance Services Group-A and Group-B (Gazetted)(One time Absorption of Medical Officers appointed on ad-hoc basis in Maharashtra)(Special) Rules, 2014 dated 18/3/2015.

4 The Petitioners were appointed on ad-hoc basis as Group-A Medical Officers. According to them, after they had served for 15 to 25 years, they came to be absorbed by virtue of the Rules of 2014 notified on 18 March 2015. They contend that the conditions of absorption were detrimental to them, specially clause 3(ii) thereof regarding Pension and other retirement benefits. This clause stated that these Medical Officers would be governed by the terms and conditions as stipulated in the New Defined Contribution Pension Scheme of the Government. The Petitioners were called upon to submit unconditional undertaking to accept the terms after they accepted the absorption orders. Communications were issued stating, that if the Petitioners did not submit the undertakings, it would be considered that they are not interested in absorption. Guarantee bond also had to be submitted by the Petitioners. According to the Petitioners they submitted the undertaking without prejudice and

immediately approached the Administrative Tribunal.

5 The Administrative Tribunal, in a short order, dismissed the challenge to the conditions, observing thus:

11. We have considered the arguments of both the sides. In this case it is a fact that the applicants have not been appointed on the basis of regular selection procedure but have been appointed on ad hoc basis and their appointments have been continued from time to time on the basis of Court orders till a candidate selected by MPSC is made available.

12. In view of the ratio laid down by the Hon'ble Supreme Court in (i) Stat of M.P. & Ors. Vs. Lalit Kumar Verma, Appeal (Civil) No.5185 of 2006) (ii) State of Karnataka & Ors Vs. M.L.Kesari & Ors., SLP No. 15774 of 2006 (iii) Secretary, State of Karnataka Vs. Umadevi & Ors. Civil Appeal No.3595-3612 of 1999, (iv) Nihal Singh & Ors. Vs. State of Punjab & Ors. Civil Appeal No.1059 of 2005, (v) A. Umarani Vs. Registrar, Cooperative Societies & ors. Civil Appeal No.1413 of 2003, the applicants are not entitled to the relief prayed for.

13. It is thus seen that in this case a conscious decision was taken by the Government for one time absorption of medical officers. The applicant accepted the conditions laid down in this notification dated 18.3.2015 and more particularly Rule 3(i), 3(ii) and 3(vii) and they have given undertaking. It is clear that mere continuity in service does not confer any right in favour of such employees.”

The Tribunal further held that since a conscious decision is taken by the Government on the basis of Cabinet decision, the Tribunal is unable to grant relief as prayed for. At the same time, the Tribunal, by the impugned order, protected the pay of the Petitioners.

6 The learned Counsel for the parties have sought to advance contentions before us as to the legal position when an order of absorption of an ad-hoc employee is issued on certain conditions, whether, after accepting the absorption, where an employee can turn around and challenge some part of the conditions. The Tribunal has relied upon various judicial precedent in the impugned order. According to the learned counsel for the Petitioners that even after accepting the conditions the challenge can always be raised.

7 Another nuance of the nature of challenge needs to be noticed. The challenge could be on the ground that the conditions are not acceptable. Challenge could also be that the conditions are inherently unworkable. Though, in the Original Application the second aspect of approach is hinted in the pleadings the same tried to be elaborated before us by the Petitioners in their petition, where the Petitioners have taken following grounds:

“P. The Ld.Tribunal ought to have appreciated that the new pension scheme has come into effect from 01.01.2004. Therefore, the new pension scheme is applicable to the employees who have joined services after 01.01.2004. The Petitioners were appointed on the post of medical officers almost 10 to 14 years prior to 01.01.2004. It ought to have been appreciated that from 01.01.2004 there were no deductions from the salaries of Petitioners towards contribution under the new pension scheme. Even after the services of Petitioners came to be regularized in the year 2016, there have been no deductions from the salaries of Petitioners towards contribution under the new pension scheme. Therefore, the services of Petitioners could not

have been subjected to the new pension scheme, more particularly when there were no deductions from the salaries of Petitioners. It ought to have been appreciated that Petitioners are entitled for pension under the old pension scheme.”

This is in the furtherance of prayer clause (c) made in the Original Application.

8 However we do not find any discussion on this aspect pleaded in the petition in aid of prayer clause (c), in the impugned order. It could be that this argument in aid of prayer clause (c) was not urged before the Tribunal in the form it is urged before us. Considering the fact that the Petitioners have now retired from the service and are without any pension whatsoever even after working for a substantial period of time, we are of the opinion that an opportunity be given to the Petitioners to agitate this issue before the Tribunal.

9 In the light thereof, the impugned order dated 26 April 2023 is quashed and set aside. The Original Application No.267/2016 of the Petitioners is restored before the Tribunal, qua the Petitioners only.

10 We grant leave to the Petitioners to apply for amendment to incorporate the above mentioned pleadings in the Original Application. After the amendment is carried out, an opportunity be given to the Respondents to file their reply.

11 The Tribunal will consider the claim of the Petitioners in the context of the above mentioned challenge which we have referred to and proceed to pass appropriate order as per law.

12 Writ Petition is accordingly disposed of in above terms.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)