

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

WRIT PETITION NO. 6075 OF 2010

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| 1. State of Maharashtra, Through its
Secretary, Public Health Department
Mantralaya, Mumbai. | Petitioners |
| 2. The Director, Health Services,
Maharashtra State, Mumbai. | |
| 3. Deputy Director of Health Services,
Nagpur Circle, Nagpur. | |
| 4. Dean, Government Medical College
and Hospital, Nagpur. | |

-Versus-

Dr. Anand Bajirao Gajbhiye, Aged about 45 years, Occupation : Medical Officer, R/o 301, Shivam Apartment, Vishwakarma Nagar, Nagpur.	Respondent
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Mrs.K. R. Deshpande, AGP for the petitioners.
Mr. R.D.Murkute, counsel for respondent.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 3RD JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

By this writ petition, the State of Maharashtra and
others challenge the order of the Maharashtra Administrative

Tribunal dated 08/04/2010, allowing Original Application No.86 of 2009 filed by the respondent and directing the petitioners to grant the increment to the respondent on completion of one year of service and continue to grant the same to the respondent till he is continued in service.

2. According to the respondent, who had filed the original application before the Maharashtra Administrative Tribunal, in view of the bond furnished by him at the time of securing admission to the post graduation medical course, he was appointed as a medical officer on *ad hoc* basis. The services of the respondent were continued from time to time on *ad hoc* basis and he claimed to have worked with the petitioners as an *ad hoc* medical officer till he filed the original application in the year 2009. Since the respondent was not granted increment after the completion of one year of service and also further increments, the respondent prayed in the original application that a direction be issued to the petitioners to grant the annual increment to the respondent after the completion of one year and thereafter during every year, while he was in service. The

tribunal, by considering the orders passed by it in some other original applications granted the relief in favour of the respondent and directed the State Government to grant annual increment to the respondent after completion of one year of service and to grant him annual increments regularly till he was in service.

3. Mrs.Deshpande, the learned Assistant Government Pleader appearing for the petitioners, submitted that the tribunal was not justified in directing the petitioners to grant annual increments to the respondent on completion of one year of service on *ad hoc* basis. It is submitted that the respondent was appointed only for certain period or till a candidate selected by the Maharashtra Public Service Commission was appointed by the petitioners on the post of medical officer, whichever was earlier. It is submitted that there was a break in the services of the respondent on each of the occasions, when a fresh appointment order was granted. It is stated that the Full Bench of the Maharashtra Administrative Tribunal has held in the order dated 30/03/2010 in Original Application No.240 of

2009 and others that an employee, who is not appointed on regular basis and is continued on *ad hoc* basis from time to time would not be entitled to yearly increments. It is stated that it is well settled that only an employee appointed on regular basis would be entitled to increments after each year of service.

4. Shri Murkute, the learned counsel for the respondent, supported the order of the tribunal. It is submitted that the respondent was appointed as a bonded candidate on the post of medical officer and though there was an artificial break in the services, the respondent has in all worked for a period of more than ten years as a medical officer on *ad hoc* basis. It is submitted that the orders passed by the tribunal in several other original applications were relied on by the tribunal while granting the relief in favour of the respondent. It is submitted that the Full Bench of the Maharashtra Administrative Tribunal has considered the cases of medical officers and lecturers that were not duly selected but the respondent was selected by duly constituted selection committee and his appointment is not irregular. It is submitted

that when the relief is granted to several other employees that are similarly situated, the respondent cannot be left out.

5. On hearing the learned counsel for the parties, it appears that the tribunal was not justified in granting the relief in favour of the respondent solely on the basis of the orders passed in some other original applications. Probably, the order passed by the Full Bench of the tribunal on 30/03/2010, was not brought to the notice of the tribunal when the tribunal decided the matter in the original application filed by the respondent on 08/04/2010. The tribunal, therefore, wrongly relied on the decisions that were rendered by the Bench of Two Presiding Officers of the Tribunal, without considering the decision rendered by a Bench comprising of the Three Presiding Officers of the tribunal. The appointment order of the respondent is placed on record. The appointment order clearly shows that the respondent was appointed on *ad hoc* basis only for certain period or till a candidate selected by the Maharashtra Public Service Commission was appointed by the petitioners on the post of the medical officer, whichever was

earlier. The appointment order of the respondent clearly shows that the respondent was not even appointed for some period and his appointment could have come to an end if a duly selected candidate was appointed by the recommendations of the Maharashtra Public Service Commission on the post he was holding. Merely because the respondent continued to serve as a medical officer, the tribunal could not have directed the petitioners to condone the break in the services of the respondent and grant him annual increments. Had the services of the respondent regularised from the date on which he was appointed, the respondent may have been entitled to claim the increments after the end of each year of service. However, it appears that the services of the respondent were not regularised till his services were terminated. The appointment of the respondent was on temporary and *ad hoc* basis and the respondent was therefore not entitled to claim yearly increments, solely because he was permitted to continue from time to time as a medical officer on *ad hoc* basis. It is well settled that only regular employees would be entitled to increments and the other benefits to which they are entitled to.

We find that the tribunal has committed a serious error in allowing the original application and directing the petitioners to release the increments in favour of the respondent.

6. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order dated 08/04/2010 passed in Original Application No.86 of 2009 is quashed and set aside. The Original Application No.86 of 2009 filed by the respondent stands dismissed.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)