

O.A. No. 795/2018 **(SB)**

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

None for the applicant.

Shri H.K. Pande, Id. P.O. for the respondents.

The learned P.O. files reply on behalf of R-2 to 4. It is taken on record.

S.O. two weeks for filing rejoinder, if any.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 1022/18 with C.A.400/18 **(SB)**

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri T.J. Patil, Id. counsel for the applicants and Shri S.A. Deo, Id. CPO for the State.

2. The applicants filed Pursis dated 22/02/2019 mentioning that they want to withdraw the O.A. Permission is granted as prayed for. Copy of the pursis is taken on record and marked Exh-X for the purposes of identification.

3. In view thereof, the O.A. stands disposed of as withdrawn with no order as to costs.

4. Consequently, the C.A. also stands disposed of.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 452/2018 (SB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri S.S. Bajwa, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

Since the pleadings are complete, the matter is admitted and be kept for final hearing.

The learned P.O. waives notice for the respondents.

**S.O. in the last week of
March,2019.**

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 827/2018 (SB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Shri L.S. Burde, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

At the request of Id. counsel for the applicant, **S.O. four weeks** for filing rejoinder.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. Nos. 282 & 283 of 2018 **(SB)**

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri R.V. Shiralkar, Id. counsel for the applicants and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The learned P.O. files copy of the Maharashtra Sub-Service Departmental Examination Rules, 1988 in O.A.282/2018. It is taken on record and marked Exh-X for the purposes of identification.

Closed for orders.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 494/2018 (SB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri A. Ayyub, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

2. On 14/02/2019 following order was passed -

"2. The applicant who is a Tutor Nurse has been transferred from Akola to Ambejogai vide order dated 31.5.2018. Admittedly, she was due for transfer. As per the Govt. policy and guidelines issued on 9.4.2018, it was obligatory on the part of the respondent authorities to prepare a seniority list of persons working at a particular station and the reason for such seniority list is to see that the employees who are senior shall be transferred first. The seniority list seems to have been prepared, a copy of which is at page Nos. 44 & 45. As per the seniority list, the applicant stands at the last but one number. It seems that the senior

employees at the station even did not fill the forms for transfer, though they were due for transfer and the applicant has been transferred, though she is very junior at the station. Thus, the respondents have not considered the fact that the applicant was junior most at Akola.

3. *As per the policy, preference was also asked for the post and the applicant has given her preference in order as Nagpur, Pune, Aurangabad, Gondia, Dhule and Kolhapur. However, none of her option post was considered and the applicant has been posted at Ambejoigai, District Beed which was never her post of choice. Prima facie, it seems that there is a breach of guidelines issued in the policy dated 9.4.2018 and simply stating that the transfer is on administrative ground, the applicant has been transferred at Ambejogai.*

4. *The Ld. counsel for the applicant submits that in order to avoid inconvenience to the applicant as well as to the State, the applicant has joined at Ambejogai under protest. However, her husband is doing a small business at*

Akola and the post at Akola is still vacant till filing of reply. Her husband is suffering from hypertension and had an attack of high blood pressure for which the applicant was required to spend Rs. 1,00,000/-.It is further submitted that the applicant's son is taking education at Pune and, therefore, the applicant is ready to get transferred at Pune which is her place of choice at Sr. No.2. In the alternative, the applicant submits that since nobody is posted in her place at Akola, she may be re-transferred to Akola.

5. Considering the aforesaid aspects, the Ld. P.O. is therefore, requested to take instructions from the respondentNo.2 as to whether applicant's prayer for transfer at Pune or in the alternative at Akola can be considered and if yes, within how many days".

3. In view of the aforesaid order, the learned P.O. has taken instructions from

the respondent no.2 as he filed on record one Chart showing the vacancy position which is marked Exh-X from which it seems that as per the said Chart the post of Tutor is lying vacant at Pune. The learned P.O. submits that the post at Ambejogai where the applicant is working may become vacant, if she is immediately posted at Pune and it will not be in the administrative convenience and therefore the applicant can be adjusted at Pune on the vacant post in the annual general transfers of 2019.

4. The learned counsel for the applicant submits that the applicant has no objection if she is adjusted in the general annual transfers of 2019 at Pune. In view thereof, the application can be disposed of with necessary direction to the respondent no.2. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondent no.2 is directed to consider the case of the applicant for transfer at Pune in the vacant post as

mentioned in the Exh-X dated 05/02/2019
in the general annual transfers of 2019.

(iii) No order as to costs.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 862/2018 **(SB)**

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Shri S. P. Palshikar, Id .counsel for
the applicant and Shri M.I. Khan, Id. P.O.
for R-1 to 2. None for R-3.

At the request of learned counsel
for both the parties, **S.O. 28/02/2019**.

Interim relief to continue till then.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 542/2017 **(SB)**

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Shri Bharat Kulkarni, Id. counsel
for the applicants and Shri P.N.
Warjurkar, Id. P.O. for the respondents.

At the request of Id. P.O., **S.O.**
27/02/2019 for filing reply.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

Rev.A.21/18 in O.A. No. 704/15 (DB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan,
Member (A).**

Dated : 26.02.2019

Shri S.C. Deshmukh, Id. counsel
for the applicant and Shri P.N. Warjurkar,
Id. P.O. for R-1&2. None for R-3 to 5.

S.O. 28/02/2019.

Member (A)

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 444/2018 (SB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri N.R. Saboo, Id. counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for R-1 to 3. None for R-4.

2. The applicant filed a pursis along with documents which is at Exh-X and it is stated that the representations of various persons have been entertained and they have been accommodated in the Social Forest Region at Nagpur. The learned counsel for the applicant also submits that there are still vacancies in Social Forest Region at Nagpur and the applicant has also filed representation to that effect. Copy of such representation is at Annex-A-3 along with the pursis dated 4/2/2019. It is stated that the applicant is willing to be considered for transfer at the time of general annual transfers of 2019, in case he is adjusted at Nagpur Social Forest except Wild Life in view of the G.R. dated 22/05/2017.

3. The learned P.O. submits that he will take instructions on the pursis and position of vacancy so as to whether the applicant can be accommodated as per his request during the general annual transfers of 2019.

S.O. one week.

Steno copy is granted.

Vice-Chairman (J).

dnk.

dated :- 26/02/2019.

O.A. No. 737/2018 (SB)

**Coram : Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated : 26.02.2019

Heard Shri M.R. Khan, Id. counsel for the applicant and Shri S.A. Sainis, Id. P.O. for the respondents.

2. Vide impugned order dated 18/08/2018 the applicant, who is a Sub Divisional Engineer has been posted from Yavatmal to Zilla Parishad, Minor Irrigation, Sub Division, Deoulgaonraja. It seems that the applicant was earlier promoted to the post of the Sub Divisional Engineer vide order dated 25/04/2018. In consequence of the said order the applicant was posted at Yavatmal in Amravati Division vide order dated 27/04/2018. However within four months vide impugned order dated 18/08/2018 the applicant has been transferred to Deoulgaonraja and said order is under challenge.

3. In the reply-affidavit in para-3 it is mentioned that the Competent Authority

for post the applicant is the Government and not the Chief Engineer and this fact came to the knowledge of the Chief Engineer on the very day on 27/04/2018 and therefore it was directed to the concerned authority not to relieve the applicant. However, it is admitted fact that the applicant was relieved on the date of posting i.e. 27/04/2018 itself and joined at Yavamtal and has worked there for about four months.

4. The learned counsel for the applicant has invited my attention to the order of promotion issued by the Government in respect of government and other employees of the similar cadre. It is dated 25/04/2018.

5. The para-7 of the said order reads as under –

^i nklurh fnyY; k i fjjf'k"V ^^v** e/; suem vfHk; R; kauk
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fopkjr ?kou r l p ek- jkT; i k egkn; kpsl u 2018&2019
; k vFkI adfYi; o"kkzfjrk fnyY; k funB kkuq kj
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6. The learned counsel for the applicant submits that as per the said letter it is clear that the concerned Chief Engineer has been given full authority to post the promoted employees as per the administrative convenience. In such circumstances, the submission of the learned P.O. is that the Chief Engineer was having no authority to post the applicant at Yavatmal has no legal force.

7. The learned P.O. submits that in para-7 it has been stated that the Officer shall not be relieved unless approval of the government has been obtained. Plain reading of the promotion order however shows that the concerned Chief Engineer was to verify as to which post was suitable and whether there is a need of officers to be posted and considering all these facts the promotees were to be posted within two days. It was also stated that if the posting is not accepted within one month and the concerned officer does not join within one month, his promotion will be cancelled. Considering all these facts, it will not lie in the mouth of respondent no.1 that the Chief Engineer was having no authority to post the applicant at Yavatmal. Except this there is nothing on the record to show as to why the applicant was posted at Deoulgaonraja or whether his posting at Deoulgaonraja was in the administrative exigency. The Minutes of the meeting are also not placed on record to show as to why the Government needs to change the posting of the applicant. Admittedly, nobody is posted in place of applicant at Yavatmal. Considering all these aspects,

I am satisfied that the impugned order dated 18/08/2018 whereby the applicant has been transferred to Deoulgaonraja just within four months of his posting at Yavatmal is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Hence, the following order :-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 18/08/2018 at Annex-A-1 whereby the applicant has been posted as Sub Divisional, Soil Conservation Officer, Zilla Parishad, Minor Irrigation, Sub Division, Deoulgaon Raja, Dist. Buldhana is quashed and set aside.
- (iii) The respondents are directed to allow the applicant to work at Yavatmal.
- (iv) no order as to costs.
Steno copy is granted.

Vice-Chairman (J).

dnk. dated :- 26/02/2019.

O.A.No. 39 of 2019 (DB)

**(Dr. Shri Prabhakar S/o Punaji
Jameewar vs. State of
Maharashtra & Ors.)**

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar,
Member (J).**

Dated :- 26/02/2019.

ORDER

**Per :
Anand Karanjkar Member (J).**

Heard Shri A.Z.
Jibhkate, learned counsel for the
applicant, Shri A.M. Ghogre, Id.
P.O. for R-1 to 3 and Shri A.Y.
Kapgate, Id. counsel for respondent
nos.4 and 5.

2. It is case of the
applicant that he was appointed in

service as Medical Officer, he served at various places in Gondia district. It is submission of the applicant that GAD issued G.R. dated 02/07/2002 and as per this G.R., the Medical Officers who were drawing salary in the pay scale of Rs.15600-39100 with Grade Pay Rs.5400 were recognised as Group-A Officers. As the applicant was receiving the same pay scale, therefore, the applicant was Group-A Medical Officer. It is grievance of the applicant that on the basis of illogical classification the respondents came to the conclusion that the applicant was not Group-A Medical Officer, but he

was Group-B Medical Officer and benefit of the G.R. dated 03/05/2015 and later G.R. issued in 2018 was not given to him. It is submitted that as per G.R. dated 31/05/2015 the Medical Officers serving in Group-A and drawing salary Rs.15600-39100 with Grade Pay Rs.5400 were entitled to serve till completion of the 60 years of their age and the subsequent G.R. issued in 2018 also extended the benefit to such Medical Officers.

3. It is submitted that as the applicant was Group-A Medical Officer, therefore, he was entitled to serve till 31/01/2021. It is submitted that decision was taken by the District Health Officer, Zilla

Parishad, Gondia that the applicant's date of retirement was 31/01/2019 and accordingly he wrote letter at Annex-A-1 to the Deputy Director of Health Services, Nagpur Circle. It is submission of the applicant that similar case was examined by the Hon'ble Bombay High Court Bench at Nagpur in Writ Petition No.6757/2017 and vide order dated 05/03/2018 relief was granted to the respondents in that Writ Petition holding that all Medical Officers who were drawing salary in the pay scale of Rs.15600-39100 with Grade Pay Rs.5400 were Group-A employees and they were entitled for the benefit of G.R. dated 30/05/2015.

4. The respondents have submitted that the applicant is Group-B Medical Officer, he was never brought in the cadre of Group-A Medical Officer and therefore the applicant is not entitled for the relief. It is submitted by the respondents that vide G.R. dated 17/10/2014 decision was taken by the Government to bring the applicant in the cadre of Medical Officer, Group-B w.e.f. 28/05/2001. It is submitted that the applicant was never brought in the cadre Medical Officer, Group-A and merely because the applicant was drawing salary in the pay scale of Rs.15600-39100 with Grade Pay Rs.5400 was not entitled to claim

the post in Group A. The learned P.O. has placed reliance on the Judgment in Writ Petition Nos. 2562,2563 and 2564 of 2017 decided by the Hon'ble Bombay High Court, Division Bench at Aurangabad on 16/04/2018. It is submitted that in view of the latter Judgment delivered by the Hon'ble Bombay High Court, Division Bench at Aurangabad, the Hon'ble Bombay High Court Division Bench at Bombay, in Writ Petition No.4523/2017 and 9386/2017 decided on 05/07/2018 relied upon the Judgment delivered by the Hon'ble Division Bench Aurangabad and in view of these two Judgments the applicant is not

a Group-A Medical Officer and there is no substance in the contention of the applicant that interim protection be given to him.

5. During course of the argument the learned counsel for the applicant submitted that though his date of retirement was 31/01/2019, but the applicant is working till today on the post and he is in service, the applicant had requested the Medical Officer Dr. Vikram Katare to accept the charge, but he refused to accept the charge and consequently there was no alternative other than to work. It is submitted that as the applicant is not relieved from the duty, therefore, the applicant is in

service till today, therefore, he is entitled for the interim protection till the decision of the O.A.

6. The learned counsel for the applicant submitted that the earlier Judgment is delivered by the Hon'ble Bombay High Court Bench at Nagpur in Writ Petition No.6757/2017, operates as binding precedent, this decision was placed before the Hon'ble Division Bench,at Aurangabad but not followed. It is submitted that as there was a contrary view taken in earlier decision, it should have been referred to the Full Bench and without doing so the Writ Petition Nos. 2562 to 2564 of 2017 were decided. It is submitted that in

series of Judgments it is held that whenever there is a conflict between the decision delivered by the Coordinate Benche of the same High Court proper post is to refer the decision to the Full Bench. It is submitted that without referring the issue to the Full Bench, the latter Division Bench cannot take a contrary view and discard the precedent. The learned counsel for the applicant is relying upon the Judgment in case of **Jaisri Sahu vs. Rajdewan Dubey & Ors. reported in 1962 AIR (SC),83, Santlal Gupta & Ors. Vs. Modern Cooperative Group Housing Society Limited & Ors.,(2010) 13 SCC,336** and **Ravinder Singh Vs.**

Sukhbir Singh & Ors.,AIR 2013

SCC,1048. On the basis of these Judgments, it is contention of the learned counsel for the applicant that the law laid down by the Hon'ble Bombay High Court Division Bench at Nagpur, in Writ Petition No.6757/2017 is binding as a precedent and it must be followed.

7. In order to decide the controversy, it is necessary to read the Judgment delivered by the Hon'ble Bombay High Court Division Bench, at Aurangabad, in Writ Petition Nos.2562 to 2564 of 2017 on 16/04/2018. In para-3 of the Judgment, it is observed that

“the Judgment of the Division Bench at Nagpur dated 5th March, 2018, in Writ Petition No. 6757 of 2017, relied by the petitioners may not be of any avail to the petitioners. In the said writ petition, the Judgment of the tribunal was challenged which was basically based on the Government Resolution dated 30th May, 2015”.

8. In para-4 it is observed that -

“In the present case, the petitioners are absorbed pursuant to the Government Resolution dated 17th October, 2014, in Group 'B'. The Original Applications are filed by the applicants in the years

2010 and 2015. The tribunal in the order has nowhere referred to or discussed the Government Resolution dated 17th October, 2014, nor has considered the medical officers in Maharashtra Medical and Health Services, Group A (Recruitment) Rules, 2000 and as amended on 18th July, 2013. These rules would be relevant to be considered while coming to the conclusion as to whether the petitioners would be considered in Group 'A'. According to the learned counsel for the petitioners, the petitioners are paid the salary applicable to Group 'A' medical officers. However, we don't find any discussion on the said aspect'.

9. Thereafter in para-6 of the Judgment direction was given that-
“in light of the above, we relegate the parties before the tribunal. The impugned order is quashed and set aside and the petitioners are relegated before the tribunal. The petitioners shall appear before the tribunal on 2nd May, 2018. The tribunal shall also consider the Government Resolution dated 2nd July,2002, more particularly, Clause 3-A of the said Government Resolution”.

10. After reading paras-3, 4&6 of the Judgment in Writ Petition Nos. 2562 to 2564 of 2017, it is crystal clear that the Judgment

in Writ Petition No. 6757 of 2017 was not relied upon, by The Hon'ble Division Bench. The Hon'ble Division Bench in latter para observed that the petitioners in that case were absorbed in Group-B service in pursuance of the G.R. dated 17/10/2014. It was also observed that the Tribunal did not refer or consider the G.R. dated 17/10/2014 similarly the Maharashtra Medical and Health Services, Group-A Recruitment Rules,2000 as amended on 18/07/2013 were not considered. In para-6 the Division Bench directed that the Tribunal shall consider the G.R. dated 02/07/2002, more

particularly, Clause 3-A of the said G.R.

11. The applicant has placed on record G.R. dated 17/10/2014 which at Annex-A-3. In this G.R. decision was taken by the Government that the Government decided to absorb 869 Medical Officers in Group-B cadre w.e.f. 28/05/2001. On page no.25 of the annexure to the G.R. at sr.no.336 the name of the applicant is mentioned and his date of retirement is mentioned as 31/01/2019. Thus it seems that the Government of Maharashtra vide G.R. dated 17/10/2014 brought the applicant in the cadre of Group-B Medical Officer. The learned

counsel for the applicant was unable to point out that any order was passed by the Government by which the applicant was brought in the cadre of Group-A Medical Officer. It is submission of the applicant that by virtue of G.R. dated 02/07/2002 as the applicant was drawing the salary in the pay scale of Rs.15600-39100 with Grade Pay Rs.5400, therefore, he was Group-A Medical Officer.

12. In this regard we would like to consider the Clause 3-A of G.R. dated 02/07/2002 which is reproduced as under –

^3 v- t; k oxh; k. kku; kj T; k ink; ntk
^vjktif=r* l etyk tkrk; rkp ntk l qkkjhr
oxh; k. kku; jgh dk; e jkghy- rlp T; k inkauk

vxnkjp jktif=r ntkz?kkf'kr dyyk vkgj R; k i nkp
rks ntkz ; ki qgh dk; e jkghy- vjktif=r inkuk
dG orUJskP; k vk/kkjsfdok fof'k"V xVke/khy
l ekoskuke/; svki kvki jktif=r ntkz i tr gskkj
ukgh**

13. After reading Clause 3-A it seems that merely on the basis of the pay the status of the post would not change, if it is non gazetted post, it would remain the same, and if the post is gazetted it would remain the same even after the classification. Keeping in view Clause 3-A of G.R. dated 02/07/2002, it is necessary to consider the submissions canvassed on behalf of the respondents. The Hon'ble Bombay High Court Division Bench, at

Aurangabad, specifically observed that in Writ Petition No.6757/2017 the Judgment of the Tribunal was challenged and it was based on G.R. dated 30/05/2015. It is observed by the Hon'ble Division Bench that it was necessary to consider the G.R. dated 17/10/2014 particularly Clause 3-A and the Maharashtra Medical and Health Services, Group-A recruitment rules,2000 as amended on 18/07/2013. After reading the Judgment in Writ Petition No.6757/2017, it seems that on the basis of G.R. dated 02/07/2002 it was held that the respondent in that matter was entitled for the relief as he was Medical Officer drawing the

pay scale of Rs.15600-39100 with Grade Pay Rs.5400 at the relevant time. After reading this entire judgment, it seems that there was no discussion about the Clause 3-A of the G.R. dated 02/07/2002.

14. The learned counsel for the applicant has placed reliance on the Judgment in case of Santlal Gupta & Ors. Vs. Modern Cooperative Group Housing Society Limited & Ors (cited supra).

In para-19 of the Judgment the Hon'ble Apex Court has observed as under –

“In the instant case, the position before us is worse as the latter Bench has taken a divergent view from an earlier coordinate Bench.

Particularly taking note of the earlier decision holding otherwise, without explaining why it could not follow the said precedent even while extensively quoting the same. Judicial propriety and discipline are not served by such conduct on the part of the Division Bench. Thus, in view of the above, it was not permissible for the High Court to take the course which it has adopted and such a course cannot be approved.”

15. In the matter before the Hon'ble Apex Court the Coordinate Bench after taking note of the earlier decision took contrary view without explaining why it could not follow the said Judgment. In the present matter the position is altogether different. The Hon'ble Bombay High Court Division Bench,

at Aurangabad, after going through the Judgment in Writ Petition No.6757/2017 observed that basically that Judgment was based on the G.R. dated 30/05/2015 and directed the Tribunal to consider the G.R. dated 17/10/2014, the recruitment Rules of Group A medical officers and Clause 3-A of the G.R. dated 02/07/2002. Therefore, the Hon'ble Division Bench has impliedly recorded the reasons why it has not placed reliance on the Judgment in Writ Petition No.6757/2017. The legal position is stated that the Courts are bound to decide the cases before it on the basis of the Statute, Rules, Regulations, Notifications,

Resolutions and Circulars issued by the Government time to time unless and until they are declared ultra virus. Till today it is not held by any competent Court that Clause 3-A of the Government of the G.R. dated 02/07/2002 is ultra virus, therefore, without consideration of this clause it is not possible to draw the conclusion that merely because a Medical Officer who is drawing the pay scale of Rs.15600-39100 with Grade Pay Rs.5400 is a Group-A Medical Officer. On the contrary, after reading the Clause 3-A inference is to be drawn that merely on the basis of the pay scale, the Government servant cannot claim the grade of the post.

16. The legal position as explained in the judgments on which reliance is placed by applicant, is that in order to acquire status of binding precedent the judgment should not be in conflict with the statutory provision, rule, regulation, resolution, notification which have force of law and if the judgment is in conflict with the statutory provision, rule, regulation, resolution, notification then it is not binding precedent.

17. Similarly the legal position is well settled that while interpreting statutes/ Government orders/ resolutions/ circulars etc. they must be read as a whole. Thus the law is that while interpreting the

G.R., it must be read as a whole and without considering the entire resolution, it is not possible to draw the interference. In view of this law, it must be seen what view was formed by the Hon'ble Bombay High Court, Division Bench at Auranabad, after reading the Judgment in Writ Petition No.6757/2017. The discussion in para-4 and para-6 impliedly reflects the reasons why reliance was not placed on the Judgment delivered in Writ Petition No.6757/2017.

18. After examining this position, the Hon'ble Bomay High Court Division Bench at Aurangabad issued specific direction to the Tribunal to decide

the applications as per the direction. In view of this discussion, it is not possible to accept that the Hon'ble Bombay High Court Division Bench, Bench at Aurangabad totally disregarded the earlier decision in Writ Petition No.6757/2017 and took a contrary view. In this matter, it further appears that in Writ Petition Nos.4523/2017 and 9386/2017 decided on 05/07/2018 the Hon'ble Bombay High Court Division Bench Bombay, has placed reliance on the Judgment delivered by the Hon'ble Bombay High Court Division Bench, Aurangabad. We are therefore of the view that we are bound to follow the later judgment delivered

by Hon'ble Division Bench Aurangabad, as the issue in Writ Petition Nos.2562 to 2564 of 2017 was the same whether the Group-B Medical Officers drawing the salary in the pay scale of Rs.15600-39100 with Grade Pay Rs.5400 were Group-A Medical Officers.

19. So far as the contention of the applicant that even after expiry of the date of retirement he is in service is concerned, we would like to point to that the applicant's claim is based only on this affidavit. On the contrary Dr. Katare has sworn affidavits which are at page nos.99 and 101. It is specifically mentioned that there is no substance in the story of the

applicant that the applicant requested Dr. Katare to receive the charge and as Dr. Katare refused to accept the charge, the applicant continued working on the post of Medical Officer.

20. In this regard we would like to point out that when the government servant is informed in advance that on such and such date he will stand retire from the service, whether he has right to enter the office without the authority given in writing by his Appointing Authority. In this case it is crystal clear that the Government of Maharashtra issued the G.R. dated 17/10/2014 by which the applicant was brought in the cadre of Medical

Officer, Group-B, the annexure to this G.R. i.e. the list at sr.no.336 the name of the applicant is mentioned and his date of retirement is shown as 31/01/2019. The applicant has placed on record the order dated 31/01/2019 issued by the Chief Executive Officer, Zilla Parishad, Gondia. In this order, it is specifically mentioned that the applicant was completing age of 58 years on 31/01/2019 and after office hours of 31/01/2019 he was relieved from the duty. It is important to note that this order was specific, after office hours of 31/01/2019 the applicant was relieved from the service on attaining the age of

superannuation, therefore, legally speaking the applicant has no legal right to enter the office thereafter under the pretext he was on duty. It is pertinent to note that the applicant never informed the CEO, Zilla Parishad, Gondia that Dr. Katare refused to receive the charge, therefore, he was continuing the duty. After office hours of 31/01/2019, in law the applicant had no right to work on the post of Medical Officer because as per the order he was already relieved from the duty. In Government service it is not permissible to work in the Government office after attaining the age of superannuation. The

applicant is making capital that the charge was not accepted by Dr. Katare. In our opinion to hand over the charge was mere formality. The applicant was supposed to fill the form i.e. the charge handing over certificate together with physical objects owned by the office, which were in his possession and this was the formality. It is not possible to say and accept that as this formality was not completed, therefore, the applicant was continued in service even after attaining the age of superannuation. We are of the firm opinion that except the Appointing Authority no other Authority is empowered to continue the

Government servant in service and to work in the office on his attaining the age of superannuation. In view of these discussions, we are unable to accept that the applicant has any legal or equitable right to continue in the office, consequently we hold that the applicant is not entitled for the interim relief. Hence, the prayer of interim relief stands rejected.

(A.D. Karanjkar)
(Shree Bhagwan)
Member(J).
Member (A).

Dated :- 26/02/2019.

*dnk.

O.A. No. 81/2019 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 26.02.2019

C.A.No. 66/19 -

Heard Shri S.N. Gaikwad, Id. counsel for the applicant, Shri V.A. Kulkarni, Id. P.O. for R-1 to 3 and Shri N.S. Autkar, along with Shri A.B. Tikle, Id. counsel for Intervener.

2. In the interest of justice the learned counsel for intervener is permitted to join this proceeding.

3. In view of above, the C.A. stands allowed.

C.A.No. 67/19 -

Heard Shri S.N. Gaikwad, Id. counsel for the applicant, Shri V.A. Kulkarni, Id. P.O. for R-1 to 3 and Shri N.S. Autkar, along with Shri A.B. Tikle, Id. counsel for Intervener.

2. It is clarified that when this Bench passed the order on 4/2/2019 the order was passed only in relation to the applicant and as he was not relieved from

duty direction was given to maintain that status-quo, that order has nothing to do with the posting of respondent no.4 or the intervener. The Department is at liberty to post the respondent no.4 and the intervener at any other place, if available till disposal of this O.A.

3. In view of above, the C.A. stands allowed.

O.A.81/2019 –

Heard Shri S.N. Gaikwad, Id. counsel for the applicant, Shri V.A. Kulkarni, Id. P.O. for R-1 to 3 and Shri N.S. Autkar, along with Shri A.B. Tikle, Id. counsel for Intervener.

2. The matter be kept after two weeks for final hearing. The parties are directed to submit their reply.

S.O. after four weeks.

Steno copy be supplied to the parties.

Member (J)

dnk.

Dated – 26/02/2019.

O.A. No. 39/2019 (DB)

**Coram : Hon'ble Shri Shri Bhagwan,
Member (A) &
Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 26.02.2019

Heard Shri A.Z. Jibhkate, learned counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for R-1 to 3 and Shri A.Y. Kapgate, Id. counsel for respondent nos.4 and 5.

Prayer for interim relief is refused.

S.O. four weeks.

Member (J)

Member (A)

Dnk.

O.A.No. 41/2019. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri S.P.Palshikar, the Id. Counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the State. Await service of respondent nos. 2 to 5.

There are many objections. The Id. counsel for the applicant may remove all the objections. **S.O. in due course.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.Nos. 277 & 281/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri A.S.Tiwari, the Id. Counsel for the applicant and Shri A.P.Potnis, the Id. P.O. for the respondent nos. 1 to 3. None for the respondent no. 4 in O.A.No.277/2018.

The Id. counsel for the applicant further seeks two weeks time to file Rejoinder. **S.O. three weeks.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 595/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri Sunil Pande holding for Shri B.M.Kharkate, the Id. Counsel for the applicant, Shri S.A.Sainis, the Id. P.O. for the respondent nos. 1 & 2 and Shri Abhijeet Parihar, the Id. counsel for the respondent nos. 3 & 4.

The Id. P.O. as well as Id. counsel for the respondent nos. 3 & 4 submits that they requires three weeks time to file reply. **S.O.**
four weeks.

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.No. 54/2019. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 26th February 2019.

Shri S.P.Palshikar, the Id. Counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the respondents.

2. The Id. P.O. placed on record, the letter from Regional Enquiry Officer, Amravati. However, the letter is very vague. In view of this, the Id. P.O. also submits that he will file clear cut affidavit on Friday. However, the Id. P.O. is also directed to call Regional Enquiry Officer, Amravati to remain present on next date.

3. **S.O. Friday i.e. 01/03/2019.**

4. **The matter be kept high on board.**

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.No. 417/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Smt. Hiranwar holding for Shri J.R.Kidilay, the Id. Counsel for the applicant and Shri A.P.Potnis, the Id. P.O. for the respondents.

As per the request of Id. counsel for the applicant, S.O. one week to file Rejoinder. **S.O. one week.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 761/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

None for the applicant. Shri A.M.Ghogre, the Id. P.O. for the respondent nos. 1 & 2. None for the respondent no. 3.

As submitted by Id. P.O., matter is **admitted** and kept for final hearing. Meanwhile, the Id. counsel for the applicant if so desire, may file Rejoinder.

The Id. P.O. waives notices for the respondents.

S.O. in due course.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 761/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 26th February 2019.

Shri S.P.Palshikar, the Id. counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the respondents.

The Id. P.O. filed the G.R. No. 21@10@2015- The Id. counsel for the applicant has relied on the **Hon'ble Apex Court Judgment in the case of State of Maharashtra Vs. Milind & Ors., Civil Appeal No. 2294 of 1986, decided on November 28, 2000.**

The Id. P.O. get other documents which can dispute the fact mainly on Pg. No. 31 at para no. "G".

S.O. 05/03/2019.

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.Nos. 141 & 142/2016. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri S.N.Gaikwad holding for Shri S.Khandekar, the Id. counsel for the applicant, Shri M.I.Khan, the Id. P.O. for the respondent nos. 1 & 2 and Ms. A.Singh, the Id. counsel for the respondent nos. 3 & 4 in O.A. No. 141/2016.

At the request of Id. counsel for the applicant, **S.O. Tuesday i.e. 04/03/2019.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 253/2016. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

None for the applicant. Shri
H.K.Pande, the Id. P.O. for the respondents.

As per the request of Id. P.O., **S.O.**
two weeks.

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.Nos. 203 & 204/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 26th February 2019.

Shri A.D.Girdekar, the Id. Counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondents.

The Id. P.O. filed the return on behalf of the respondent nos. 1 & 2 and affidavit-in-reply on behalf of the respondent no. 3. It is taken on record. Copy is served to the other side.

The Id. Counsel for the applicant is not interested to file Rejoinder. Matter is **admitted** and kept for final hearing.

The Id. P.O. waives notices for the respondents.

S.O. in due course.

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.No. 257/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Rev.24/2018:-

Ms. V.B.Gohatre in person along with her father and Shri P.N.Warjurkar, the Id. P.O. for the respondents.

The Id. P.O. submits that he has received the instructions from the department and will file the reply during the course of the day. He further submits that he will supply the same to the other side.

S.O. 05.03.2019.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 804/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri R.V.Shiralkar, the Id. Counsel for the applicant and Shri P.N.Warjurkar, the Id. P.O. for the respondent nos. 1 & 2. None for the respondent no. 3.

The Id. P.O. has already filed the reply on behalf of the respondent nos. 2. In view of this, matter is **admitted** and kept for final hearing.

The Id. P.O. waives notices for the respondent nos. 1 & 2.

S.O. in due course.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 431/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

None for the applicant. Shri V.A.Kulkarni, the Id. P.O. for the respondents.

The Id. P.O. agreed that reply has already filed by respondent no. 3. This is sufficient for the other respondents.

Hence, the matter is **admitted** and kept for final hearing.

The Id. P.O. waives notices for the respondent nos. 1 to 4.

S.O. four weeks.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 431/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

None for the applicant. Shri V.A.Kulkarni, the Id. P.O. for the respondents.

The Id. P.O. agreed that reply has already filed by respondent no. 3. This is sufficient for the other respondents.

Hence, the matter is **admitted** and kept for final hearing.

The Id. P.O. waives notices for the respondent nos. 1 to 4.

S.O. four weeks.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.Nos. 705 to 708/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Shri A.S.Tiwari, the Id. Counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondents.

The Id. P.O. submits that he will file the reply in O.A. No. 707/21018, during the course of the day.

S.O. 12/03/2019.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

**O.A.Nos. 85, 102, 103, 104, 105, 106, 107
&**

108/2019. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Heard Shri P.D.Meghe, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.

The Id. P.O. filed the affidavit-in-reply on behalf of the respondent no. 2 in all the connected matter else than O.A.No. 108/2019. He further submits that he will file the reply in O.A. No. 108/2019 till tomorrow and supply the same to the other side.

Hence, **closed for orders.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 40/2015. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Heard Ms. Pathak, the Id. counsel for the applicant and Shri P.N.Warjurkar, the Id. P.O. for the respondents.

The Id. Counsel for the applicant is directed to file copy of the complaint filed in Industrial Court by the applicant and reply filed by the Department in the said case, which will clarify the position of the respondents and applicant about regularization in 31/01/1996.

S.O. 06.03.2019.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 607/2015. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Heard S.N.Gaikwad holding for Shri G.G.Bade, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondent nos. 1 to 3. None for the respondent no. 4.

As per the request of Id. Counsel for the applicant, **S.O. one week.**

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 570/2017. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 26th February 2019.

Heard Shri S.Lancharwar, the Id. counsel for the applicant and Shri A.M.Ghogre, the Id. P.O. for the respondents.

2. The Id. P.O. submitted the reply on behalf of the respondent nos. 2 and 4. It is taken on record. Copy is served to the other side.

3. The Id. Counsel for the applicant submitted that his Juniors have been promoted and he approached the Senior Officers in 2014. However, he has filed this O.A. in the year 2017, without challenging the seniority list published by the Department as on 01.01.2011. Admittedly, the applicant joined on 29/01/2010 and Department published first seniority list as on 01.01.2011.

4. The Id. Counsel for the applicant is directed to first challenge the seniority list than the promotion issue can be examine.

Admittedly, the Id. Counsel for the applicant is agreed to withdraw the O.A. with liberty to file fresh O.A..

5. In view of this, **O.A. is disposed of as withdrawn with no order as to costs.**

Member(J)

Member(A)

Date:-26/02/2019.

aps.

O.A.No. 772/2017. (D.B.)

Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.

Heard Shri S.N.Gaikwad, the Id.
counsel for the applicant and Shri
A.M.Ghogre, the Id. P.O. for the
respondents.

Closed for orders.

Member(J)
Member(A)
Date:-26/02/2019.
aps.

O.A.No. 214/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Heard Shri A.B.Mahajan, the Id. counsel for the applicant, Shri A.M.Ghogre, the Id. P.O. for the respondent nos. 1 to 3 and Shri R.G.Kavimandan, the Id. Counsel for the respondent no. 4.

At the request of Id. Counsel for the applicant, **S.O. 25/03/2019** for filing certain documents on record.

**Member(J)
Member(A)
Date:-26/02/2019.
aps.**

O.A.No. 612/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 26th February 2019.**

Heard Shri N.D.Thombre, the Id. counsel for the applicant, Shri A.M.Ghogre, the Id. P.O. for the respondent nos. 1 & 2. None for the respondent no. 3.

At the request of Id. P.O., **S.O.**
06/03/2019.

Member(J)
Member(A)
Date:-26/02/2019.
aps.