

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 543 OF 2020

(Subject – Absorption)

DISTRICT : JALGAON

Gaurav S/o Chandrakant Randive,)
Age : 43 years, Occu. : Craft Instructor,))
Industrial Training Institute, Jalgaon.)

.... APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Skill Development and Entrepreneurship)
Department, Mantralaya, Mumbai- 400 032.)
2. **The Director,**)
Vocational Education & Training,)
Maharashtra State, 3, Mahapalika Marg,))
Post Bag No. 10036, Mumbai-400001.)
3. **The Joint Director,**)
Vocational Education & Training,)
Regional Office, Nasik.)
4. **The Principal,**)
Industrial Training Institute, Jalgaon.)
5. **Sunil s/o Mangilal Rathod,**)
Age Major, Occu. Instructor,)
Industrial Training Institute, Pachora,)
District Jalgaon.)

... RESPONDENTS

APPEARANCE : Shri J.B. Choudhary, Advocate for Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, P.O. for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **28.02.2023**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed seeking following main three reliefs :-

“(b) The order/ communication dated 12/11/2020, issued by the respondent No.2, to call the respondent No.5 for counseling for absorption on the post of Group Instructor, ignoring the claim of the applicant who is senior to respondent No.5 may kindly be quashed and set aside.

(c) The respondent No. 2 and 3 may kindly be restrain from issuing the absorption order in favour of respondent No. 5 on the post of Group Instructor in view of the order / communication dated 12/11/2020 and the respondent No.2 may kindly be directed to absorb the applicant on equivalent post of Group Instructor which is vacant in Nasik region under respondent No.3 forthwith, by keeping his seniority intact, by ignoring the undertaking given by the applicant.

(e) The respondent No.2 may kindly be directed to absorb the applicant on the vacant post in nomination quota, in the cadre of Training Officer/ Advanced Vocational Training System, Group Instructor, Junior Surveyor in Nasik Region, which is existing, as per provisions of clause (7) of Annexure-III of Government Resolution dated 10/9/2001.”

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant passed Diploma in Plastic Engineering in the year 2001. In response to the advertisement dated 28.11.2008 issued by the respondent No. 2, the applicant i.e. Gaurav S/o Chandrakant Randive was appointed as Training Officer (Centre of Excellence) C.O.E. Scheme at Industrial Training Institute, Jalgaon by the order dated 03.02.2009 and he joined the duties on 13.02.2009.

(b) Due to closure of scheme (COE) in the year 2014, the said post of Training Officer was abolished. Therefore, the respondent No. 2 i.e. the Director, Vocational Education and Training, Mumbai called the options from the applicant along with other 74 employees for absorption on the equivalent posts in the department.

(c) The Finance Department, Government of Maharashtra, Government of Maharashtra by issuing G.R. dated 10.09.2001 (Annexure A-3) provided clear-cut guidelines, which are to be followed while issuing the order of absorption due to abolition of posts. In the said G.R., it is specifically directed in Appendix-3(i) as per Clause No. 7 that, “as far as possible, the class III employees should be absorbed in same Revenue Division and as per clause 9(6), “the absorption should be as per the seniority.”

(d) The respondent No. 2 published seniority of Class-III employees 07.10.2016 (Annexure A-4) at State Level of the cadre of Training Officers under Centre of Excellence Scheme. The name of the applicant is at Sr. No. 35 of the said final seniority list.

(e) As the post of Training Officer was abolished, the applicant along with 74 employees were called by the respondent No. 2 on conversion of scheme for getting their options as per the provisions of Clause (2) of Appendix-III of G.R. dated 10.09.2001 (Annexure A-3) before issuing the order of absorption.

(f) Accordingly, the applicant gave his option of any post in a pro-forma printed form given by the office of respondent No. 2 in the cadre of Training Officer, Advance Vocational Training System, Group Instructor, Junior Surveyor, Assistant Engineering Superintendent on the basis of his academic qualification with same pay scale or pay protection for lower scale cadre post of Craft Instructor, if post in nomination quota is not vacant with his eligibility as per the academic qualification.

(g) In view of the form submitted by the applicant, the respondent No. 2 issued the order dated 09.12.2016 (Annexure A-5) and absorbed the applicant on the post of Assistant Engineering Superintendent and the applicant was posted at Government Technical High School, Malegaon, Dist. Nasik knowing fully well that the applicant is not possessing the academic qualification as mentioned in the Recruitment Rules for the post of Assistant Engineering Superintendent and hence, ineligible for absorption in nomination quota. The said order was against the guidelines issued by the Government of Maharashtra.

(h) In view of the order of absorption dated 09.12.2016 (Annexure A-5), the applicant joined on the post of Assistant Engineering Superintendent at Malegaon, Dist. Nasik. In the said absorption order dated 09.12.2016, condition No. 3 is mentioned that in case the incumbent is not holding the required qualification for the absorbed post, he should acquire the same within two years. The required qualification for the post of Assistant Engineering Superintendent is Diploma in Mechanical Engineering or Diploma in Electrical Engineering. Admittedly, the Diploma Course is of three years and therefore, in any case the applicant could not have completed the said qualification within two years. Secondly, it is also mandatory that the concerned candidate should attend the college regularly to complete the Diploma as required for the post of Assistant Engineering Superintendent. Therefore, the condition is totally illegal and against the Government guidelines dated 10.09.2001 and 10.09.2009. But as the applicant had no any option than to accept the said post, the applicant accepted the said post and joined on the post of Assistant Engineering Superintendent.

(i) Thereafter, the applicant through his Advocate gave notice dated 25.09.2018 (Annexure A-6) to the respondent No. 2 and requested for his absorption on the equivalent post after the abolition of the post of Training Officer and accordingly called upon the respondent No. 2 to absorb the applicant in the post to which he is eligible or issue necessary corrigendum to the absorption order that he may be sent on duty to acquire the academic qualification required for the post of Assistant Engineering Superintendent without affecting his State seniority within a period of 14 days from the date of receipt of the said legal notice. Thereby he also brought to notice of the respondents that irregularity and illegality of absorption order dated 09.12.2016 against the Government of Maharashtra and the prescribed procedure was brought to the notice of the respondents, thereby requesting that the applicant may be absorbed on that post to which his academic qualification suits, keeping in mind that his junior is already absorbed on the post of Training Officer (Plastic) at Industrial Training Institute, Pune or temporarily at lower cadre until vacancy in nomination quota is created.

(j) Thereafter as the equivalent post was not available with the respondent Nos. 2 and 3, the respondent No. 2 issued revised / modified order of absorption of the applicant dated 28.02.2019 (Annexure A-7) on the post of Instructor (PPO), Industrial Training Institute, Jalgaon. In view of that order, the applicant immediately joined on the said post and from that date till date the applicant is working on the said post of Instructor at Industrial Training Institute, Jalgaon.

(k) It is submitted that before issuing the revised order dated 28.02.2019 (Annexure A-7), the respondent Nos. 2 and 3 compelled the applicant to give undertaking dated 20.02.2019 (Annexure A-8) that he will not claim for absorption on the equivalent post, if made available in future. At that point of time, the applicant had no option than to give the said undertaking because if the undertaking could not have been given by the applicant, the respondent Nos. 2 and 3 would not have issued the order dated 28.02.2019 (Annexure A-7). In view of that the applicant submitted said undertaking without asking any question regarding the same.

(l) It is a fact that there is no such provision in Maharashtra Civil Services Rules to take such undertaking from any employees of such nature. In view of that, the said undertaking dated 20.02.2019 (Annexure A-8) taken from the applicant is totally illegal and will not come in the way of the applicant to claim the equivalent post, if made available in future.

(m) Later on, the applicant came to know that one post of Group Instructor (Open category), which is equivalent to the post of Training Officer in the same pay scale is vacant under the respondent No. 3 i.e. the Joint Director, Vocational Education and Training, Regional Office, Nashik in Nasik Region. In view of that information, the applicant submitted an application dated 21.05.2020 (part of Annexure A-9 collectively) to the respondent No. 2 through proper channel i.e. Principal, Industrial Training Institute, Jalgaon and requested them to accommodate him on the same post. The said application was forwarded by the respondent No. 4 i.e. the Principal, Industrial Training Institute, Jalgaon under his forwarding letter dated 21.05.2020 (part of Annexure A-9 collectively) (However, no

such forwarding letter of respondent No. 4 is produced on record).

(n) Thereafter, again the applicant through his Advocate sent notice dated 28.09.2020 (Annexure A-10) to the respondent No. 2 calling upon the respondent No. 2 to forthwith absorb the applicant in vacant post of nomination quota in the cadre of Training Officer / Advanced Vocational Training System, Group Instructor, Junior Surveyor in Nashik Region to the post of nomination quota, which is vacant and for which the applicant is eligible.

(o) In view of above, the applicant being senior-most amongst the employees with the respondent No. 2 will call the applicant for counseling and will absorb the applicant on the said vacant post of Group Instructor. But surprisingly ignoring the claim of the applicant, the respondent No. 2 by the impugned order / communication dated 12.11.2020 (Annexure A-1) called the respondent No. 5 i.e. Sunil Mangilal Rathod for counseling for absorption on the post of Group Instructor, which is vacant in Nashik Region and directed the respondent No. 5 to remain present in the office of respondent No. 2 on 24.11.2020.

(p) It is stated that since the applicant is senior to respondent No. 5, he was requesting the respondent Nos. 2 and 3 for absorbing him on equivalent post from last two years. In view of that the applicant is entitled for absorption of the equivalent post of Group Instructor, which is vacant. However, his claim is denied and the respondent No. 5 is being called for counseling for giving posting on Group Instructor, which is vacant. There is no provision to take undertaking from the employees and there is no such provision in the Maharashtra Civil Services Rules. The State has no authority to take such undertaking from the employees. In this regard the decision was published in newspaper. The said newspaper cutting is produced at Annexure A-11.

(q) In the circumstances as above, the applicant has rightful claim on the equivalent post of Group Instructor than that of the respondent No. 5, who is junior to him. Hence, the present Original Application.

4. (i) The affidavit in reply on behalf of respondent No.1 to 4 by one Shri Arvind S/o Raghunath Chaudhari working as the Principal, Government Industrial Training Institute,

Jalgaon, Dist. Jalgaon, thereby he denied all the adverse contentions raised in the present Original Application. Pleadings raised by the applicant regarding closure of Centre of Excellence Scheme (CES), in which the applicant was appointed as Training Officer and due to that the applicant and such other employees became surplus and their options were called for absorption on the equivalent posts and that the applicant after his option, was absorbed on the post of Assistant Engineering Assistant, which post required diploma in Mechanical Engineering or Electrical Engineering. The applicant was not having such qualification and was having Diploma in Plastic Engineering. But the claim of the applicant is denied contending that after absorption of the applicant to the post of Assistant Engineering Superintendent, the applicant again requested the respondents to consider his qualification and accommodate him to the post of Craft Instructor (PPO) at Industrial Training Institute, Jalgaon and after his request letter dated 31.01.2018 (Annexure R-I) the applicant made declaration that he will not claim the equivalent post to Training Officer. Hence, considering his

request, the applicant was accommodated as Craft Instructor.

(ii) However, again after lapse of sometime, the applicant once again made request letter dated 14.12.2018 requesting the respondents to accommodate him on the post of Group Instructor. There is no question of accommodating the applicant on the post of Group Instructor, as it is not tenable. The respondents have acted in accordance with law regarding the policy of absorption and there is no illegality committed by the respondent Nos. 2 and 3 as alleged. Even at the time of joining on the post of Assistant Engineering Superintendent for the first time, the applicant was silent, though he was not having requisite qualification for the said post. However, thereafter the applicant has been accommodated on the post of Craft Instructor as per his request, only by acting upon his undertaking. Hence, no illegality is committed by the respondents. The respondents have duly replied the legal notices sent on behalf of the applicant by reply dated 06.12.2018 (Annexure R-II) and 21.12.2020 (Annexure R-III) denying the allegations made therein. In the

circumstances, there is no merit in the present Original Application and it is liable to be dismissed.

5. The applicant filed rejoinder affidavit denying the adverse contentions raised in the affidavit in reply and reiterated the contentions raised in the O.A. To which the sur- rejoinder is filed on behalf of respondent No.1 to 4 by one Shri Arvind S/o Raghunath Chaudhari working as the Principal, Government Industrial Training Institute, Jalgaon, Dist. Jalgaon, again denying the adverse contentions raised in the rejoinder affidavit.

6. Thereafter short affidavit respondent Nos. 1 to 4 by said Shri Arvind S/o Raghunath Chaudhari working as the Principal, Government Industrial Training Institute, Jalgaon, Dist. Jalgaon reiterating the contentions already made in the affidavit in reply.

7. Record shows the order dated 01.07.2022 was passed by this Tribunal in farad sheet as follows :-

**“ORIGINAL APPLICATION NO.543 OF 2020
(Gaurav C. Randive Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 01.07.2022

ORAL ORDER :

Heard Shri J.B. Choudhary, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents.

2. This Original Application is filed challenging the impugned order/communication dated 12.11.2020 (Annex. 'A-1') issued by the respondent No.2 i.e. the Director, Vocational Education & Training, Mumbai whereby one Shri Sunil Mangilal Rathod who is junior to the applicant in initial post of Training Officer was called for counseling for absorption on the equivalent post of Training Officer.

3. The applicant was appointed on the post of Training Officer, Class-III with the respondent No.3 on 13.02.2009 whereas Shri Sunil Mangilal Rathod was appointed on the post of Training Officer on 17.06.2010 as reflected in seniority list of Training Officer (Annex. 'A-4').

4. Subsequently, the applicant, as well as, the said Shri Sunil Mangilal Rathod, were absorbed on the lower post of Craft Instructor. However, subsequently the applicant has been superseded by calling Shri Sunil Mangilal Rathod for absorption on equivalent post of Training Officer denying such post to the applicant on the ground that before giving him the appointment on the post of Craft Instructor, the applicant had given undertaking dated 20.02.2019 (Annex. 'A-8') that he would not claim in future his absorption on the equivalent post.

5. In such circumstances as above, in order to appreciate the right claimed by the applicant on the ground of discrimination amongst others, it would be just and proper to see the record of said Shri Sunil Mangilal Rathod as regards his initial appointment on the post of Training Officer and subsequently his absorption on the lower post on Craft Instructor and more particularly as to whether any such undertaking was taken from said Shri Sunil Mangilal Rathod as that of the applicant.

6. The respondents to produce on record the relevant record positively by the next date.

7. The present matter be treated as part heard.

8. S.O. to 15.07.2022."

Pursuant to the abovesaid order dated 01.07.2022, said Shri Arvind S/o Raghunath Chaudhari working as the Principal, Government Industrial Training Institute, Jalgaon, Dist. Jalgaon filed documents along with affidavit. The said documents

includes absorption order of the respondent No. 5 i.e. Sunil Mangilal Rathod on the lower pay scale post of Craft Instructor vide order dated 02.03.2017 (page No. 140 of the paper book). In this order, there is no mention of undertaking, as was case of the applicant.

8. I have heard the arguments advanced by Shri J.B. Choudhary, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent authorities on the other hand.

9. After having considered the rival pleading, documents and submissions on record, the short question which arises for consideration is as to whether the applicant is entitled for the post of Group Instructor on vacant post, which post is equivalent to the post of Training Officer, which is a dying cadre in view of abolition of COE Scheme in spite of undertaking given on 20.02.2019 (Annexure A-8) at the time when he was absorbed on the lower post of Craft Instructor as per the modified absorption order dated 28.02.2019 (Annexure A-7).

10. The applicant has contended that he has been discriminated by the respondent Nos. 2 and 3 by calling the respondent No. 5 i.e. Sunil Mangilal Rathod, who is admittedly

junior to him in the dying cadre of Training Officer for accommodating him on the equivalent post of Group Instructor denying the said post to the applicant under the garb of undertaking.

11. From the facts on record, it is not in dispute that the applicant and respondent No. 5 are similarly situated persons. In view of this, the modified absorption order of the applicant dated 28.2.2019 (Annexure 'A-7') in respect of the applicant and modified absorption order of the respondent No. 5 dated 2.3.2017 (page -140 of the p.b.) are required to be examined.

12. In the order of the applicant dated 28.2.2019 (Annexure 'A-7') there is mention of undertaking given by the applicant that he could not claim for equivalent post. Such condition or column is not mentioned in the modified absorption letter dated 2.3.2017 (page-140 of the p.b.) in respect of the respondent No. 5. In view of that, it appears that modified absorption order dated 2.3.2017 was issued to the respondent No. 5 without seeking any undertaking from him.

13. No doubt, the applicant was absorbed on the post of Assistant Engineering Superintendent as per the order dated 9.12.2016 (Annexure 'A-5'). The said post required admittedly

minimum educational qualification of diploma either in Mechanical Engineering or Electrical Engineering. The applicant was not having such Diploma. He is having Diploma in Plastic Engineering. As per the condition incorporated therein clause No. 3 of the said letter dated / order dated 9.12.2016 (Annexure 'A-5') is as follows: -

“३. समायोजन झालेल्या पदाची शैक्षणिक अर्हता धारण करित नसल्यास ती दोन वर्षात धारण करणे कम्प्राप्त राहिल.”

14. The applicant has come out with a case that even if the applicant had to achieve the Diploma in Mechanical Engineering or Electrical Engineering, the tenure of the said course is 3 years and it was not possible for the applicant to work on the said post. In view of that the applicant made representation dated 31.10.2018 (Annexure 'R-I') to accommodate him on the post of Craft Instructor (PPO), which is having the lower pay scale. Though the respondents submitted that in the said letter/ representation dated 31.10.2018 the applicant gave undertaking that he would not claim equivalent post, such an undertaking is not there. In view of the same, the contentions raised on behalf of the respondents are not correct in that regard.

15. From the documents on record it is evident that such undertaking was taken from the applicant separately on

20.2.2019 (Annexure 'A-8'). The respondents have failed to state under what provision or authority the said undertaking is taken from the applicant. The said undertaking dated 20.2.2019 (Annexure 'A-8') is having effect of giving up his legitimate right.

16. In this regard learned Advocate for the applicant has placed reliance on the decision of this Tribunal at Mumbai in O.A. No. 255/2016 in the matter of **Dr. Vijaykumar K. Patne Vs. State of Maharashtra & Anr. decided on 6.3.2017**. In the said case, the claim was regarding grant of leave. In the said case the applicant alleged to have given undertaking that because of his illness, he could not report for duty and then he was came to be transferred to the present place of posting and he undertook that in so far as the period of absence was concerned, he would lay no claim for any kind of leave or any other relief in that behalf. It is observed that such undertaking cannot be effectuated by a forum of law and justice.

17. In the case in hand the applicant seems to have given undertaking dated 20.2.2019 (Annexure 'A-8') in the anxiety of getting absorption at least on the lower post. The said undertaking was not given from the respondent No. 5 i.e. Shri Sunil Mangilal Rathod, while accommodating him on the lower

post of similar post of Craft Instructor. Moreover, I have no reason to take a different view once taken by the Coordinate Bench of this Tribunal about the undertaking. In this case, in fact the applicant has been discriminated as against the similarly situated employee. The respondents cannot act upon the undertaking given by the applicant as such the undertaking cannot be recognized in the eyes of law. The applicant has every right of getting absorption on the equivalent post, when the vacancy is available as per seniority.

18. In the circumstances as above, in my considered opinion, the impugned order/communication dated 12.11.2020 (Annexure 'A-1') issued by respondent No. 2 in respect of the applicant is required to be quashed and set aside and respondent Nos. 2 & 3 to consider the claim of the applicant for the post of Group Instructor in place of the respondent No. 5 i.e. Sunil Mangilal Rathod, who is junior to the applicant and who is no more. Hence, I proceed to pass following order : -

ORDER

The Original Application is disposed of in following terms: -

- (i) The impugned order/communication dated 12.11.2020 (Annexure 'A-1') issued by the respondent No. 2 is hereby quashed and set aside.

(ii) The respondents are directed to consider the claim of the applicant on the post of Group Instructor in Nashik Region as disclosed in impugned order/communication dated 12.11.2020 (Annexure 'A-1') within a period of 2 months from the date of this order by keeping his seniority intact by ignoring undertaking dated 20.2.2019 (Annexure 'A-8') given by the applicant and to absorb the applicant on the vacant post in nomination quota in the equivalent post of Group Instructor/Junior Surveyor in Nashik Region, which is existing as per the clause 7 of Appendix-3 of G.R. dated 10.9.2001 (Annexure 'A-3').

(iii) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 28.02.2023.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 543 of 2020 VDD Absorption