

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO. 130 OF 2015

DISTRICT : DHULE

Smt. Kalyani Vivek Khale,)
R/o. 43, Vardan, Sonya Maroti)
Housing Society, Opp. Railway Station,)
Dhule, Tq. & District Dhule.)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
(Copy to be served on C.P.O.)
Maharashtra Administrative Tribunal,)
Bench at Aurangabad.)
2. The Commissioner of Agriculture,)
Agriculture Commissionarate,)
Maharashtra State, Pune.)
3. The Director of ATMA (M.W.S.I.P.),)
@ Nodal Officer, Agriculture)
Commissionarate, IInd floor, Sakhar)
Sankul, Shivaji Nagar, Pune 411 005,)
Maharashtra State, Pune.)

4. Divisional Joint Director of Agriculture,)
Nashik Division, Nashik.)
5. District Superintendent of Agriculture)
Officer, Dhule, Tq. & Dist. Dhule.)

....RESPONDENTS

Shri V.B Patil, learned Advocate for the Applicant.

Mrs Deepali S. Deshpande, learned Presenting Officer for the Respondents

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)
Shri J.D Kulkarni (Member) (J)**

DATE : 18.10. 2016

PER : Shri Rajiv Agarwal, (Vice-Chairman)

ORDER

1. Heard Shri V.B Patil, learned Advocate for the Applicant and Mrs Deepali S. Deshpande, learned Presenting Officer (P.O) for the Respondents.

2. This Original Application has been filed by the Applicant seeking regularization and continuance of his service on the post of District Computer Operator (D.C.O).

3. Learned Counsel for the Applicant argued that the Applicant was selected for the post of District Computer Operator in a regular selection process pursuant to advertisement dated 25.6.2007 issued by the Respondent no. 2. Accordingly, the Respondent no. 4 issued order dated 30.8.2007 appointing the Applicant as District Computer Operator, for Dhule district. This appointment was on contract basis. The Respondent no. 5 renewed the appointment of the Applicant for another year 2008-2009 w.e.f 1.9.2008. Similar orders were issued on 2.9.2009, for 2009-10 and for subsequent years. Finally, by order dated 31.7.2014, the Applicant's services were extended upto 30.9.2014 and not renewed after that date. Learned Counsel for the Applicant argued that the Applicant had worked for more than 7 years in the Government. The Government has been regularizing services of the persons appointed on ad hoc/contractual basis from time to time. Now the Applicant is 38 years old is over age, and is not eligible to compete for any post in the Government. It is, therefore, necessary to protect her services as D.C.O and therefore, the Respondents may be directed to regularize and continue her services.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was appointed as District Computer Operator on contractual basis for implementation of Maharashtra Water Sector Improvement Project, which was taken up in 33 districts of the State. No regular posts were created for this Project, which was for a

fixed period of six years from 29.9.2005 to 30.9.2011. It was made clear from the very beginning that contractual appointment for implementing the Project was for the duration of the Project only. No pay scales were prescribed and only fixed monthly remuneration was payable. The contract was initially for a period of one year and it was renewed from time to time. The duration of the Project was extended up to 30.9.2014, and accordingly, the contractual appointment was also extended up to that date. Learned Presenting Officer argued that the orders referred to by the Applicant regarding regularization were in respect of employees, who were appointed on ad hoc / temporary / contractual basis on regularly sanctioned posts. In some of cases, the selection of the employees was not in accordance with the recruitment rules and relaxation was required to be given for regularization. In the present case, no posts were sanctioned, there was no pay scale to the posts and the appointments were on contractual basis. Learned Presenting Officer argued that the services of the Applicants were not governed by the Maharashtra Civil Services Rules, but in accordance with the contract between the Applicant and the Respondents. The Applicant was fully aware that her appointment was limited to the duration of the Project. The Applicant, if she so desired, could have applied for the Civil Services Examination or any other post, before she became overage, and her contractual appointment had nothing to do with her choice to appear for such examination or not.

Learned Presenting Officer argued that there is no merit in this Original Application and it may be dismissed.

5. We find that the Applicant was appointed on fixed remuneration for the post of District Computer Operator, Dhule under the Project 'Maharashtra Water Sector Improvement Project'. From the Exhibit R-1, it appears that it was an externally funded Project for a limited duration. Initially duration was six years from 29.9.2005 to 30.9.2011. However, it appears to have finally concluded on 30.9.2014. The Applicant was initially appointed as District Computer Operator by order dated 30.8.2007 for one year. She got further orders and the last order was dated 31.7.2014, which was valid up to 30.9.2014. This order makes it clear that after 30.9.2014, no further extension was to be granted under any circumstances. The posts expired when the project concluded. The Applicant from the day one was aware that her appointment was on contractual basis maximum for the period of the Project. She was never governed by the Maharashtra Civil Services Rules, but by the Contract / Agreement she executed with the Respondent no. 5. The Applicant is relying on G.R issued by various departments of the Government regularizing irregular appointments. G.R dated 8.3.1999 is regarding regularizing services of those appointed without reference to Selection Boards. However, all those persons were working on sanctioned posts on regular pay scales. The facts in the present case are quite different. The G.R dated 30.5.2008

is]regarding implementation of Kalelkar Award which is regarding staff working on daily wage establishment in the Engineering Departments like P.W.D, Water Resources Department etc. of the Government. The Applicant's case is not covered by the Kalelkar Award. The G.R dated 16.10.2012 is regarding Forest labourers working on daily wages. Their services were regularized as a one time measure. None of these G.Rs can be said to be applicable to the facts in the present case. Even the reliance on judgment dated 19.10.2013 of the Nagpur Bench of Hon. Bombay High Court in W.P 2046/2010 is misplaced, as the employees therein were appointed on contractual basis against the regularly sanctioned posts. In the present case, no posts were sanctioned, and the Applicant was not working in a post carrying regular pay scale. The posts were created for the duration of the Project and lapsed after the Project was concluded. The Applicant has joined the post with her eyes open and cannot claim that she has become age-barred as she worked for the aforesaid Project. She was free to compete for any post, if she so desired. There was no promise by the Respondents for any regular post. This Tribunal cannot direct the Government to create posts to accommodate the Applicant (and others similarly situated persons). In our considered view, there is no case for interference by this Tribunal in this matter.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**J.D KULKARNI
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 18.10.2016
Place : Aurangabad
Dictation taken by : A.K Nair**

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