

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 88 / 2016 (S.B.)**

1. Manoj Raghupatirao Gawande,
Aged about 33 Yrs., Occupation : Technical Laboratory
Assistant in Government Engineering College, Amravati,
R/o Shivani (Rasulapur),
Tq. Nandgaon (Khandeshwar),
Dist. Amravati.
2. Amit Diliprao Rote,
Aged about 32 Yrs., Occupation : Technical Laboratory
Assistant in Government Engineering College, Amravati,
R/o 22 A, Yogakshem Colony,
Near Eknath Puram, Rajapeth, Amravati,
Tq. and Dist. Amravati.
3. Suyog Chandrahas Deshmukh,
Aged about 31 Yrs., Occupation : Technical Laboratory
Assistant in Government Engineering College, Amravati,
R/o Behind Rathi Hostel,
Behind Durga Temple, Rathinagar,
Amravati, Tq. & Dist. Amravati.
4. Mangesh Chandrabhanji Aswar,
Aged about 29 Yrs., Occupation : Technical Laboratory
Assistant in Government Engineering College, Amravati,
R/o Behind Hotel Nagaraj, Samarth Nagar,
Anjangaon (Surji), Tq. Anjangaon (Surji),
Dist. Amravati.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through it's Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,
- 2) The Director of Technical Education,
3, Mahapalika Marg, Mumbai-400 001.

- 3) The Principal,
Government Engineering College,
Amravati, Dist. Amravati.

Respondents

Shri S.P.Palshikar, the Id. Advocate for the applicant.

Shri A.M.Ghogre, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 10th August, 2020.

Judgment is pronounced on 28th September, 2020.

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

2. The Id. counsel for the applicant has relied upon the Hon'ble High Court Judgment in case of **Sachin A. Dawale & Ors. Vs. State of Maharashtra & Another in W.P. No. 2046/2010 delivered on 15.10.2013**. The Id. Counsel for the applicant has also relied on Judgment of this Tribunal in O.A. No. 165/2015. However, as pointed out by Id. counsel for the applicant in order sheet dated 22/02/2016, when this O.A. was listed it appears that Id. C.P.O. took two months time for filling reply and by subsequent order sheet also it appears that, the O.A. was again listed on 11.04.2016, 02.05.2016, 13.06.2016, 27.06.2016, 04.07.2016, 18.07.2016, 23.02.2018. However, applicants were not granted interim relief in any of the order. Applicants became out of service since, July, 2016, as per P.B., Pg. No. 49 as applicants had been given last order of appointment dated 04/08/2015 and as per clause 5 of

this order their term of employment was only 11 months. So they became out of service from July, 2016.

3. The difference between these applicants and applicants in O.A. No. 165/2015 is that applicants of O.A. No. 165/2015 were protected by interim relief granted in order dated 05/05/2016 till final outcome of the O.A.. However, these applicants were not given any interim relief and so they got discontinued from July, 2016 and as on today also they are not in service.

4. The Id. P.O. also relied on Judgment of Hon'ble High Court Mumbai, Bench at Nagpur on C.A. No. 828 of 2017 which was filed by State and order delivered on 27/04/2017 by Division Bench of Hon'ble High Court, Nagpur Bench. In para no. 5 following observations have been made:-

The relevant paragraph no. 22 of the order passed by us reads thus:-

22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years' service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013 shall be continued in service as regular employees....."

It could thus be seen that, vide the said judgment and order, we had directed the respondents to regularize the services of such of the petitioners and confer permanency on such petitioners who had completed three years' service with technical breaks on the date of judgment and order. The order is very much clear in the sense that the petitioners who were in continuous employment till 15.10.2013 were to be continued in service as regular employees. It could thus be seen that the case which fell

for consideration before us was the case of regularization of the employees who were already in service. In no case we were considering the case of the persons who were already out of employment and there was no question of reinstatement.

5. The Id. P.O. relied upon Judgment of Hon'ble High Court Mumbai, Bench at Nagpur on C.A. No. 2599/2017 in W.P. NO.2046/2010 which was filed by petitioners and order was delivered on 21/11/2017. After hearing all the parties following observation were made in para nos. 3 & 4 of the Judgment in this C.A. :-

3. *If the original judgment and order dated 19th Oct., 2013 is read, it will be clear that only such employees who were in continuous employment as on 15th October, 2013 are only entitled to be continued in service as regular employees. In the order dated 27th April, 2017 we have further clarified the position that only petitioners who were in continuous employment till 15th October, 2013 will be entitled to be continued in service as regular employees. We have further clarified that the case which fell for consideration before us was the case of regularization of the employees who were already in service. We have further observed that we were not considering the cases of the persons who were already out of employment and that there was no question of reinstatement.*

4. *If both, judgment and order dated 19th October, 2013 so also clarificatory order dated 27th April, 2017 are read together the position is very clear that **only such of the employees who were in continuous employment as on 15th October, 2013 are entitled to the protection granted by us.***

6. The Id. counsel for the applicant has also relied upon Judgment of MAT in O.A. No. 165/2015 and he has mainly relied upon para nos. 8, 10, 12 and 13 (C). The difference is that applicants in O.A. No.

165/2016 were protected by the interim order from this Tribunal on 05/05/2016 and by that interim order the applicant's of O.A. No. 165/2016 were continued in service till the decision of the O.A. i.e. on 04/09/2019. In this O.A. the applicants were initially appointed in 2012 there last date of interview was 24/03/2012 and subsequently they were appointed by last order dated 04.08.2015(P.B., Pg. No. 49) for a period of 11 months only as per the clause 5 of the order and they were continued till July, 2016 by last order dated 04/08/2015 (P.B., Pg. No.49).

7. As pointed out by Id. P.O. on P.B., Pg. No. 18 (1) of notification following objectives have been mentioned for taking these candidates. The applicant's last appointment was 04/08/2015 as per the P.B., Pg. No. 49 for the period of 11 months as per the clause 5 of the order. The order was valid till term of 11 months, so they were continued till July, 2016. The applicants approached to this Tribunal on 19/01/2016.

8. The Id. P.O. submits that it was a very temporary kind of arrangement for a certain objectives which is mentioned in advertisement at P.B., Pg. No. 18 para 'a' and there was no such post on the permanent establishment that time also and today also there are no post like this.

9. The Id. P.O. also relied upon judgment in W.P. No. 4893 of 2015 of Hon'ble High Court Mumbai, Bench at Nagpur delivered on 15.10.2015 where same view has been taken about Judgment dated 19/10/2013 in W.P. No. 2046/2010.

10. As per the order dated 09/01/2020, the Id. P.O. placed on record letter dated 20.01.2020 by Principal Government Engineering College, Amravati during hearing on 23.01.2020. In this letter, it has been specifically clear that the program "Technical Education Quality Improvement Program-2 (TEQIP-II)" against which the applicant were temporarily appointed and after completion of the program were terminated after July, 2016 is closed and said program is no longer existing and applicants are also not in service today.

11. The Id. Counsel for the applicant placed on record affidavit dated 10.02.2020 (P.B., Pg. No. 93); I have gone through the contained of the same affidavit. The Id. P.O. also pointed out letter dated 20.01.2020 by Principal, Government Engineering College, Amravati (P.B., Pg. No. 92). After hearing the Id. Counsel for the applicant as well as Id. P.O., it is crystal clear that all the contention raised by the applicant so also Id. P.O. were taken into account and the O.A. was decided on merit. It is not case of the applicant that disregarding this contention any question of fact was not decided or any question of Law was not decided. On the contrary after considering the Judgment delivered by Division Bench of the Hon'ble High Court Mumbai, Bench at Nagpur in W.P. No. 2046/2010 delivered on 15.10.2013; it was held that the applicant's case was not covered as the applicants were not in service on a specified date as observed by the Hon'ble High Court. At the same time these applicants were not having any protection by any Interim order by Tribunal as applicants in O.A. No. 165/2016 had protection by the Interim order of this Tribunal dated 05.05.2016. Hence, these applicants case cannot be covered by either Judgment of Hon'ble High Court in W.P. No. 2046/2010 or O.A. No. 165/2016 of this Tribunal. Under these circumstances, no case is made out to entertain this application. By Judgment in W.P. No.

2046/2010 and in subsequent C.As. Hon'ble High Court has already settled such type of issues. No further elaboration is needed.

12. In view of discussion in foregoing paras, there is no substance in relief clause of the O.A. and hence O.A. requires to be dismissed:-

ORDER

1. O.A. is dismissed.
2. No order as to costs.

(Shri Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/09/2020.
and pronounced on

Uploaded on : 29/09/2020.