

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.915/2012. (D.B.)

Dipali Jagdev Tayade,
Aged about 30 years,
Occ- Service,
R/o Ramesh Nagar, Dabki Road,
Akola.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai-400 032.
- 2) The Superintending Engineer and
Circle Officer, Vigilance Cell,
(Amravati Circle),
Water Resources Department, Amravati.
- 3) The Superintending Engineer,
Buldhana Irrigation Project Circle,
Buldhana.

Respondents

Shri S.N. Gaikwad, the learned counsel for the applicant.

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

Coram:-Shri Shree Bhagwan, Member (A) and
Shri Anand Karanjkar, Member (J)

ORAL JUDGMENT

(Passed on this 25th day of April 2019.)

Per:- Member (J)

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

2. It appears that the O.A. was allowed by this Bench and thereafter the order was challenged by the State Government in W.P. No. 6126/2017. Writ Petition was decided on 19.12.2017 and direction was given to this Tribunal to examine the relevant material whether the educational qualification of the applicant was equivalent to hold the post.

3. The learned counsel for the applicant submitted that same issue came for determination before the Hon'ble Division Bench of the High Court at Aurangabad in W.P. No. 3313/2018 decided on 24.10.2018. In that Writ Petition, the Hon'ble Division Bench of the High Court examined Civil Engineering Assistants, Group-C in the Irrigation Department (Recruitment) (Amended) Rules, 2010 and after considering the relevant Rule No.3, the Hon'ble Division Bench of the High Court at Aurangabad in paragraph 5 of the Writ Petition has observed as under:-

"The Rules framed under proviso to Article 309 of the Constitution of India cannot be superseded by the executive instructions issued under Article 162 of the Constitution of

India. The G.R. dated 15.12.2011 on which the reliance is placed by the Tribunal has been issued under the executive powers. The executive instructions under the executive powers cannot supersede the rules framed under proviso to Article 309 of the Constitution of India.”

4. This legal position is now well established with the G.R. dated 15.12.2011 on the basis of which the service of the applicant was terminated, was contrary to the rules framed under Article 309 of the Constitution of India and, therefore, action of the respondents terminating the services of the applicant, placing reliance on the G.R. dated 15.12.2011 was illegal. The Hon'ble Division Bench of the High Court at Aurangabad also held that two years' Draughtsman (Civil) Course of Industrial Training Institute was equivalent. In the present case, the applicant is possessing that qualification, therefore, she was eligible to be appointed on the post of Civil Engineering Assistant and her appointment was in conformity with the rules. In view of this discussion, we do not see any reason to justify the action of respondents terminating the services of the applicant. Hence we proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed in terms of prayer clauses (ii) and (iii).
- (ii) No order as to costs.

(A.D.Karanjkar)
Member (J)

(Shree Bhagwan)
Member (A)

Dt. 25.4.2019.

pdg