

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.1007 OF 2012

DISTRICT : SINDHUDURG

Smt. Vanita Babaji Chavan. )  
Working as Instructor (Craftsman Food )  
Production)(General) in I.T.I, Oros, )  
Tal.: Kudal, District : Sindhudurg. )  
Address for Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
9, "Ram-Kripa", Lt. Dilip Gupte Marg, )  
Mahim, Mumbai 400 016. )...Applicant

**Versus**

The Joint Director of Vocational )  
Education & Training, (Regional Office), )  
49, Kherwadi, Bandra (E), )  
Mumbai - 400 051. )...Respondent


**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Shri K.B. Bhise, Presenting Officer for Respondent.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 21.01.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

1  
  
\_\_\_\_\_

**JUDGMENT**

1. This Original Application is made by an Instructor (Craftsman, Food Production) (General) seeking confirmed posting in accordance with the select list dated 15.10.2011 rather than the appointment on the basis of clock hour as introduced by the impugned order. In the alternative, the Applicant claims a direction for the Respondent to continue to appoint her on contract basis as originally done at ITI, Oros, District Sindhudurg on regular/permanent basis.

2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondent.

3. In fact, the facts as such are not much in dispute. The Applicant initially came to be appointed on 25<sup>th</sup> August, 2009 on contract basis to the post above referred to. The said appointment came to be renewed by orders of 16.10.2010 and 7.10.2011 with nominal breaks. It would suffice, if we were to read to the extent necessary only one of such appointment letters (Exh. 'B' collectively, Page 16 of the P.B.). It would appear therefrom that an



advertisement came to be published for the said post on a date which is not specified in that document. The Applicant came to be selected. She belongs to Scheduled Caste category. She was appointed at Oros on a fixed salary of Rs.5,500/- with no other allowances. It was temporary appointment on contract basis for a period of maximum of 11 months or till such time as the regular appointment was made whichever was earlier. The appointment would come to an end with efflux of time stipulated thereby. It was made clear that her appointment would not be made permanent in any circumstance because it was made as a result of the urgency involved in the matter. Then, there were stipulations which are normally to be found in such cases and it is not necessary to detail them all over here.

4. In the meanwhile, an advertisement came to be issued by the In-charge holding the post of the Respondent – Joint Director of Vocational Education and Training being Advertisement No.1 of 2011. The last date by which the applications were to be made was 25<sup>th</sup> July, 2011. The post in question was at Serial No.30. There were as many as 48 conditions. The 47<sup>th</sup> of which is germane hereto hereto and it needs to be reproduced verbatim in Marathi.



“४७. जाहिरातीतील नमूद व्यवसायास केंद्र सरकार D.G.E.T. कडून संलग्नता प्राप्त झाल्यावरच व विहित पद्धतीने सदर व्यवसायात प्रवेश प्रक्रिया मुदतीत झाल्यावरच, पात्र उमेदवारास नियुक्ती आदेश निर्गमित करण्यांत येतील. सामान्य प्रशासन विभाग, शासन निर्णय क.प्राणिमं-२००७/प्र.क.४३/०७/१३-अ, दि. २७-०६-२००८ मध्ये नमुद केल्याप्रमाणे एक वर्ष किंवा निवडसूची तयार करतांना ज्या दिनांकापर्यंत रिक्त पदे विचारात घेण्यांत आली आहेत. त्या दिनांकापर्यंत, जे नंतर घडेल त्या दिनांकापर्यंत विधिग्राह्य ठरेल. त्यानंतर ही निवडसूची व्यपगत होईल.”

5. It is very clear from the above stipulation that the affiliation with DGET of Central Government was a condition precedent to the appointment in question. Now, be it noted that one could justifiably wonder as to why the advertisement should have been inserted at all unless the said condition was met, but as far as we in this Tribunal are concerned, we have to apply the legal principles, and therefore, we shall have to take a clear note of an essential pre-requisite to the appointment without the consideration of any other aspect of the matter. If the plain letters are so plain as they are, they leave no room for any interpretative exercise. Although it is no doubt true that one's heart goes out to the candidates who were made to apply and made to wait for the events which may not be quite certain. One wishes really that these aspects which have a lot to do with the youngsters waiting for employment is treated with the kind of sensitivity that it merited.



6. It is, however, again an indisputable factual position that the Applicant successfully competed for the said post which she applied for in response to the advertisement above referred to.

7. An event pending this OA is manifested by a G.R. of 15<sup>th</sup> October, 2015 which is at Exh. 'R-7A', Page 91 annexed to the Affidavit-in-reply of the Respondents. The crux thereof is that the services of those instructors of the ITIs which have come to an end or which were just about to come to an end would be converted into what is known as clock hourly basis.

8. In the Affidavit-in-reply dated 3<sup>rd</sup> January, 2013, it becomes very clear that the fact that the Applicant was selected to the said post is clearly admitted. But the case of the Respondent is that no affiliation was granted by the Director of General Employment and Training, New Delhi, and therefore, it was not possible to grant the relief to the Applicant that she was asking for. It is further pleaded in the said Affidavit-in-reply that the Applicant was appointed under Konkan Package Development in trade of Craft Instructor (Crafts Food Production) (General).

A handwritten signature in black ink, consisting of a circle with a vertical line through it and a large, sweeping flourish to the right.

---

9. Another Affidavit-in-reply came to be filed on 14.12.2015 apparently in compliance with this Tribunal's order of 30.11.2015. There are documents from the concerned Department of Government of India to which a reference has been made in Para 3.1 of the said Affidavit-in-reply. There is also a reference to a Government of Maharashtra G.R. dated 21<sup>st</sup> August, 2004 and ultimately, it is pleaded that a training of Hotel and Food Crafts under the KDPP Scheme for Oros (in District Sindhudurg) was to be started. But that was only on contract basis and in that connection, it is pleaded that it was a policy decision. In Para 3.3, it was pleaded that as per the affiliation letter dated 2.2.2007 by Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India, one post was sanctioned for the trade of food production. A document in that behalf is annexed to the said Affidavit-in-reply. It is pleaded that the Applicant wanted regular post, but that post was available at Wangaon, District Thane and the regular post of the Craft Instructor could not be granted to her because of non-affiliation above referred to. In Para 3.5 of the said Affidavit-in-reply, there is a reference to the fact that the Government of India did not approve of the proposal of a single unit, because requirement as per the Government of India norms was two units in which connection, a



document is annexed to the said Affidavit-in-reply. It is then pleaded that the said post could only be filled on the contract basis and not regular basis. In fact, the insufficiency of the unit in adequate land and insufficient power supply made it difficult to get affiliation even for Wangaon unit and in that background, in Para 5.2, it is pleaded that the practice of giving appointments on contract basis was also done away with and clock hourly basis replaced it.

10. In an earlier Affidavit filed on 27.10.2015, the facts were pleaded with regard to Wangaon unit as discussed above and further that the Applicant was appointed as Craft Instructor at ITI, Oros under Konkan Project on contract basis and that was only one of the two posts available at Oros. However, employment on permanent basis could not be given for want of affiliation which aspect of the matter has already been discussed above and again in Para 3.19, it was pleaded as to how the system of clock hourly basis was introduced.

11. It must have been found that although the Applicant has successfully competed for the said post, but the reasons for non-fructification *inter-alia* is the non-affiliation and the other facts and factors discussed above. It is no doubt true that Konkan Development Package is by

  
→

no means a temporary one, and therefore, there should be no reason why permanent appointees should not be there. However, at the end of the day, it is a matter for the concerned Government to decide and if the requirement of the Government of India is of two units as discussed above and not one unit and other norms of the Government of India are what they are, we do not think that we are in any better position to substitute our conclusions on the concerned Governments. That is more so, when our jurisdiction is by no means so expansive as the Applicant probably would expect. Unless it was shown that there was something inherently discriminatory and that too of a nature which would offend the constitutional provisions, the judicial forum would be extremely slow in rushing into the area which is legally and legitimately reserved for the concerned Government.

12. Now, in our view, the same would be the applicable principle in so far as the prayer clause (b) is concerned. The Applicant wants us to give directions that in the event of her regularization not coming through, instead of clock hourly basis, the status-quo ante should be ordered to be restored. In other words, she insists on getting the appointment on contractual basis which probably will be lesser of the two evils (clock hourly and contractual). In this OA, we do not feel call upon to make





any observation about the validity of the modes of appointments taken recourse to as manifested hereby, because we would refrain from making any observation which might cause unwarranted prejudice. Still we find that if we were to grant prayer clause (b), then we will have in effect compelled another document of contractual appointment to come into existence for which the Respondent is not willing to accept it. Again, the jurisdictional limitations would come into play. The powers to interfere may be there, but then circumspection is advised in the manner of exercise of the powers and that being the state of affairs, we are not so disposed as to grant that relief as well. Beyond that, we would not say anything more of our own.

13. The upshot is that legally and as per the jurisdictional limitations, no relief can be granted to the Applicant and this Original Application is accordingly dismissed with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**21.01.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**21.01.2016**

Mumbai

Date : 21.01.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\O.A.1007.12.w.1.2016.doc