

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.543 OF 2017

DISTRICT : Mumbai

SUB : Absorption/ Regularization

Ms Pritika Arvind Patil)
Age 28 years, OCC : Nil)
R/at D24, Room No.7, Jui C.H.S.)
near Chincholi Talav, Sector 25,)
Juinagar, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra, through)
the Principal Secretary, Higher &)
Technical Education Department,)
Mantralaya, Mumbai 32.)
2. The Director of Technical Education,)
MS, Mahapalika Marg, Post Box No.)
1967, near Madam Cama Hospital,)
Mumbai 1.)
3. The Director, Veer Mata Jijabai)
Technical Institute, near H. R.)
Mahajani Road, Matunga 400 019.)...**Respondents**

Shri K. R. Jagdale, Advocate for Applicants.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J
SHRI DEBASHISH CHAKRABARTY, MEMBER -A

DATE : 20.07.2023.

PER : SHRI A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has filed present O.A. for directions to Respondents to absorb her on regular basis on the post of Lecturer from the date of initial appointment with consequential service benefits invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are the admitted facts giving rise to Original Application.

The Applicant was appointed as a Lecturer on consolidated salary of Rs.25,460/- for academic year 2012-2013 by order dated 28.12.2012 issued by the Respondent No.3 - Director, Veer Mata Jijabai Technical Institute, Mumbai (referred as VJTI for brevity). Thereafter, Applicant's appointment was continued by issuing fresh orders year to year on same consolidated salary of Rs.25,460/-. As per last appointment order dated 02.06.2016, she was appointed for the academic year 2016-2017 up to 31.05.2017. Thereafter, Applicant was not given fresh appointment order and she came to be relieved. Thereafter, she made representation on 26.05.2017, claiming absorption on the post of Lecturer placing reliance on the decision of the Hon'ble High Court in **Writ Petition No.2046/2010 (Sachin A. Dawale and 90 others Vs. State of Maharashtra and one another, dated 19.10.2013)**. However, it was not responded. Ultimately, the Applicant has filed this O.A. for absorption.

3. Heard Shri K. R. Jagdale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Shri K. R. Jagdale, learned Counsel for the Applicant sought to contend that appointment of the Applicant was made after issuance of advertisement by the Respondent No.3 by the Committee appointed for this purpose. He, therefore, tried to contend that appointment was with due process of law and Applicant ought to have been continued in service on the post of Lecturer. Placing reliance on the decision of **Shri Sachin Dawale's** case (cited supra), he prayed for directions to Respondents for absorption.

5. Per contra, Shri A. J. Chougule, learned Presenting Officer raised the issue of jurisdiction contending that VJTI being autonomous institute, Applicant has no status of Government servant and, therefore, the Tribunal has no jurisdiction to entertain the O.A. Secondly, the Applicant was appointed purely on contract basis as a temporary employee and at the end of period of employment, she was relieved from the service. Thus, Applicant has no right much less legally enforceable to continue appointment or to seek absorption on regular basis.

6. Admittedly, as seem from appointment orders, the Applicant was appointed purely on temporary basis year to year on contractual basis on consolidated salary of Rs.25,460/-. There is stipulation in the appointment order i.e. appointment is purely on temporary basis as ad-hoc faculty and contract was for academic year. Suffice to say, it was not appointment on regular basis. That apart, there is nothing on record to establish that Applicant was appointed on substantive vacant post. Except bear words of Applicant, there is absolutely nothing to establish that appointment was made after following due process of law. Apparently, it is temporary arrangement of appointment on contractual basis. If the employer makes appointment disclosing all terms and conditions and employee accept the same without any grievance the terms and conditions mentioned in appointment order must prevail and such contractual appointment comes to an end at the end of period of contract.

7 Suffice to say, if there were no substantive post and posts were filled in purely on contractual basis for limited period, no such relief for absorption is acceptable otherwise it amounts to paying dividend to back-door entry which is totally impermissible in law.

8. Insofar as the decision in **Sachin Dawale's** case is concerned, in that case, since Lecturers in different faculties in Government Polytechnic were not available on account of selection not conducted by the MPSC, the Government had specifically notified G.R. dated 25.07.2002 which was subsequently modified by G.R. dated 02.09.2003 and 03.10.2003 thereby specifying special procedure for filling up a vacant post in the Polytechnic in Government of Maharashtra. The Petitioners therein undergone due selection process by Selection Committee which was consisting of by various experts. That apart, those appointments were on clear substantive vacant full-time post because of non- selection through MPSC. Therefore, in fact situation, the relief of absorption was granted in **Sachin Dawale's** case. Notably, the Hon'ble High Court also made it clear that it should not be taken as a precedent since the decision was given in peculiar facts of the case. Suffice to say, the decision in **Sachin Dawale's** case is of no assistance to the Applicant in present situation.

9. Admittedly, at the end of academic year 2015-2016, the Applicant's contractual period of service came to an end and she was relieved. The O.A. has been filed on 16.06.2017. Thus, on the date of filing of O.A., she was not at all in service. This being so, the question of granting relief of absorption does not survive.

10. As regard jurisdiction of the Tribunal, admittedly, the Applicants were contractual employees of VJTI which is autonomous institution governed by its own rules. They are not State Government employees amenable to jurisdiction of this Tribunal. The jurisdiction of this Tribunal is restricted to service matters to any civil post under the State.

11. Section 15 of the Administrative Tribunal Act, 1985 provides for jurisdiction power and authority of State Administrative Tribunal which is as under:-

"15. JURISDICTION, POWERS AND AUTHORITY OF STATE ADMINISTRATIVE TRIBUNALS. -

*(1) Save as otherwise expressly provided in this Act, Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court 1[***]in relation to -*

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person, whose services have been placed by any such local or other authority or corporation [or society] or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations or societies controlled or owned by the State Government :

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or corporations [or societies].

*(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [***] in relation to -*

(a) recruitment, and matters to recruitment, to any concerning service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14 appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable"

12. It is thus explicit that jurisdiction of the Tribunal is in relation to service matters to any civil post under the State. As per Section 15(2), it is only in case of issuance of Notification by the State Government, service matters pertaining to services to local or other authorities and corporations controlled or owned by the State Government, the Tribunal can exercise its jurisdiction. The VJTI is not the authority controlled or owned by the State Government nor there is any such notification as contemplated under Section 15(2) of Administrative Tribunal Act, 1985. This being clear position on the point of jurisdiction also, the O.A. is not maintainable. The reliance placed on the decision in **AIR 1995 SCC 1636 (R. N. A. Britto v/s Chief Executive Officer and Ors)** is totally misplaced. In that case, the Applicant was appointed as a Secretary of Bajpe Panchayat established under the provisions of Karnataka Village and Local Boards Act, 1959. The Hon'ble Supreme Court held that several functions where were required to be performed by the State are entrusted to Panchayat as well as funds of Panchayat are of the

Government and those were collected by way of tax. Therefore, the employees of Panchayat were held as State Government servants amenable to jurisdiction of Karnataka State Administrative Tribunal. However, in present case, the Applicant was contractual employee of VJTI which is fully autonomous institution. Their service conditions are totally different, therefore, in our considered opinion, the said decision is of no assistance to the Applicant in present facts.

13. The totality of the aforesaid discussion lead us to sum up that Original Application is devoid of any substance on merit as well as on the point of jurisdiction. Hence, the following order :-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Sd/-

(A.P. Kurhekar)
Member(J)

Place : Mumbai

Date : 20.07.2023

Dictation taken by : Vaishali S. Mane

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