

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.65 OF 2015  
WITH  
ORIGINAL APPLICATION NOS.89, 90, 315 & 894 OF 2015

\*\*\*\*\*


ORIGINAL APPLICATION NO.65 OF 2015

Smt. Sapna C. Sonawane. )  
Age : 34 Years, Occu.: Nil, )  
(Ex. Sr. Clerk-cum-Store Keeper in the )  
Office of I.T.I, Karegaon, Tal. Mokhada, )  
District : Thane and residing at )  
Sukhsagar Apartment, Ulhasnagar-4, )  
District : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Principal Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Director (Training), Vocational )  
Education & Training Directorate, )  
M.S, having Office at 3, Mahapalika )  
Marg, P.B. No.10036, Mumbai 1. )...**Respondents**

WITH

  
\_\_\_\_\_

**ORIGINAL APPLICATION NO.89 OF 2015**

Miss Vrushali M. Sawant. )  
 Age : 36 Years, Occu.: Nil, )  
 (Ex. Instructor, Cutting and Tailoring, )  
 I.T.I, Shenve, Tal. Shahapur, )  
 District : Thane and residing at )  
 Kolgaon, Tal. : Sawantwadi, )  
 District : Sindhudurg. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. )...**Respondents**

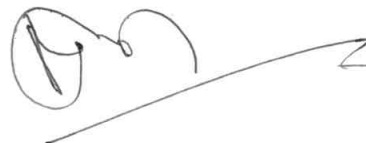
**WITH****ORIGINAL APPLICATION NO.90 OF 2015**

Ms. Smita B. Gaikwad. )  
 Age : 33 Years, Occu.: Nil, )  
 (Ex. Instructor, Cutting and Tailoring in )  
 the Office of I.T.I, Karegaon, Tal. Mokhada,) )  
 District : Thane and residing at Mantri )  
 Nagar, Latur. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. )...**Respondents**

2



**WITH**  
**ORIGINAL APPLICATION NO.315 OF 2015**

Smt. Kalpana S. Uchale. )  
 Age : 32 Years, Occu.: Nil, )  
 (Ex. Craft Instructor), I.T.I, Jamgahvan, )  
 Tal. Kalamnuri, District : Hingoli and )  
 residing at Amrut Kunj, A-Row House )  
 No.2, Opp. Metro Zone, Wadala Pathardi )  
 Road, Nasik. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. )...**Respondents**

**WITH**  
**ORIGINAL APPLICATION NO.894 OF 2015**

Shri Kiran D. Sonawane. )  
 Age : 32 Years, Occu.: Nil, )  
 Residing at Block No.107, 1<sup>st</sup> Floor, )  
 Sukh Sagar CHS, Katrap Road, Near )  
 Hetal Apartment, Badlapur (E). )  
Address of Service of Notice : )  
 Shri A.V. Bandiwadekar, Advocate, )  
 Having Office at 9, "Ram-Krishna", )

  
\_\_\_\_\_

Lt. Dilip Gupte Marg, Mahim,  
Mumbai 400 016.

)  
)...Applicant

**Versus**

1. The State of Maharashtra & Anr. )...Respondents

**Shri A.V. Bandiwadekar, Advocate for Applicants in OAs 65, 89 & 90/2015.**

**Ms. N.G. Gohad, learned Presenting Officer for the Respondents in OAs 65, 89, 90 & 894/2015 & Ms. Savita Suryawanshi, Presenting Officer for Respondents in OA 315/2015.**

**Shri K.R. Jagdale, Advocate for Applicant in OA 894/2015.**

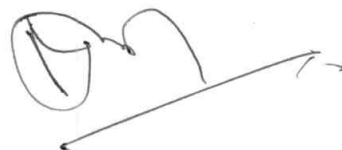
**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 29.09.2016**

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

**JUDGMENT**

1. These five Original Applications (OAs) can be disposed of by this common Judgment because although there may be minor variations here and there, but at the heart of it, the issue involved is regularization of the service of all these Applicants which was initially on contract basis



renewed from time to time. In that connection, these Applicants seek the benefit of a G.R. of 8.7.2014 and seek absorption thereunder. The Applicants in the 1<sup>st</sup> OA is a Senior Clerk-cum-Storekeeper while all the others are Craft Instructors and all of them are in Group 'C' category (Class-III).

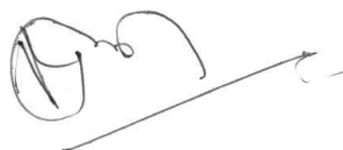
2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants in 1<sup>st</sup> four OAs and Mr. K.R. Jagdale, the learned Advocate for the Applicant in the last one and Smt. N.G. Gohad and Ms. S. Suryawanshi, the learned Presenting Officers for the Respondents.

3. The Applicant came to be appointed on contract basis for a fixed duration which came to be renewed from time to time. As a matter of fact, in case of all the Applicants, the Project Officer strongly recommended their regularization. It is not necessary to set out date-wise details, but it would be suffice to mention that in the 1<sup>st</sup> OA, the Applicant was initially for the first time appointed on the basis above mentioned on 23<sup>rd</sup> September, 2005 and her last agreement was valid upto 31.3.2013. In case of the 2<sup>nd</sup> OA, the Applicant was for the first time appointed on temporary basis or contract basis on 9<sup>th</sup> October, 2006



and she continued from time to time in a similar capacity. At Exh. 'F' in her OA (Page 37 of the Paper Book (P.B)), there is a communication from her to the Director (Training), Vocational & Training Directorate – Respondent No.2, dated 22.1.2014 whereby she sought the permission to join. It seems from a document at Page 35 of her OA that her last appointment was of March, 2013. In the 3<sup>rd</sup> OA, the Applicant came to be appointed for the first time on 23<sup>rd</sup> September, 2005 and in her case also, the said period was extended from time to time and her express agreement was of March, 2013. In case of 4<sup>th</sup> Applicant, she was temporarily appointed from time to time by way of renewal during 15.9.2006 and 10.7.2012 and it appears that her last agreement was current of March, 2013. In so far as the 5<sup>th</sup> and the last Applicant is concerned, he got his first appointment in the same capacity in July, 2008. Then, on 9<sup>th</sup> July, 2009, 9<sup>th</sup> July, 2010 and a date in the year 2011 which is not clear and again in the year 2012, his terms were extended in the same basis. On 4<sup>th</sup> March, 2014, he reported for work but Mr. Jagdale, the learned Advocate for the Applicants told us that thereafter he was not allowed to work.

4. The above discussion would make it very clear that in case of none of the Applicants, it was an instance of



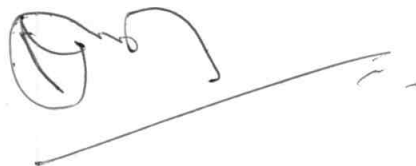
just one of appointment. There was a definite pattern in which although the ad-hoc or temporary appointment or appointment on contract came to be given from time to time but it indeed was given from time to time. There is absolutely no question of any of the Applicants having played any sharp practice as it were. In case of at least two Applicants, it seems that by the time, it was 31<sup>st</sup> March, 2013, they were in the family way and they have, therefore, relied upon two G.Rs in respect of maternity leave. They are of the year 1997 and 2009. It is not necessary for us to go in depth there into. The case of the Respondents in this behalf has been that those Applicants being non-permanent Government employees working on contract basis were not entitled to maternity leave. As we mentioned just now and as shall be presently pointed out, even without entering any categorical finding on the maternity leave aspect of the matter, all these OAs can be decided in accordance with the law.

5. Therefore, it is very clear that the Respondents of their own went on granting extension from time to time to each one of these Applicants. It is not a case of just one instance but the case of each one of them, the appointment was spread over a period of substantial time. There is material in the form of communications which would make

A handwritten signature, possibly 'G.M.', is written in black ink. A long arrow points from the signature towards the right side of the page.

it clear that none of these Applicants was a burden on the establishment. In fact, they were rendering effective service and it was not at all the case of the establishment that their performance left anything to be desired. It is, therefore, very clear that the Applicants continued to work in the manner they did spread over a period of time, and therefore, in the first place, there is no reason why they should not have been granted a further extension at least in the same capacity. We must repeat that there was no reason as far as their performance was concerned to discontinue them. Irrespective of whether they had absolutely no right or had weak type of right, the point remains that till that point in time and even thereafter, no regular appointee was there to replace them and there were clear vacancies of substantive nature which they were working on, although they themselves might be contract appointees or call it by whatever name. Therefore, unless such a supervening event took place that could have disentitled the Applicants from continuing in their status as contract appointee, in our opinion, there was no reason why they could have been discontinued just for the asking. The last Applicant in fact reported for work also.

6. According to the Respondents, they were not given such an extension because they did not apply for it and they did not come. Now, there is absolutely no





material to suggest that any written application was being presented before every extension. There is strong material to show that the Respondents needed the services of the Applicants and the extensions were being given all by their own without being asked for it by the Applicants. In so far as those Applicants who were at the advanced stage of pregnancy, even they had been in a service for long in whichever capacity, it was and there being no law, rule or instrument taking a contrary view having been pointed out and other factors remaining constant, we are of the opinion that the cases of those Applicants also will have to be understood in a proper perspective and with reference to context. It is, therefore, very clear and we hold it to be so that the Applicants in the first place were entitled to be given the same facility of contract appointment, if not anything else and there is no reason why they should not have been treated in that manner.


7. Ms. Gohad, the learned Presenting Officer in stoutly opposing this OA referred us to an order of this very Bench in **OA 1002/2011 (Dr. Ashok S. Mane Vs. The State of Maharashtra and 3 others, dated 4.2.2015)**. We have perused that order and we find that there it was a case of positive finding of the entry being backdoor and completely illegal which is not the case here. The learned P.O. also relied upon **Dilipkumar Garg and**



**another Vs. The State of Uttar Pradesh, Civil Appeal No.5122/2007 (Supreme Court of India).**

She relied thereon for the proposition that the judicial fora that exercise the jurisdiction of judicial review of administrative action should not sit in appeal over the decisions of the administrative authorities. We have borne this principle in mind in deciding this particular matter.


8. The upshot, therefore, is that the Applicants will have to be considered eligible and entitled for continuation at least in the same capacity from 1<sup>st</sup> April, 2014 and having held so, we may now deal with the G.R. of 8<sup>th</sup> July, 2014. Copies thereof have been annexed to each one of these OAs and we read it from the last OA where it is at Exh. 'P' (Page 40 of the PB). It is in Marathi. There are as many as 10 references. The preface thereto mentions *inter-alia* that the State Cabinet took decisions for welfare of unemployed tribal youth and the Scheme covered the period from 2004-05 to 2013-14. From out of 414 posts of teaching and non-teaching staff, some posts were filled-in on contract basis (कंत्राटी तत्वावर) on fixed monthly salary. In as much as the amount was less and the places where they were required to travel to in the manner of speaking were difficult, the employees were frequently leaving the jobs although by the Scheme itself, the unemployed tribal youth of both genders were gaining in the matter of expertise and



training. In that context, therefore, it was decided that those 414 posts of teaching and non-teaching staff instead on contract basis should be given regular pay scale. Then there is the decision of the Government in the first Paragraph in 5 Sub-paragraphs. There are Paras 2, 3 and 4 as well which are not quite germane hereto and we would, therefore, restrict our attention to the first Paragraph which has got 5 Sub-paragraphs. For the sake of facility, even as Clause 4 is the most important one, but in order to have a proper focus and perspective, we reproduce the entire clause in Marathi.

“प्रस्तावनेत नमूद केलयानुसार आदिवासी रोजगारभिमुख व्यवसाय शिक्षणाचे सार्वत्रिकरण योजनेच्या संदर्भात दि.२३.०२.२०१४ रोजी मंत्रीमंडळ बैठकीत पुढीलप्रमाणे नमूद केलेल्या बाबीस मान्यता देण्यात आली आहे. हयास अनुसरून शासन खालीलप्रमाणे मान्यता देत आहे :-

- (१) “आदिवासी रोजगारभिमुख व्यवसाय शिक्षणाचे सार्वत्रिकरण” ही योजना कायमस्वरूपी सुरु ठेवावी.
- (२) या योजनेअंतर्गत निर्माण केलेल्या विविध संवर्गातील एकूण ४१४ पदांना कंत्राटी तत्वाऐवजी शासनाच्या नियमित असलेल्या सहाय्या वेतन आयोगानुसार वेतनश्रेणी लागू करण्यात येत आहे. (परिशिष्ट “अ” नुसार)
- (३) उपरोक्त एकूण ४१४ पदांपैकी विविध संवर्गातील रिक्त असलेली उर्वरित पदे सरळ सेवेने व शासनाच्या प्रचलित कार्यपध्दतीने भरण्यात यावी.
- (४) शासन निर्णय दिनांक २३.०८.२००४ अन्वये आदिवासी विकास विभागाने या योजनेखाली निर्माण केलेल्या विविध संवर्गातील एकूण ४१४ पदांपैकी सध्या कार्यरत असलेल्या कर्मचाऱ्यांची सेवा दिनांक ०१.०४.२०१४ पासून नियमित करण्यात यावी.



(५) या योजनेतून विविध संवर्गातील एकूण ४१४ पदांकरीता येणाऱ्या वेतन व इतर भत्यांकरीता रु.१३,७८,६२,०००:- (तेरा कोटी अठ्ठयाहत्तर लक्ष बासष्ट हजार) इतक्या आवर्ती खर्चास मान्यता देण्यात येत आहे.”

9. In so far as the 4<sup>th</sup> Sub-clause is concerned, the Marathi words of which the English equivalent is “employees presently working”. As for rest, the exact Marathi version may be referred to. The Respondents want to so construe it as to mean that only those employees who were physically working as on 1.4.2014 would be the recipient of the benediction thereof and that is an interpretation, we are not in a position to accept. In our opinion, a proper perspective must inform the interpretation and the context can never be lost sight of. What the said provision lays down is that the services are regularized from 1.4.2014 and we cannot read therein any compulsion that the concerned employee must be physically there as on that day. We agree with Mr. Bandiwadekar’s submission that if interpretation sought to be given by the Respondents is accepted, then it may lead to absurd results, in as much as the one that was accidentally absent on 1<sup>st</sup> April will miss the buss as it were despite he having been there for years and years on while the one who may have joined in the month of March would be able to carry the day with just one month’s experience to back him up. That being the state of affairs, we are very clearly of the opinion that in view of the factual



finding that we have entered in these OAs, these Applicants are eligible and entitled to the benediction of the G.R. dated 8<sup>th</sup> July, 2014. The Applicants in the first 4 OAs at least have taken various rolled up pleas. But ultimately, in our opinion, the essence of the matter is what we have found it to be and the final order can be attuned thereto and that will govern all these 5 OAs. The Applicants, therefore, will have to be regularized.

10. It is hereby held and declared that the Applicants herein will be deemed to be in service as on 1<sup>st</sup> April, 2014 and they will be entitled to the benefit of the G.R. of 8<sup>th</sup> July, 2014. The Respondents are directed to act in accordance herewith and to let the Applicant join the posts which they last held within a period of six weeks from today. These Original Applications are allowed with these directions with no order as to costs.

Sd/-

Sd/-

**(R.B. Malik)**  
**Member-J**  
**29.09.2016**

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**29.09.2016**

Mumbai

Date : 29.09.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\9 September, 2016\O.A.65.15 group.w.9.2016.doc