

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.851 OF 2017

DISTRICT : KOLHAPUR

1. Shri Gaus Babu Sayyad.)
Age : 56 Yrs., Working as Craft Instructor))
(Wireman) on Clock Hour Basis in I.T.I.,)
Aundh (Khatav), District : Satara,)
R/o. Ganesh Nagar, Budhgaon,)
Tal. & Dist.: Sangli.) **(Deleted as per order dt.1.11.17)**

2. Shri Rahul A. Patil.)
Age : 30 Yrs., Occu.: Nil,)
Ex. Craft Instructor (Welder) in I.T.I,)
Kolhapur and residing at Ashtavinayak)
Colony, Phulewadi, Kolhapur.) **...Applicants**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya, Mumbai – 32.)

2. The Director of Vocational Education &)
Training (Through Jt. Director), having)
Office at Vocational Education & Training)
Directorate, 3, Mahapalika Marg,)
Post Box No.10036, Mumbai - 400 001.)

3. The Joint Director, Vocational Education)
Training, Regional Office, Ghole Road,)
Pune – 5.) **...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicants.

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

CORAM : **A.P. KURHEKAR, MEMBER-J**

DATE : **28.02.2019**

JUDGMENT

1. The Applicants have filed the present Original Application for direction to the Respondents to appoint them on contract basis on the ground of parity.

2. The Applicants were appointed as Craft Instructors in I.T.I. on contractual basis for the period of two years by order dated 7th December, 2010 on fixed salary of Rs.15,000/- per month. Their tenure came to an end at the end of December, 2012. They claims to have requisite qualification for the appointment of Craft Instructors in various trades of I.T.I. On completion of tenure, the Applicants were relieved from the service. Thereafter, the Respondent No.3 issued fresh order of two years' appointment on contractual basis to the Respondent No.1 for the period from January, 2013 to January, 2015. As such, at the end of January, 2015, the services of Applicant No.1 also came to an end. The Applicants contend that their colleagues who were appointed in other institutes of I.T.I. while in service, approached the Tribunal for regularization and extension of their services on contractual basis. In O.A.738/2016 filed by Shri Pankaj B. Wagh and Anr. against the Respondents, the relief of reinstatement of the Applicants therein was granted. Accordingly, the Applicants therein were reinstated. On the basis of decision in ***O.A.738/2016 (Pankaj Wagh Vs. The Secretary, Skill Development & Entrepreneurship Department) decided on 12.04.2017***, the Applicants contend that they being similarly situated persons on the ground of parity, they also need to be reinstated in service. On these pleadings, the Applicants prayed for direction to Respondent No.3 to appoint them as Craft Instructors.

3. During the pendency of application, the name of Applicant No.1 has been deleted as Respondent No.3 issued order of his appointment on contractual basis by issuing order dated 26th September, 2017. As such, the O.A. continued in respect of Applicant No.2 only.

4. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.36 to 41 of the Paper Book) *inter-alia* denying the entitlement of Applicant No.2 for reinstatement in service on contractual basis on the ground of parity. In this behalf, the Respondents contend that the Applicants were initially appointed purely on contract basis for two years. At the end of tenure on 06.12.2012, both the Applicants were relieved from the service. In so far as the Applicant No.2 is concerned, the Respondents contend that his work was not satisfactory during the period of his appointment from 2010 to 2012. He used to remain absent frequently and on the contrary, signed Attendant Muster despite being marked 'Absent'. Therefore, the Memo was issued to him on 20.10.2012 and explanation was sought. In explanation, the Applicant No.2 admits the mistake, but sought to justify it stating that he signed Muster on the instructions of Group Instructor Shri Patil. As such, he claims to be innocent and apologizes for the mistake. He assured not to commit such mistake in future and requested for extension. His Confidential Report was also adverse, and therefore, Principal, I.T.I. did not recommend his name for further extension. On this background, the Respondents contend that Applicant No.2 was not suitable for further extension in service, and therefore, the ground of parity cannot be invoked. On this pleading, the Respondents prayed to dismiss the application.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to contend that, in view of decision rendered by this Tribunal in O.A.738/2016 and some other O.As filed by colleagues of the Applicant as referred in O.A.738/2016, the Applicant No.2 is also entitled to appointment on contractual basis on account of parity and the misconduct attributed to the Applicant should not

come in his way. Thus, according to him, the decision for not extending the tenure of Applicant No.2 is arbitrary. He has also pointed out that the stand taken by the Respondents that Principal, I.T.I, Kolhapur did not recommend the name of Applicant No.2 for extension is incorrect in view of subsequent recommendation made by him on 22.01.2013 (Page No.66 of the P.B.). On this line of submission, he prayed to allow the O.A.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents invited my attention to the Memo dated 29.10.2012. The CRs of Applicant No.2 and explanation submitted by him are at page Nos.49, 50 and 59 of the P.B. The Respondents specifically contend that the performance of Applicant No.2 was not satisfactory and he has committed misconduct during the period of his tenure from 2010-2012.

7. The perusal of Memo (Page No.49 of P.B.) reveals that the explanation of Applicant No.2 was called for signing Muster on 9th, 12th, 13th and 18th of July, 2012 though he was absent on these dates. As he was absent, the absentee was marked by marking Cross Mark in red ink as per usual practice. However, subsequently, the Applicant put his signature over these Cross marks. He also did it about his absence on 17.08.2012. Besides, he was not punctual in attendance, and therefore, one day's salary was deducted from his salary for late attendance on three occasions. Significant to note that in reply to show cause, which is at page No.59 of P.B, the Applicant No.2 has not denied his absence on these dates. He also admits to have signed the Muster later on. However, he sought to justify misdeed contending that he did it on the instructions of Group Instructor Shri Patil. He further sought to justify the mistake contending that he was not aware about the Rules and Regulations of the Institute, and therefore, apologies for the mistake and requested for extension. There is no denying that this explanation (Page No.59 of the P.B.) was tendered by Applicant No.2. This being the position, there is admission of misconduct and the explanation sought to be

offered is far from acceptance. His conduct of signing Muster though absent is not befitting to the public servant and his explanation that he did it on the instructions of Shri Patil is nothing but lame excuse.

8. Furthermore, the Principal, I.T.I. under whom the Applicant No.2 worked for two years made adverse entries in his Confidential Reports, which is at Page No.50 of P.B.). He has specifically mentioned that the conduct of Applicant is not satisfactory and cannot be recommended for further extension. The Principal, I.T.I. had an opportunity to observe the conduct and performance of the Applicant, and therefore, his evaluation about the performance of Applicant No.2 is important. Furthermore, the adverse entries made in CRs are also strengthened by the admission of Applicant No.2 himself in view of his explanation at Page No.59.

9. True, as seen by letter dated 27.11.2013 (Page No.66 of P.B.) later, the Principal, I.T.I. seems to have recommended the name of Applicant No.2 for appointment on contractual basis. What he states in his letter that Applicant No.2 in his explanation has apologized for the mistake, and therefore, he be given chance for appointment on contractual basis. This recommendation dated 22.01.2013 cannot be read in isolation and most importantly, it does not wipe out the mistake of Applicant No.2 referred to above. Besides that was on the recommendation by Principal, I.T.I. and cannot be said binding on the appointing authority i.e. Respondent Nos.1 to 3. It is because of misconduct and CRs of Applicant No.2, the Respondents refused to extend the appointment of Applicant No.2 for further period on contractual basis.

10. Shri Bandiwadekar, learned Advocate for the Applicant made feeble attempt to show that the remarks made by Principal, I.T.I. in C.R. that the result of All India Test of the students under the guidance of Applicant No.2 is unsatisfactory, is obviously incorrect in view of the mark-sheet of the students.

True, the result as seen from the mark-sheet (Pages 62 to 65 of the P.B.) shows around 77% and 80% students passed the examination. Perhaps in the assessment of Principal, the result was expected more, and therefore, he has mentioned it as unsatisfactory. Apart, misconduct admitted by the Applicant in his explanation was one of the major reason for non-giving him extension. Suffice to say, the submission advanced by the learned Advocate for the Applicant that despite good performance, the extension was refused holds no water.

11. As stated earlier, the Applicant No.2 was purely on contractual basis with clear understanding and condition that his services will be discontinued at the end of two years of his tenure. He has accordingly executed Bond admitting the conditions stipulated in appointment letter. Needless to mention that the appointment being on purely contractual basis, the Applicant No.2 has no vested right to seek further extension much less he has no legal enforceable right to ask for extension particularly in view of his misconduct which disentitle him for seeking extension. In other words, he has forfeited the claim of reappointment by his misconduct for which he should thank himself rather than blaming Respondents.

12. True, in O.A.738/2016 and some other O.As filed by colleagues of the Applicant, they were granted relief and directions for reinstatement in service were issued. However, the Applicant No.2 cannot claim ground of parity in view of his misconduct referred to above. In such situation, if employer who has right to choose the employee, takes decision not to extend the appointment on contractual basis of Applicant No.2, the same cannot be faulted with. It cannot be termed arbitrary or in violation of principles of law. Therefore, the Judgments rendered in O.A.738/2016 is of no assistance to Applicant No.2 in the present situation. I, therefore, conclude that the submission advanced by the learned

Advocate for the Applicant is devoid of merit and the O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 28.02.2019
Dictation taken by :
S.K. Wamanse.