

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.738 OF 2016

DISTRICT : NASHIK

1. Shri Pankaj B. Wagh.)
Age : 35 Yrs, Occu.: Nil,)
R/at D/5/3, Rajaya Karmachari)
Hsg.Soc, Ashok Nagar, Satpur,)
Nashik - 422 007.)
2. Shri Vijendra S. Kolekar.)
Age : 33 Yrs, Occu.: Nil,)
R/at Sahyadri Nagar, Gangadbari,)
Nandgaon, At/P. Tal. Nandgaon,)
District Nashik.)
3. Shri Jagdish V. Jadhav.)
Age : 32 Yrs, Occu.: Nil,)
R/at Post Pimpalnare, Tal. Dindori,)
District : Nashik.)
4. Shri Mahendra H. Kale.)
Age : 35 Yrs, Occu.: Nil,)
R/at At Post Khicha Maliwada,)
Junnar, District Pune.)
5. Shri Arun R. Madhavai.)
Age : 37 Yrs, Occu.: Nil,)
R/at At Kuldongi, Post : Sekara,)
Tal.: Nandgaon, District Nashik.)
6. Shri Prashant V. Nerkar.)
Age : 40 Yrs, Occu.: Nil,)
R/at At Post Chinchwar, Tal.: Dhule,)
Dist : Dhule.)
7. Smt. Varsha P. Bhor.)



Age : 33 Yrs, Occu.: Nil,)
 R/at Mahalaxmi Row House, A-7,)
 Swami Samarth Nagar, Pathardi)
 Phata, Nashik.)...**Applicants**

Versus

1. The Secretary,)
 Skill Development & Entrepreneur-)
 ship Department (Previous Dept.))
 Higher & Technical Education Dept.,)
 Mantralaya, Mumbai - 400 032.)
2. The Director.)
 Vocational Education & Training,)
 M.S, 3, Mahapalika Marg, P.B.No.)
 10036, Mumbai 400 001.)
3. The Joint Director.)
 Vocational Education & Training,)
 Old Agra Road, Nashik 422 002.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 12.04.2017

JUDGMENT

1. This Original Application (OA) is brought by 7 Applicants seeking to be treated at par with the Applicants of the OA 52/2016, dated 13.4.2016 (Nagpur Bench of this Tribunal) and in effect seek reinstatement and



continuation in service as Instructors, Industrial Training Institute (ITI).

2. The Applicants are at the moment in the manner of speaking out of job. They were till discontinuation working as Instructors in Welding, Turner, Fitter, etc. They are out of job for a little more than one and half years. A fasciculus of OAs, the leading one being **OA 467/2015 (Shri Vinod R. Badekar Vs. State of Maharashtra and others and other OAs) came to be decided by this Tribunal on 27th April, 2016 (Coram : Shri Rajiv Agarwal, Vice-Chairman)**. It was observed in the penultimate Paragraph of that Judgment that, on the basis of principle of equality in public employer though selected on contract basis which is the basis, even in the present Applicants were also appointed had a right to be appointed on a regular post, if the vacancies existed. Here, in this matter, I am informed at the Bar in this OA that more than 1400 vacancies still exist. It was further observed in that particular common Judgment that the case of those Applicants was no different than that of the Applicants whose services had been continued due to Court intervention. They were held eligible to get the same relief as in Para 8 above. Para 8 of that Judgment reads as follows :



“8. It is true that the Applicants had given undertaking that they will not claim any right to be appointed on regular basis. This undertaking has to be understood in proper context. If the regular posts were not being filled by the Respondent No.1, it could be argued that the Applicants have no case for seeking regularization. However, it is seen that on the one hand the Applicants are kept on contract basis and their services are discontinued after one or two terms of two years, while on the other hand new persons are being recruited on regular basis. This has no justification, whatsoever. The Applicants have not challenged GR dated 23.8.2010. They had executed bonds that they will not seek regularization of their services. Their claim that they are eligible for regularization of services after 3 years in view of judgment of Hon’ble High Court (Nagpur Bench) in W.P. No.2046/2010 cannot be accepted on that count. If their claim is accepted services of all the Applicants would be required to be regularized even in excess of regular posts. This will breach GR dated 23.8.2010. However, the Applicants have been selected in regular selection process as per recruitment rules and they are fully eligible to be accommodated in regular vacancies as per their seniority and merit to the extent of available regular vacancies. The Applicants are eligible for this relief on the basis of the principle of equality before law. The posts vacated by such persons appointed on contract basis, whose services are to be regularized, can then be filled on contract/clock hourly basis.”

3. The Hon’ble Vice-Chairman concluded in Para 11 as follows :

“11. All the Applicants in all OAs. and similarly selected persons will be considered for appointment on the regular vacancies, on the basis of their place



in the merit list. To the extent the Applicants and others could be accommodated they will be accommodated. The remaining Applicants will be governed by GR dated 23.8.2010. Those who have been given interim relief will be allowed to continue to work till the decision on absorbing persons in the above terms is taken. This process should be completed within a period of 3 months from the date of this order. There will be no order as to costs.”

4. The only difference that could possibly be said although not quite significant in the context is that the present Applicants are technically out of job at the moment. But then, in my opinion, that is hardly a distinguishing feature of any great moment. Before I proceed further, it also needs to be mentioned that the Hon'ble Chairman sitting at Nagpur made interim orders in 5 OAs, the leading one being OA 52/2016 on 13.4.2016 in which the interim order of the above referred group of OAs starting from OA 467/2015 was relied upon. That OA which was finally decided by the Hon'ble Vice-Chairman, was the one in which on 23.6.2015, interim relief was granted and that was referred in the order of the Hon'ble Chairman in the Nagpur OAs.

5. Mrs. K.S. Gaikwad, the learned PO while stoutly opposing the OA, invited reference to what has been described as Affidavit-in-compliance of the Tribunal's order dated 22.7.2016 and tried to distinguish the case of the



present Applicants with other successful Applicants in whose OAs, the orders as mentioned above were made. According to the learned PO, after the orders were made in OA 467/2015, the 2nd Respondent – Director, Vocational Education and Training issued a letter dated 6.5.2016 to all Joint Directors seeking information in respect of the contractual employees and thereafter, the Joint Director of Vocational Education and Training, Nashik – the 3rd Respondent submitted a detailed information thereabout vide the communication of 12.5.2016. Pertinently, in that information, the names of the present Applicants were admittedly included which is reflected from Exh. 'R-1' collectively. This fact needs to be borne in mind. According to the Respondents, the contractual services came to an end on 8.11.2015 so far as the Applicants were concerned and thereafter, the Applicant did not apply for re-appointment to the Director, Vocational Education and Training and this according to the Respondents would show that they had no interest in the said appointment. It is, however, pleaded that they had submitted a common application on 7.7.2016 that too, after completion of one and half years of the conclusion of their contractual service which was according to the Respondents a huge gap.



6. At this stage itself, it will be necessary in my view to notice a communication dated 22nd June, 2016 from Joint Director to the Principal, ITI, Tumsar in District Bhandara in respect of the Lecturer Shri Anil V. Rodke. His case was exactly like the present Applicants. His term had also ended and after more than one year, his case was approved for all practical purposes for reinstatement in the same capacity. In addition to the circumstances emanating therefrom, Mr. Chandratre invited reference to Paras 6.10 and 6.11 of the OA. It is pleaded therein in effect that the Applicants and some colleagues were pursuing other remedies and in the meanwhile, they came across this Tribunal's Judgment in the above referred OA 467/2015. Some queries were raised thereafter. The result of that particular order has been set out. They in effect pleaded therefore that they had all along being bona-fidely pursuing their remedies.

7. In my opinion, therefore, the attempt of the Respondents to distinguish the case of the Applicants from those who succeeded in earlier rounds of litigations has no force or substance. The Applicants are quite clearly at par with them and are entitled and eligible to be treated exactly in the same manner including Shri Anil V. Rodke whose matter has just been discussed hereinabove. I would,



therefore, hold that the Applicants are entitled to the relief sought.

8. The Respondents will have to act in accordance herewith and for all practical purposes, extend to the Applicants the benefit of the earlier orders of this Tribunal discussed hereinabove even as in the prayer clause, actually the reference was made only to one order.

9. The Respondents are directed to act in accordance herewith and treat the Applicants herein in exactly the same manner as the Applicants of the OAs that have figured hereinabove and reinstate the present Applicants on the same directions and conditions such as it obtained at the time their contractual appointment came to be an end. The compliance herewith within a period of four weeks from today and in view of the foregoing, the Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
12.04.2017

12-04-17

Mumbai

Date : 12.04.2017

Dictation taken by :

S.K. Wamanse.