

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5060 OF 2015

ATMA Employee's Welfare Association
(Maharashtra State), Aurangabad,
Having its registered office at
N-9, K-36/2, Jalgaon Road,
Pawan Nagar, HUDCO,
Aurangabad – 431 003.

Through : its Secretary,
Pradeep s/o Balasaheb Pathak,
Age-47 years, Occu. Service as
Block Technology Manager,
R/o N-9, K-36/2, Jalgaon Road,
Pawan Nagar, HUDCO,
Aurangabad – 431 003

..PETITIONER

VERSUS

1. The Union of India,
Through the Secretary,
Department of Agriculture
& Co-operation,
Ministry of Agriculture,
Government of India,
New Delhi
2. The Secretary,
Agriculture, Animal Husbandry,
Dairy Development and Fisheries
Department, Hutatma Rajuguru Chowk,
Madam Kama Road, Mantralaya,
Mumbai-32.
3. The Commissioner for Agriculture,
Office of Commissionrate,
Maharashtra State,
Pune
4. The Director,
A.T.M.A. (Agriculture Technology
Management Agency)
Commissioner of Agriculture,
Maharashtra State,
Pune-5

..RESPONDENTS

Mr. S.D. Joshi, Advocate for the Petitioner
Mrs.M.A. Deshpande, Additional Govt. Pleader, for
respondent/State
Mr. B.B. Kulkarni, Advocate for respondent nos.1 and 4

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 11th AUGUST, 2016
JUDGMENT PRONOUNCED ON : 24th AUGUST, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is heard finally.

2. The petitioner is an association of the Employees of Agricultural Technology Management Agency popularly known as "ATMA" and hereinafter referred to as ATMA only. The learned counsel for the petitioner relying on the contents of the petition as well as rejoinders dated 30th January, 2016 and 15th April, 2016 submits that respondent no.1—Union of India sponsored a scheme called "ATMA" to support the State Extension Agricultural Programmes in the year 2010. The said programmes were to operate at District and Block Levels

for implementation of the said scheme. Various posts were created such as Block Technology Manager (for short, "BTM"), Subject Matter Specialist (for short, "SMS") which subsequently renamed as Assistant Technology Manager (for short, "ATM") and Computer Programmer (for short, "CP"). The Apex Body namely ATMA Governing Board was established for supervising the overall policy directions. Accordingly, one post of BTM and two posts of ATMs were to be filled up at the Block Level on contract basis. The post of Computer Programmer (CP) was to be filled up on contract basis at District Level.

3. The expenditure of implementing the scheme was to be incurred by respondent no.1—Union of India and respondent no.2—State Government in the ratio of 90:10, respectively.

4. The posts referred to above were to be filled up by respondent no.3. Accordingly, respondent no.3 published an advertisement for the above referred posts calling for the applications from the eligible candidates on or before 30th September, 2010. The members of the petitioner were holding the requisite

qualifications. Therefore, they applied for the above referred posts as per their respective qualifications. They were subjected to interview by the Office of respondent no.3. Considering their educational qualifications as well as performance in the interview, they were selected for the said posts and appointed on contract basis for a period of 11 months by issuing an appointment order dated 10th November, 2010.

5. The candidates appointed as BTM were offered consolidated pay of Rs.15,000/- and Rs.5,000/- per month towards mobility charges. The candidates appointed for the posts of SMS (now called as ATM) were offered consolidated pay of Rs.5,000/- and Rs.3500/- per month towards mobility charges. Accordingly, the members of the petitioner discharged their duties as BTM, ATM and CP respectively.

6. The members of the petitioner holding the posts of BTM and ATM were deputed for training to be conducted by ATMA with the aid of Agricultural Department for a period of 3 to 5 days. The members of the petitioner also were directed to complete Post Graduation Diploma in Agricultural Extension Management for which, ATMA

incurred the expenditure of Rs.15,000/- for each of the members of the petitioner. Most of the members of the petitioner have completed the said Post Graduation Diploma.

7. After completion of the period of 11 months from the initial appointments of the members of the petitioner, they were given a technical break for some days and again issued appointment orders on contract basis for a further period of 11 months. The services of members of the petitioner came to be continued after technical breaks on completion of 11 months from their respective dates of appointments. The last appointment orders were issued in the month of May-2014 and June-2014 in respect of few members of the petitioner.

8. The members of the petitioner performed their duties satisfactorily to achieve the objectives of the scheme. The term of some of the members of the petitioner was going to end on 30th April, 2015, while the term of some of the members on 4th and 5th May, 2015. In the meanwhile, respondent no.2 issued the impugned communication on 9th April, 2015, whereby it was indicated that instead of appointing the members of the

petitioner on contract basis for a further period, the posts held by them should be filled up on contract basis only, but through outsourcing. Therefore, the members of the petitioner apprehended that their services would be discontinued without any reasonable ground. Hence, they filed the present Writ Petition challenging the communication dated 9th April, 2015 and seeking continuation of their services until continuation of the scheme sponsored by the Central Government or until attaining the age of superannuation, whichever is earlier.

9. The learned counsel for the petitioner submits that the members of the petitioner are not claiming regularisation in the services. The said members have been subjected to proper selection process and after considering their educational qualifications and satisfactory performance in the interview, they have been appointed to the respective posts. They were continued from time to time till the year 2014, after giving them technical breaks on completion of their respective period of 11 months from the respective dates of appointments. He submits that the scheme sponsored by

respondent no.1 – Union of India is still in existence. The workload of the said scheme has been increased. Therefore, in the place of two ATMs, three ATMs have been sought to be appointed. He further submits that the members of the petitioner are experienced hands. Some of them have completed the age of 45 years. However, by introducing the new scheme, the respondents have tried to throw the members of the petitioner on streets by taking the decision to fill up the posts of BTM, ATM and CP on contract basis through outsourcing, from the candidates, who are below the age of 45 years. He submits by this strange decision, the members of the petitioner are being subjected to great harassment and inconvenience. He, therefore, submits that the impugned communication dated 9th April, 2015, may be quashed and set aside and the respondents may be directed to continue the services of the members of the petitioner till the scheme sponsored by respondent no.1 remains in force or till the members of the petitioner attain their respective ages of superannuation, whichever occurs earlier.

10. The learned Additional Government Pleader filed

reply dated 29th June, 2015 and additional reply dated 11th February, 2016, he opposed the Writ Petition. The some and substance of the contentions raised by respondent nos.2 to 4 is that the ATMA Scheme of 2010, has been replaced by ATMA Scheme of 2014. As per the guideline No.2.9 on page No.29 of ATMA Scheme of 2014, the mode of recruitment and remuneration has been changed. Accordingly, the above referred posts are required to be filled up on contract basis not by the respondents, but through outsourcing. Remuneration for the above referred posts also has been increased. The learned A.G.P. submits that the earlier ratio of sharing expenditure by the Union of India and State Government for implementation of the scheme has been changed from 90:10 to 60:40 respectively. The budgetary provision and policy decision for incurring expenditure has not yet been made. Therefore, the Minister for Agriculture, directed that unless and until policy decision is taken by the State Government and budgetary provision is sanctioned, the orders for appointment on contract basis in favour of the members of the petitioner should not be issued. The learned A.G.P. submits that the members of the petitioner had been appointed on contract basis for

a limited period of 11 months. Their services were continued after technical breaks from time to time. However, the extension of their services would not vest them with any right to claim continuity in service until termination of the scheme or attaining the age of superannuation, whichever is earlier. The learned A.G.P. further submits that as per the revised guidelines, the above referred posts would be required to be filled up through Service Providers from the candidates who are below the age of 45 years. Therefore, the persons who attained the age of 45 years cannot claim appointments to the said posts. The learned A.G.P. submits that as per the guidelines of 2010, it was discretionary to fill up the posts on contract basis by the State Government. However, as per the guidelines of the year 2014, it has been made obligatory on the part of the State Government to fill up the said posts on contract basis through the Service Providers. On these grounds, the learned A.G.P. submits that the Writ Petition, may be dismissed.

11. Indisputably, the members of the petitioner have been selected to the posts held by them after publishing an advertisement and calling for applications

from all the eligible candidates. They were subjected to interview by the Selection Committee. As such, they were selected to the posts held by them by following due procedure. It is not the case of the respondents that the members of the petitioner have been appointed without following the due process of selection.

12. The scheme of ATMA is still in force. It is not the case of the respondents that the workload of the said scheme has been reduced and therefore, some of the members of the petitioner would be required to be removed from the services. On the contrary, as seen from the comparative chart given by the learned A.G.P. at internal Page No.6 of the reply dated 11th February, 2016, in the place of two ATMs, three ATMs have been decided to be appointed at one Block Level. It is clear that the workload of the scheme has been increased.

13. Admittedly, the members of the petitioner have been given training by ATMA for 3 to 5 days by spending of Rs.500/- per day for each of them. Moreover, most of the members of the petitioner have completed their Post Graduation Diploma in Agricultural Extension Management at the cost of the respondents, which was Rs.15,000/-

per member. The members of the petitioner have experience of 5 to 6 years at their credit. They have satisfactorily worked for implementation of the scheme. If that be so, we do not find any rational or justification for discontinuing the services of the members of the petitioner and appointing fresh candidates for doing the same work on contract basis, but through Service Providers.

14. The learned counsel for the petitioner cited the judgment in the case of ***Md. Abdul Kadir and anr Vs. Director General Of Police, (2009) SCC-611***, wherein the Government of India formulated the Prevention of Infiltration of Foreigners Scheme ("PIF Scheme" for short) for Assam, for strengthening the Assam Government machinery for detention and deportation of foreigners in the year 1960. The scheme had been extended from time to time and was in force even when the above cited judgment was delivered. As per the said scheme, only ex-servicemen were to be appointed to the additional posts for contract period of one year. After the said period of one year, they were being given breaks and reappointed considering their performance.

The artificial annual breaks and reappointments were introduced by the State Agency entrusted with the operation of the scheme by issuing circular dated 17th March, 1995. Being aggrieved by process of termination and reappointment introduced by the said circular and consequences thereof, appellant nos.1 and 2 therein, approached the Gauhati High Court. The learned Single Judge of the Gauhati High Court allowed the writ petition filed by them and held that the appellants should be continued as long as the scheme was continued by the Government of India. The said decision was set aside by Division Bench of the Gauhati High Court. The decision was challenged before the Hon'ble the Supreme Court, which came to be allowed partly with the following observations.

"This Court has always frowned upon artificial breaks in service. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the

length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination re-engagement, merely because their appointment is termed as ad hoc appointments. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminus with the scheme. The circular dated 17.3.1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed."

15. The learned counsel for the petitioner placed reliance on common judgment in the case of of **Ajay s/o Ashokrao Ghatole and others Vs. The State of Maharashtra and others** (Writ Petition No.9539 of 2012 and the companion writ petitions), delivered by this Court on 12th March, 2014, wherein, the petitioners claimed to be appointed as Data Entry Operators on contract basis challenged the communication dated 9th November, 2012,

issued by the Director of Education (Primary), directing of the Education Officer (Primary), Zilla Parishads in the State of Maharashtra to start the process of recruitment of Data Entry Operators on contract basis afresh. The said writ petition came to be allowed with the following observations.

"In the present case, the petitioners have undergone the selection process undertaken by the State Government as per its policy. There is no objection to the recruitment process that has been undergone by the present petitioners. The petitioners are not claiming permanent status based upon their temporary employment or absorption or regularisation. What is claimed by the petitioners is that they should be continued in employment till the scheme in question is continued or till there is a change in the requirement of the qualification under the scheme by the Central Government. The case of the petitioners is squarely covered by the judgment of Apex Court in the case of the Mohd. Abdul Kadir (cited supra)."

16. The controversy involved in the present case is rather similar to that of the case of **Ajay s/o Ashokrao Ghatole and others Vs. The State of Maharashtra and others**, (supra). In view of the above cited judgments, we are of the considered opinion that the cosmetic

change in the Guidelines of 2010 and 2014 pertaining to recruitment of the staff of the scheme just by substituting the word "should" for the word "may" cannot be attached with any importance. There is no rational or justification in discontinuing the services of the members of the petitioners, who are trained and experienced hands, and allowing the respondents to fill up the said posts on contract basis only from the fresh candidates through service providers. As stated by the petitioner itself, its members are not claiming regularisation of their services or seeking the benefits of permanency. The members of the petitioner certainly are entitled to expect reasonably continuation of their services until termination of the above referred scheme or until attaining the age of superannuation, whichever occurs earlier. In view of the judgment in case of ***Md. Abdul Kadir and anr Vs. Director General Of Police,*** (supra), the members of the petitioner would not be entitled for regularisation of their services and their services would be coterminus with the above-mentioned scheme. In the result, we allow the writ petition with the following order.

O R D E R

- (i) The impugned communication dated 9th April, 2015, to the extent of Clause-2 issued by respondent no.2 directing appointment on contract basis through outsourcing, is hereby quashed and set aside.
- (ii) The respondents shall continue the services of the members of the petitioner until continuation of the scheme sponsored by Respondent no.1-Union of India or until they attain the age of superannuation, whichever occurs earlier, subject of course to earlier termination either on medical or disciplinary grounds or for unsatisfactory performance.
- (iii) Rule is made absolute in the above terms.
- (iv) The Writ Petition is accordingly disposed of.
- (v) The parties shall bear their own costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE