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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2134 OF 2013

KAVITA PRAVIN JADHAV,
Age : 28 years, Occ : Household,
R/o Mandve (Bk.),
Tq.Jamner, Dist.Jalgaon.

...PETITIONER

-VERSUS-

- 1 ASHA ISWAR JADHAV,
Age : 28 years, Occ : Household,
R/o Mandve (Bk.),
Tq.Jamner, Dist.Jalgaon.
- 2 Taluka Selection Committee,
Integrated Child Development Project,
Jamner, Dist.Jalgaon.
- 3 Chief Executive Officer,
Zilla Parishad, Jalgaon,
Dist.Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Shri Wani Girish V.
Advocate for Respondents : Shri Sonwane Maheshkumar S. for R/2 and
R/3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 On 20.03.2014, I had passed the following order:-

- “1. Heard Shri G.V. Wani, learned Advocate for the petitioner and Shri M.S. Sonwane, learned Advocate for respondent No. 2/Taluka Selection Committee, Integrated Child Development Project, Jamner, Dist. Jalgaon.
2. A peculiar controversy is before this Court. The petitioner was at serial No. 1 in the select list for appointment as 'Anganwadi Sevika' (Anganwadi helper) at Mandve (Bk.) under Zilla Parishad, Jalgaon. Respondent No. 1 was at serial No. 2 in the select list. Shri Sonwane, representing respondent No. 2, does not dispute this position, and concedes that the petitioner was at serial No. 1, as per the merit select list.
3. Since, respondent No. 1 resorted to litigation, by challenging the selection process, the Zilla Parishad, Jalgaon, acting through its Chief Executive Officer (C.E.O.) appointed respondent No. 1 as 'Anganwadi Sevika'. Shri Sonwane, the learned Advocate further states that subsequently respondent No. 1 has incurred a disqualification on account of giving birth to a third child. Consequentially, she has been terminated from the said post and as such, the said post is laying vacant today.
4. It is noticed that the Zilla Parishad, Jalgaon, which is the appointing authority and the employer of 'Anganwadi Sevika' has not been impleaded. Shri Wani, learned Advocate for the petitioner, submits that he would forthwith carry out the amendment and add Zilla Parishad, Jalgaon as respondent No. 3.
5. Liberty to add the said Zilla Parishad as respondent No. 3 is granted which shall be carried out in the

course of the day. Notice before admission be issued to the added respondent. Shri Sonwane, learned Advocate appearing on behalf of respondent No.2, waives notice for the added respondent, and seeks liberty to file a short affidavit-in-reply.

6. *In these facts noted above, stand over to 11-04-2014. Added respondent to file affidavit-in-reply on or before 08-04-2014. In the meanwhile, the post of 'Anganwadi Sevika' which has fallen vacant on account of disqualification of respondent No. 1 shall not be filled in and shall be kept vacant until further orders.*
7. *Respondent No.1 though served has preferred to remain absent and no appearance has been entered on her behalf. If she chooses to remain absent on the next date, this matter would be heard and decided in her absence.”*

3 The Petitioner is undisputedly at Sr.No.1 in the merit/ select list for appointment as an “Anganwadi Madatnis” at village Mandve (Bk.) under the Zilla Parishad, Jalgaon. Respondent No.1/ Smt.Asha Ishwar Jadhav was at Sr.No.2 in the said merit/ select list. It is now undisputed that Respondent No.1, who had challenged the selection of the Petitioner, is herself now disqualified on account of having more than two children which is prohibited under the law.

4 The learned Advocate appearing for Respondent No.3/ Zilla Parishad submits that Respondent No.1 has indeed been disqualified and would now be precluded either from claiming a stake to the post of “Anganwadi Madatnis” or from challenging the selection of the Petitioner.

He has placed on record a communication dated 19.08.2015 received by the learned Advocate from Respondent No.2 indicating that Respondent No.1 has not put forth any challenge to her disqualification as on date.

5 The said communication is taken on record and marked as Exhibit X for identification.

6 Respondent No.3 has filed an affidavit in reply through it's Chief Executive Officer dated 05.04.2014. In paragraphs 5 and 6, it is conceded that the selection of the Petitioner is in accordance with law and the Rules applicable. In paragraph 9 of the affidavit in reply, Respondent No.3 has relied upon the Government Resolution dated 15.09.2011 to state that the waiting list under Rule/ Clause 4(b) of the said Government Resolution is valid and subsisting only for a period of one year from the date of interview. It is tried to be suggested that the wait list expires after the period of one year.

7 Considering the fact situation emerging from the record, it is apparent that the Petitioner was to be appointed as an "Anganwadi Madatnis". It was not that the Petitioner was in the wait list. She was eligible for appointment and the affidavit in reply indicates that she was to be appointed, but for the litigation initiated by Respondent No.1 who

under fortuitous circumstances, prevented the Petitioner's appointment. Respondent No.3 has come up with a case that even today if the appointment is to be made, it is only the Petitioner who could be appointed.

8 The act of the Court can do no harm to any litigant. The litigation pending with reference to the Petitioner's selection to the post of "Anganwadi Madatnis" has caused the delay. It cannot be said that the Petitioner, therefore, be disentitled from being appointed as an "Anganwadi Madatnis". In my view, clause 4(b) of the Government Resolution dated 15.09.2011 would not be applicable to the instant case. The post of "Anganwadi Madatnis" is kept vacant under the orders of this Court.

9 In the light of the above, the impugned judgment and order of the Additional Commissioner, Nashik Division, Nashik dated 29.06.2012 in Anganwadi Appeal No.6/2012 and the order of the Chief Executive Officer, Zilla Parishad, Jalgaon dated 02.12.2011, are rendered unsustainable. Both, therefore, stand quashed and set aside.

10 Needless to state, the Respondent Authorities shall proceed to appoint the Petitioner as an "Anganwadi Madatnis" in accordance with law

and the Rules applicable.

11 This Writ Petition is, therefore, allowed. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)