

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2275 OF 2014

SANGITA ROHIDAS SAROSE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Deshpande Jagdish V
Advocate for Respondents 1 & 2 : Smt. Shelke S.D.
Advocate for Respondent 5 : Shri Dalvi U.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 17, 2015
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PER COURT :-

1. I have heard the learned Advocates for the petitioner, respondents 1 and 2 and the contesting respondent No.5.
2. The contention of the petitioner is that she had applied for an appointment as Anganwadi Sevika in relation to village Dongargaon, Tq. Hadgaon, District Nanded pursuant to the advertisement dated 16.12.2010. The said advertisement was published on the basis of the Government Resolution date 5.8.2010 issued by the State of Maharashtra. It is not in dispute that the petitioner and respondent No.5 were one of the applicants for the said post.
3. The fifth respondent is said to have gathered knowledge on 18.4.2011 that the petitioner was appointed as an Anganwadi Sevika, despite having not furnished the necessary documents as mentioned in the advertisement. An objection was raised before respondent No.3 - Chief Executive Officer,

Zilla Parishad, Nanded, questioning the validity of the application of the petitioner and her subsequent appointment as an Anganwadi Sevika. It was alleged that the petitioner was not a resident of Gram Panchayat Dongargaon.

4. Respondent No.3 considered the objections of the fifth respondent and by order dated 14.10.2011, the appointment of the petitioner was set aside. Consequentially, respondent No.5 was appointed as an Anganwadi Sevika by order dated 4.11.2011.

5. The petitioner challenged the order dated 4.11.2011 before the Divisional Commissioner, Aurangabad and by the judgment and order dated 22.3.2013, the appeal of the petitioner was allowed and it was held that she was rightfully appointed as Anganwadi Sevika. The fifth respondent preferred Writ Petition No.3310 of 2013 before this Court, challenging the judgment of the Divisional Commissioner.

6. By its Judgment dated 20.8.2013, this Court disposed off the petition by setting aside the judgment of the Divisional Commissioner and observed in paragraph No.9 as follows:-

“9. Apart from that, the petitioner has submitted that respondents no.1 and 2 have not published the preliminary list, which fact is disputed by both the learned Counsel for respondents no.1 & 2 and respondent no.3. In this view of the matter, in my opinion, the ends of justice will be served by setting aside the impugned order and remitting the proceedings before the Divisional

Commissioner for considering the controversy afresh. Hence, the petition is disposed of in the following terms :-

i) The impugned order dated 22nd March, 2013, passed by the Divisional Commissioner, Aurangabad is quashed and set aside and the proceedings instituted by the third respondent are revived before the Divisional Commissioner;

ii) Respondents no.1 and 2 will produce the preliminary list published, as also the entire record as regards selection of the Anganwadi Sevika which is in question in the present case. Respondents no.1 and 2 will also make it clear, whether the petitioner has filed objection in writing within the stipulated time before the C.D.P.O. in terms of clause 3 of the Govt. Resolution dated 5th August, 2010;

iii) The parties agree that they will appear before the Divisional Commissioner, Aurangabad on 26th August, 2013 and for that, no fresh notice is required to be issued to them.

iv) All contentions on merits of the parties are expressly kept open.

10. Rule is made absolute accordingly with no order as to costs."

7. It is in the above backdrop that Appeal No.165 of 2011 was remitted to the Divisional Commissioner. After hearing all the sides, the Divisional Commissioner has delivered the impugned judgment dated 10.10.2013, thereby, dismissing the Appeal filed by the petitioner and upholding the order of respondent No.3 CEO, cancelling the appointment of the petitioner and appointing the fifth respondent as an Anganwadi Sevika. It is informed

that respondent No.5 has been working as Anganwadi Sevika, w.e.f. 4.11.2011.

8. The grievance of the petitioner in this petition is primarily on three grounds. Firstly, that the certificate of the Gram Sevak and the Gram Panchayat indicating that the petitioner belongs to the village Dongargaon was annexed to the application. Secondly, the Government Resolution, dated 5.8.2010, does not mention that the certificate of the Tahsildar, indicating the residence of the applicant would alone be considered. Thirdly, the direction of this Court, especially in Clause No.3 as regards whether the objection of the fifth respondent was filed within limitation as per the terms of Clause 3 of the said Government Resolution, has not been complied with.

9. It is vehemently contended that the certificate of the Tahsildar was not the ultimate document of proof of residence and the objections of the fifth respondent deserve to be rejected since they were raised beyond limitation. It is, therefore, prayed that this petition be allowed and the petitioner be reinstated as Anganwadi Sevika.

10. The learned AGP and the learned Advocate on behalf of the State and respondent 5 have strongly supported the impugned judgment. It is contended that the limit of 15 days to raise an objection, is purely directory in nature. If an appointment is found to be unsustainable on account of infirmities and deficiencies in the application of appointment and which

was lost sight of in scrutiny, would still render such an appointment unsustainable. An illegality cannot be cured only because the objection is not raised within the time prescribed.

11. The learned Advocates have supported the conclusions of the Divisional Commissioner that the delay in raising objections is insignificant as it has brought to light a patent illegality in the application of the petitioner. Technicalities should not be held so significant that they would result in perpetuating illegalities.

12. I have considered the submissions of the learned Advocates who have taken me through the impugned judgment as well as the observations of this Court in its order dated 20.8.2013.

13. It is not in dispute that the objection raised by the fifth respondent was after the lapse of fifteen days from the date of publication of the preliminary list. It is also not in dispute that the advertisement mandated the certificate of the Tahsildar indicating the residence of an applicant as a proof of residence. It is also not in dispute that the petitioner had not annexed the said certificate to her application, which the fifth respondent had so done. It is also not in dispute that the fifth respondent was at Sr. No.2 in the Merit List below the petitioner.

14. In the light of the submissions of the petitioner, I have considered the grievance that the delay on the part of the fifth respondent in raising

objections is fatal. I am unable to accept the said contention for the reason that a technical issue as like delay being caused in raising an objection should not be held to be so important or significant that the objections pointing out illegalities in the appointment of the petitioner should be disregarded and the illegality should be allowed to perpetuate. The fact remains that the fifth respondent has brought to the notice of the concerned authorities that the application filed by the petitioner deserved to be rejected in the scrutiny itself, since it was not in conformity with the advertisement and the vital document indicating the proof of residence as prescribed in the advertisement was not placed on record. This illegality cannot be cured by rejecting the objections of the fifth respondent on the ground of delay.

15. One can look at this case from a different angle. Though the objections were belatedly raised, once it has come to the notice of the competent authority that the application for appointment filed by the petitioner deserved to be rejected for having not annexed the relevant document, that in itself would entitle the authorities to review the appointment. The element of sanctity which needs to be attached to the advertisement will have to be appreciated, lest several applicants would file documents of their own choice and the terms set out in the advertisement would be rendered redundant.

16. As such, having noticed the illegality in the application form of the petitioner, though belatedly, I do not find any error having been committed

by the third respondent in cancelling the appointment of the petitioner. For the said reasons, the impugned judgment of the Divisional Commissioner cannot be branded as perverse or unsustainable.

17. In the light of the above, this petition is dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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