

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

WRIT PETITION NO.3988 OF 2014

Vandana wd/o Dhondba Narwade,
Age 33 years, Occu. Service,
R/o Kurtadi, Taluka Kalamnuri,
District Hingoli

..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Women and Child Welfare
Department, Mantralaya,
Mumbai
2. Sub-Divisional Officer,
Sub Division Office,
Hingoli
3. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
4. The Chief Executive Officer,
Zilla Parishad, Hingoli,
Taluka and Dist. Hingoli
5. Child Development Project
Officer, Yekatmik Bal Vikas
Seva Yojana (E.B.V.S.Y.),
Balapur, Balapur (Akhada),
District Hingoli
6. Shilpa w/o Sunil Khillare,
Age Major, Occu.Anganwadi Sevika
R/o Kurtadi, Taluka Kallmnuri,
District Hingoli

..Respondents

Mr D.M. Shinde, Advocate for petitioner
Mr R.P. Phatke, A.G.P. for respondents No.1 to 3
Mrs Preeti Diggikar, Advocate for respondents No.4 and 5
Ms M.R.Jamdhade, Advocate for respondent No.6

CORAM : N.W. SAMBRE, J.

DATE : 31st March 2015

PER COURT

1. Pursuant to the advertisement dated 7th December 2010, issued by the Integrated Child Development Project Officer, Akhada Balapur, within the jurisdiction of respondent No.4 – Zilla Parishad, Hingoli, the petitioner and respondent No.6 had applied for the post of Anganwadi Sevika as per the policy of the State Government, as is reflected in Government Resolution dated 5th August 2010. In the said Government Resolution it is provided that if a candidate belongs to reserved category, an additional weightage of three marks be given, pursuant to which respondent No.6 came to be appointed.

2. The petitioner, having noticed that the caste certificate pressed into service at the time of selection, produced by respondent No.6 bearing Outward No.2009 Caste/S.C./CR/7888/2310 dated 25th February 2009 was sham and bogus, filed complaint before the Collector, Hingoli and respondent No.4, Chief Executive Officer, Zilla Parishad, Hingoli. The respondent No.4-Chief Executive Officer, Hingoli proceeded to decide the complaint by placing blame on the Sub Divisional Officer, Hingoli who had issued certificate, as according to him, the mistake in the certificate mentioning 'Scheduled Tribe' instead of 'Scheduled Caste' was at the behest of the said authority. The appeal preferred by the present petitioner before the Divisional Commissioner, Aurangabad in accordance with the policy had resulted into same fate, as such, the present petition.

3. Learned Counsel for the petitioner, while questioning the legality and validity of the orders impugned, urged that the petitioner falls in the category of widow and she is entitled to additional marks as per the policy narrated herein above. According to petitioner, she has secured 58 marks whereas the respondent No.6 secured 58.25 marks. Learned Counsel for the petitioner would urge that the inquiry should have been conducted by the authorities when a complaint was preferred to them and it should have been taken to its logical end by verifying the fact as regards authenticity of the caste certificate which was produced by respondent No.6, which according to him was not taken recourse to.

4. In addition to above, learned Counsel for the petitioner would urge that the affidavit filed by the Sub-Divisional Officer, Hingoli, i.e. respondent No.2 reflects that the caste certificate that was produced by respondent No.6 prior to her selection, certifying that she belongs to Scheduled Caste category, was not at all issued by the said authority and as such, according to him, his claim that the respondent No.6 relied upon a forged document, was justified. He would urge that the said conduct of respondent No.6 speaks about her ill-intention and ill-mind, who was selected and appointed on the post of Anganwadi Sevika.

5. While countering the above referred submissions, learned Counsel for respondent No.6 - selected candidate, would urge that the document - caste certificate which was produced by her at the time of selection and appointment, was genuine one and the mistake that occurred in the said certificate referred to above, was at the behest of

Sub-Divisional Officer-respondent No.2. She would further urge that respondent No.6 cannot be blamed for the mistake in the certificate, as the respondent No.6 has hardly any control over the aspect of issuance of certificate or over the official act of the Sub Divisional Officer. According to her, the corrective measure was taken by respondent No.6 by applying for issuance of fresh caste certificate, which accordingly, on 24th May 2011 vide Outward No.1416/2011 came to be issued in her favour certifying that she belongs to Scheduled Caste category. According to her, what is contemplated, is the claim as belonging to a particular reserved category and not the production of document in support thereof like caste certificate.

6. Learned Counsel for respondent No.4 - Chief Executive Officer, Zilla Parishad, Hingoli would strenuously urge that the Chief Executive Officer, based on the available documents, has proceeded to pass the order rejecting the claim of the petitioner, however, has submitted that the order does not speak of any inquiry as regards verification of the document, i.e. caste certificate. According to her, the Chief Executive Officer verified the documents which were produced at the time of selection and appointment and believing the same while issuing the order of appointment to respondent No.6.

7. The learned Assistant Government Pleader Mr Phatke has invited attention of this Court to the Outward/*Dak* Registers maintained by the office of the Sub-Divisional Officer, Hingoli, which are produced before this Court, so as to justify the stand of Sub-Divisional Officer that the certificate in question was not issued by the office of the Sub-Divisional Officer. He has taken me through the said

outward registers, one for Scheduled Tribe category and another for Scheduled Caste category, Other Backward Class category and other categories. Upon perusal of the same, it is required to be noted that the caste certificate on which respondent No.6 has placed reliance, bearing Outward No.2009/Caste/S.C./CR/7888/2310 dated 25th February 2009 was never issued in her favour. It is also required to be noted that there is no such entry in the register under Outward No.2009/Caste/S.C./CR/7888/2310 as on 25th February 2009. In fact, no such Outward No.7888/2010 could be noticed in either of the outward registers. According to him, if this Court takes recourse to the provisions of Section 114 of the Evidence Act, presumption is required to be testified and drawn against respondent No.6 since no such entry was taken in the outward register.

8. The above referred submissions on the part of the learned A.G.P., if tested in the light of submissions made by learned Counsel for the petitioner, in my opinion, the learned Counsel for the petitioner was justified in saying that the document - caste certificate which was produced at the time of selection and appointment by respondent No.6, was never issued by the office of respondent No.2 - Sub Divisional Officer, Hingoli. It is also required to be noted that conduct on the part of respondent No.6 of producing the caste certificate claiming to be belonging to 'Scheduled Caste' category, but in which there is mention of she belonging to 'Scheduled Tribe' category, should have been enquired into by the Chief Executive Officer instead of blaming the Sub Divisional Officer for issuance of incorrect certificate. Production of such a document for the purpose of securing employment speaks about the intention of respondent

No.6, even though she has produced new caste certificate before getting appointment order.

9. This Court cannot overlook the fact that the above factual matrix as is reflected from the outward registers and the submissions of the respective parties, the orders passed by the Chief Executive Officer, so also the Divisional Commissioner are inconsistent with the same, as same facts are not looked into.

10. As such, it will be appropriate to remand the matter to the respondent No.4 - Chief Executive Officer, Zilla Parishad, Hingoli, who is directed to decide the challenge by the present petitioner afresh qua the caste certificate produced by respondent No.6 at the time of her selection and appointment, in the light of the observations made herein above. The said authority shall also apply its mind to the fact as to whether production of caste certificate was mandatory or not.

11. The parties are in agreement that they shall appear before the respondent No.4 - Chief Executive Officer, Zilla Parishad, Hingoli on 20th April 2015 along with the written notes and additional evidence, if any. The Respondent No.4 shall pass fresh orders, after hearing the parties, expeditiously and in any case within four weeks thereafter.

12. Writ Petition stands allowed partly, in above terms.

(N.W. SAMBRE, J.)