

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

WRIT PETITION NO. 5573 OF 2012

Sangita Devidasrao Jadhav .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri G. N. Chincholkar, Advocate for the Petitioner

Smt. S. A. Dhumal, A. G. P. for the Respondent No. 1

Shri V. S. Panpatte, Advocate for the Respondent No. 2

Shri M. V. Ghatge h/f Shri B. N. Gadegaonkar, Advocate for the
Respondent No. 3

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

DATE : 26TH FEBRUARY, 2015.

PER COURT :

1) Mr. Chincholkar the learned counsel states that, the petitioner was selected and was issued appointment order on 11.04.2011 for the post of Mini Anganwadi Sevika. The petitioner though was given appointment order was not allowed to join. According to the learned counsel the petitioner had given notice of hunger strike, at that time it was never communicated

that the appointment of petitioner is cancelled on 28.07.2011. According to the learned counsel on wrong premise the said order is passed.

2) The petitioner has only two children and does not have the 3rd child. According to the learned counsel, false certificate has been produced by the respondent. Even no notice is issued to the petitioner before cancelling the appointment order.

3) Mr. Panpatte the learned counsel states that, panchanama was also drawn, the report was obtained and on the basis of that, after finding that the petitioner is ineligible as the petitioner has 3 children, the appointment of the petitioner is cancelled. No illegality has been committed by the authority while cancelling the appointment of the petitioner. As per the selection list the respondent No. 5 is appointed.

4) Mr. Ghatge the learned counsel states that, Gram Sevak is the authority under the Registration of Births and Deaths Act, 1969 and the certificate issued by him has been properly relied. The respondent No. 3 is appointed in the year, 2011 and is working since then.

5) We have considered the submission canvassed by the learned counsel for respective parties. It is not disputed that, the petitioner was issued with the appointment order dated 11.04.2011 for the post of Mini Anganwadi Sevika. As per the affidavit filed by the respondent the petitioner's appointment is cancelled vide order dated 28.07.2011, on the ground that petitioner has 3 children. Before issuance of the cancellation order it does not appear that any show cause notice was issued to the petitioner nor any enquiry has been conducted. When the appointment is being cancelled on the ground attributable to the ineligibility of the petitioner the respondents ought to have called say from the petitioner and the veracity of the said averments ought to have been decided. The petitioner is denying birth of 3rd child to the petitioner. Considering the aforesaid aspect of the matter, it would not be appropriate to sustain the order of termination dated 28.07.2011.

6) In light of the above, we pass the following order -

ORDER

A) The order dated 28.07.2011 terminating the services of the petitioner is quashed and set aside.

B) The authority that is respondent No. 2 Child Development Project Officer, Loha shall conduct the enquiry about the averments and allegations of the petitioner having the 3rd child.

C) The petitioner would be entitled to put forth his stand.

D) The veracity of the document shall be gone into by the authority and thereafter decide about the legality of the appointment order issued to the petitioner.

E) In case the authority finds that the petitioner does not have the 3rd child then would consider the availability of the vacant post for giving posting to the petitioner.

F) The authority shall conduct the said enquiry expeditiously, preferably within four (4) months.

7) Writ petition is accordingly disposed of. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]