

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW PETITION NO.130 OF 2015
IN
WRIT PETITION NO.9788 OF 2014

Renuka Vishnu Dawand

PETITIONER

VERSUS

Chhaya W/o Jagan Gaikwad
and 3 others

RESPONDENTS

Mr.A.S.Rasal, Advocate for the petitioner.

Mr.P.S.Agrawal, Advocate for respondent No.1.

Mr.Pratibha Bharad, Advocate for respondent Nos. 3 and 4.

Mr.D.R.Korde, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/09/2015

PER COURT :

1. The petitioner was respondent No.1 in WP No.9788/2014. By judgment dated 12/08/2015, the said petition has been allowed.
2. The petitioner submits that this Review Petition is preferred for pointing out the errors apparent on the face of the record thereby requiring a review of the judgment dated 12/08/2015.
3. The first aspect canvassed by the petitioner is that she had never applied pursuant to the third advertisement, which is dated

22/05/2013. Therefore, the conclusion of this Court that the Review Petitioner had participated in the selection process pursuant to the third advertisement and hence cannot call in question the said selection process after having failed, is an error apparent on the face of the record.

4. The second aspect canvassed by the petitioner is that the respondent authorities suo moto considered her application filed pursuant to the second advertisement dated 10/04/2013 in relation to the third advertisement dated 22/05/2013 and hence it cannot be said that the review petitioner had applied and participated in the selection process pursuant to the third advertisement. Therefore, the error apparent on the face of the record.

5. The third aspect canvassed by the petitioner is that this Court has wrongly applied the GR dated 05/08/2010 to the selection process in the light of the GR dated 16/11/2013, which was not placed either before the lower authorities or before this Court. Contention is that by the GR dated 16/11/2013, all selection processes pursuant to the GR dated 05/08/2010 have been cancelled or have been ordered to be cancelled. Therefore, there is an error in delivering the judgment under review.

6. I have considered the submissions of the learned Advocates for the review petitioner.

7. In so far as the first issue is concerned, it is evident from the judgment of the Divisional Commissioner, Aurangabad in Appeal No.18/2013 dated 31/07/2014 that the review petitioner had applied pursuant to the third advertisement. In the first paragraph on the second page of the said judgment, the Appellate Authority has recorded that there were 7 applicants pursuant to the third advertisement dated 22/05/2013. The review petitioner scored 53.73 marks in the preliminary rounds and hence did not qualify for the interviews as there were 3 persons above her, who had qualified.

8. This is a matter of record as has been noted by the Divisional Commissioner. Neither has the review petitioner questioned the said conclusion, nor has the review petitioner so stated in her affidavit in reply filed in the writ petition before this court so as to contend that she had never applied pursuant to the third advertisement and was suo-moto considered by the respondents/authorities. I find that the review petitioner is attempting to canvass against the record.

9. The second aspect raised by the review petitioner is that she

had not applied pursuant to the third advertisement and therefore her challenge to the appointment of the original petitioner needs to be construed to be a grievance arising not out of the third advertisement but in relation to the second advertisement. I do not find any merit in the said contention since the record reveals that the review petitioner was one of the 7 applicants in pursuance to the third advertisement.

10 The third aspect raised by the petitioner is that the GR dated 05/08/2010 has been wrongly made applicable. In the judgment delivered by this Court, which is subject matter of this review petition, this Court has concluded that the proceedings pursuant to the second advertisement, which was on the basis of the GR dated 05/08/2010, had been terminated and thereafter the third advertisement was published calling for applications from the parties. Till the result of the preliminary rounds was declared, the petitioner had not raised any issue as regards a challenge to the third advertisement. On this count as well, I do not find that the petitioner has made out any error in the impugned judgment.

11. The last issue canvassed by the review petitioner is that the selection process or recruitment process pursuant to the GR dated

05/08/2010 deserves to be cancelled. Firstly, in one breath the petitioner prays that she should be appointed pursuant to the GR dated 05/08/2010. In the same breath, the petitioner relies upon the GR dated 16/11/2013 contending that all selection/recruitment processes should be cancelled which are initiated under the GR dated 05/08/2010. The petitioner, therefore, cannot be permitted to reprobate and approbate.

12. Notwithstanding the above, the GR dated 16/11/2013 is not with regard to the cancellation of the recruitments carried out under the GR dated 05/08/2010. The said GR clearly envisages that any recruitment procedure, which is still underway as per GR dated 05/08/2010, and has not been completed /concluded, shall stand cancelled.

13. In the instant case, the selection process at issue was already concluded after the results were declared on 17/08/2013 and the original petitioner/respondent No.1 herein was appointed as an "Anganwadi Sevika". The said GR, therefore, cannot be given a retrospective effect so as to cover the selection process, which was completed and the results of which were declared on 17/08/2013.

14. In the light of the above, I do not find that the petitioner has succeeded in making out any ground so as to indicate an error in law and on facts committed by this Court while delivering the judgment under review dated 12/08/2015. Review petition is, therefore, rejected.

15. At this juncture, learned Advocate for the petitioner submits that this order be stayed for a period of 4 (four) weeks. Learned Advocate for the respondents oppose the said request. Since this Court has delivered its judgment dated 12/08/2015, which is not stayed, the request to stay this order is rejected.

(RAVINDRA V. GHUGE, J.)