

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8745 OF 2014

Sarla Baburao Patil,
Age-30 years, Occu-Service,
R/o Asane, Tq. And Dist. Nandurbar

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Woman and Child Development
Department, Mantralaya,
Mumbai – 400 032,
2. Chief Executive Officer,
Zilla Parishad, Nandurbar,
3. The Child Development Project Officer,
Renala, Tq. And Dist. Nandurbar,
4. Yogita Ratan Patil,
Age-32 years, Occu-Nil,
R/o Asane, Tq. And Dist. Nandurbar

RESPONDENTS

Mr.L.V.Sangit, Advocate for the petitioner.
Mr.A.D.Pawar, Advocate for respondent No.4.
Mr.R.N.Jain, Advocate for respondent Nos. 2 and 3.
Mr.D.R.Korde, AGP for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/11/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment and order dated 22/08/2014 delivered by respondent No.2 Chief Executive Officer, Zilla Parishad, Nandurbar by which the appeal preferred by respondent No.4 herein has been allowed and the appointment of the petitioner as “Anganwadi Sevika” is set aside. Respondent No.4 is directed to be appointed in her place.

3. The order impugned is passed by respondent No.2. The issue canvassed by the petitioner is that the circular dated 25/05/2011 cannot be granted a retrospective effect in the light of the judgment delivered by this Court in the matter of Shilpa Dhanraj Kale Vs. Divisional Commissioner, Amravati and others 2015(6) Mh.L.J. 245.

4. The Government Resolution dated 05/08/2010 (clause 5) provides for challenging the judgment of the Chief Executive Officer before the Divisional Commissioner of the concerned Region. The petitioner indicates from paragraph No.2 of the impugned order dated 22/08/2014 and the observations of the Chief Executive Officer below issue no.4 that the Divisional Commissioner, Nasik had directed respondent No.2 to decide the appeal filed by the petitioner.

5. I have heard the learned Advocates for the respective sides.

6. The petitioner was selected as “Anganwadi Sevika” on 31/03/2011. The petitioner was working as an “Anganwadi Sevika” till 28/08/2014, Respondent No.4 challenged her appointment.

7. The Chief Executive Officer, respondent No.3 rejected the appeal / application filed by respondent No.4 by order dated 22/03/2012. Respondent No.4 herein directly approached the Division Bench of this Court in WP No.2067/2012. By order dated 12/04/2012, this Court disposed of the petition and permitted respondent No.4 to prefer an appeal in accordance with the Government Resolution dated 05/08/2010.

8. The application / appeal was preferred by respondent No.4 bearing No.147/2012. The said appeal should have been filed before the Divisional Commissioner, Nasik in the light of clause 5 of the GR dated 05/08/2010. However, the Appeal No.147/2012 was treated as a complaint by respondent No.2 C.E.O. and by order dated 13/08/2012, same was allowed concluding that respondent No.4 deserves to be selected. The appointment of the petitioner was therefore cancelled.

9. The petitioner, rather than challenging the order of the C.E.O.

dated 13/08/2012 before the Divisional Commissioner, Nasik, preferred WP No.7141/2012 before this Court. By order dated 09/10/2012, the impugned order dated 13/08/2012 was set aside and the matter was remitted back to the C.E.O. Nandurbar.

10. By order dated 29/10/2012, the C.E.O. rejected the contention of the petitioner that the complaint filed by respondent No.4 was not within 30 days in the light of clause 5 of the GR dated 05/08/2010.

11. The petitioner should have therefore approached the Divisional Commissioner. Instead of doing so, the petitioner approached the Division Bench of this Court in WP No.9483/2012. Since no finding on the ground of limitation was given by the C.E.O. Nandurbar, the Division Bench of this Court, by order dated 18/06/2014 set aside the order of the C.E.O. dated 29/10/2012 and remitted the matter to the C.E.O. Zilla Parishad, Nandurbar.

12. By the impugned order dated 22/08/2014, the C.E.O. Zilla Parishad, Nandurbar has wrongly shown the petitioner (originally appointed "Anganwadi Sevika") as an appellant and the original complainant/ respondent No.4 herein is shown as a respondent.

13. In the light of the above, the petitioner ought to challenge the impugned order dated 22/08/2014 by preferring a proper appeal under clause 5 of GR dated 05/08/2010 before the Divisional Commissioner, Nasik. The two grounds raised in this petition that the C.E.O. does not have the jurisdiction to condone delay beyond the limitation of 30 days for challenging the appointment of the petitioner and that the Government circular dated 25/05/2011 cannot be granted a retrospective effect in the light of paragraph 8 of the judgment of this Court in the matter of Shilpa Dhanraj Kale (supra) can be raised before the Divisional Commissioner, Nasik.

14. In the light of the above, this petition is disposed of by granting liberty to the petitioner to prefer an appeal for challenging the impugned order dated 22/08/2014 wherein the petitioner is wrongly shown as an appellant instead of respondent No.4 being shown as the complainant, within the period of limitation to be calculated from the date of this order.

15. All contentions of the petitioner as well as the original complainant / respondent No.4 are kept open.

16. The Divisional Commissioner, after receiving the appeal of the

petitioner, shall issue notices to the respondents and shall consider the contentions of all the litigating sides including the contention of the petitioner that respondent No.4 could not have filed a complaint beyond 30 days in the light of clause 5 of the GR dated 05/08/2010 and that the Government circular dated 25/05/2011 cannot be granted retrospective effect in the light of the judgment of this Court in the case of Shilpa Dhanraj Kale (supra).

17. Needless to state, the Divisional Commissioner, Nasik is the authority competent under clause 5 of the GR dated 05/08/2010 and the said authority alone shall decide the appeal of the petitioner.

(RAVINDRA V. GHUGE, J.)