

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.9316 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.P.R.Patil, advocate for the petitioner.
 Mr.A.S.Shinde, Asstt. Govt. Pleader for the State.
 Mr.Ajay Deshpande, advocate for Respondent No.4.

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

Date : 02.02.2015.

PER COURT :

1. Heard.
2. The present petition assails the judgment of the Maharashtra Administrative Tribunal to the extent of imposing cost against the present petitioner, so also for expunging the strictures made by the Tribunal against the petitioner.
3. Mr.Patil, learned counsel for the petitioner submits that petitioner while conducting the selection process and issuing appointment in favour of the present Respondent No.5 for the post of Police Patil acted in accordance with the legal provisions and the procedure. While appointing Respondent No.5, as Police Patil, the petitioner considered the reports of the Tahsildar, Circle Officer

and the Character Certificate issued by the Superintendent of Police, Ahmednagar. According to the learned counsel, the petitioner in his affidavit-in-reply filed before the Tribunal in para 13 has also expressed that certain fact had escaped from his attention. The petitioner bonafidely and in good faith having considered that present Respondent No.5 has secured more marks than the Respondent No.4, has issued the appointment order. The learned counsel submits that even Tribunal has come to the conclusion that the petitioner has not favoured Respondent No.5. There are no malafides on the part of the petitioner in issuing appointment order in favour of Respondent No.5. In such a case the observations made against the petitioner in para 26 of the impugned order, so also imposing cost upon the petitioner is improper and deserves to be set aside.

4. Mr.Deshpande, learned counsel for Respondent No.4 submits that the petitioner had before him the report of the Circle Officer, Tahsildar, which was given after inquiry and which clearly stated about extra marital relations which Respondent No.5 had and the children begotten from the said extra marital relations, still, the petitioner ventured to issue appointment order to Respondent No.5 who was possessing immoral character. The conduct of the petitioner is also relevant. The petitioner did not show any remorse while filing first two affidavits and while filing affidavit for the

third time, had practically admitted about immoral behaviour of the Respondent No.5. Considering the conduct of the petitioner, the Tribunal has rightly passed strictures against the petitioner and has imposed nominal cost.

5. We have considered the submissions canvassed by learned counsel for respective parties. There can not be any dispute about the fact that petitioner was acting in his official capacity. The Tribunal has also arrived at a finding that the petitioner while acting in his official capacity has not favoured Respondent No.5. There are no malafides even remotely suggested in the judgment against the petitioner, still, the Tribunal has observed about the behaviour of the petitioner as loathsome and having failed to do justice to his duties. The petitioner may have decided a particular thing as per his perception. The perception with which the petitioner may have decided the selection proceedings, may according to the Tribunal be erroneous, however, that would ipso facto not be conclusive of the fact that the petitioner has conducted the entire business in a most loathsome manner and has failed to do justice. The petitioner was acting bona fide in good faith which is also reflected from the affidavit which he has filed. In the present matter, we are not deciding about the correctness of the order of the Tribunal on merits, as the same is also not subject matter of the present Writ Petition. Suffice it to observe that if the proceedings are conducted

bona fide and in good faith and if the Tribunal comes to the conclusion that the decision of the petitioner was not correct according to the Tribunal then the same would not be sufficient to impute aspersion on the petitioner, more particularly, when the Tribunal has categorically come to the conclusion that the petitioner has not favoured Respondent No.5 in viva-voce. The Tribunal has also observed that the petitioner before it could not show the award of marks in viva-voce as arbitrary.

6. In light of the above, the order to the extent of imposing cost upon the petitioner and passing strictures on the petitioner is set aside.

7. Following observations of the Tribunal in the impugned judgment, more particularly, in para 26 which are reproduced herein below are expunged.

“In the background that, the Respondent No.2 has conducted entire business in a most loathsome manner and failed to do justice to his duties. By his negligent acts the Respondent No.2 has caused loss of time of this Tribunal.”

So also observation to the extent of Respondent No.2 to share the responsibility of payment of costs is also quashed and set aside. The order directing the present petitioner to pay the costs is also set aside.

8. The Writ Petition is accordingly disposed of. No costs.

(V . L . ACHLIYA, J .)

(S . V . GANGAPURWALA, J .)

Dt..02.02.2015.
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