

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

WRIT PETITION NO. 9906 OF 2014

BHAGUBAI TRIMBAK BARGAL. ..PETITIONER.

VERSUS

**THE DIVISIONAL COMMISSIONER,
AURANGABAD AND OTHERS. ..RESPONDENTS.**

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Advocate for Petitioner : Mr.M.V. Salunke h/f Mr.Salunke
V.D.

AGP for Respondent No.1: Mr.S.K. Kadam.
Advocate for R.No.2 & 3: Mr.Bhosale Abhaysinh K.

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CORAM : S.S. SHINDE & P.R. BORA,, JJ.

Dated: 1st APRIL, 2015.

PER COURT :-

1. Heard learned Counsel for the parties.

2 Learned Counsel for the petitioner submits that in view of clause 5 of the government Resolution dated 5th August, 2010, respondent No.4, aggrieved by the order of appointment of the petitioner, in the first instance, ought to

have approached the Chief Executive Officer and in case, further aggrieved by the decision of the Chief Executive Officer, ought to have preferred further proceedings before the Divisional Commissioner (Revenue), Aurangabad Division, Aurangabad. It is submitted that the appeal filed by the respondent No.5 was time barred inasmuch as, the appointment letter in favour of the petitioner has been issued on 15th October, 2013 and appeal came to be filed on 22nd November, 2013. It is further submitted that the petitioner was possessing requisite qualification on the date of issuing appointment letter and, therefore, the appellate authority ought to have considered the said aspect. Without prejudice to the arguments advanced, the learned Counsel for the petitioner, by way of an alternate argument, submits that even if part of the order passed by the appellate Authority to the extent of setting aside the appointment of the petitioner is accepted, the petitioner may be permitted to participate in the further process of appointment for the post of *Anganwadi Sevika*.

3. On the other hand, learned Counsel for the respondent No.4 submits that the Chief Executive Officer himself was instrumental in appointing the petitioner and, therefore, there was no point in filing the proceedings before the Chief Executive Officer. Therefore, the appeal was directly presented before the Divisional Commissioner, Aurangabad. He further submits that on the date of advertisement and even on the date of filling in the application for the post of *Anganwadi Sevika*, the petitioner was not possessing the requisite qualification. He further submits that the appellate authority has recorded the reasons for setting aside the appointment order issued in favour of the petitioner and, therefore, this Court may not interfere in the order passed by the appellate authority.

4. We have heard the learned Counsel for the petitioner, learned Counsel for the respondent No.4, learned Counsel for respondents No.2 and 3 and the learned AGP for respondent No.1. With their assistance, perused the pleadings and the grounds in the petition. We have also

perused the reasons assigned by the appellate authority in the impugned order. Admittedly, on the date of issue of advertisement and also at the time of filling in the application for the post of *Anganwadi Sevika*, the petitioner was not possessing the requisite qualification i.e. passing of 10th standard. Therefore, the appellate authority has rightly observed that the petitioner, on the relevant date, was not possessing the requisite qualification. Though Clause 5 of the Government Resolution dated 5th August, 2010 provides for approaching the Chief Executive Officer in the first instance, in the facts of the present case, we have noticed that the Chief Executive Officer has communicated the Project Officer Child Development, Panchayat Samiti, Kannad, District Aurangabad that Smt. Bhaugbai Trimbak Bargal i.e. present petitioner possesses the required qualification as per the Government Resolution dated 15th September, 2011 and therefore, she should be appointed on the post of *Anganwadi Sevika* and as a sequel, said Project Officer has issued appointment letter appointing the petitioner as *Anganwadi Sevika*. Therefore, in our opinion,

there was no point in approaching the Chief Executive Officer who was instrumental in appointing the petitioner.

5. Upon perusal of the reasons recorded by the appellate authorities, we find that those reasons are in consonance with the material placed on record and the findings of fact recorded by the appellate authority are not perverse and those are in consonance with the record. So far as point of limitation is concerned, the appointment letter was issued on 15th October, 2013 and the appeal was presented by respondent No.4 on 22nd November, 2013. In our opinion, the said provision will have to be construed reasonably and harmoniously inasmuch as, the date of knowledge of respondent No.4 of issuance of such appointment letter is material. The appellate authority has already adjudicated the matter on merits and upon scrutiny of the record, we find that the said finding of fact recorded by the appellate authority is in consonance with the material on record. As already observed, admittedly, on the date of advertisement and date of application for the said post, the petitioner was

not possessing requisite qualification and, therefore, the appellate authority was justified in setting aside the appointment of the petitioner to the post of *Anganwadi Sevika*.

6. The alternate submission of the learned Counsel for the petitioner that, the petitioner may be allowed to participate in the process of appointment on the said post, which is subject matter of the proceedings, since the petitioner possessed the requisite qualification, cannot be considered. The entire controversy relates back to the advertisement issued already and, therefore, such a prayer cannot be considered.

7. For the reasons aforesaid, we do not find any reason to interfere in the impugned judgment and order passed by the appellate authority. Hence, the petition stands rejected.

(P.R. BORA,, J.)

(S.S. SHINDE, J.)