IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10736 OF 2012

Jijabai W/o Shashikant Shinde,
Age-36 years, Occu-Anganwadi Sevika,
R/o.Dhagpimpri, Tal.Paranda, Dist.Osmanabad — PETITIONER

VERSUS

1. State of Maharashtra,
   Through The Secretary to the Women& Child
   Development Department, Mantralaya,
   Mumbai – 400 032.

2. The Divisional Commissioner,
   Division Aurangabad, at Aurangabad,
   Dist. Aurangabad.

3. The Chief Executive Officer,
   Zilla Parishad, Osmanabad,
   Dist.Osmanabad.

4. The Child Development Project Officer,
   Integrated Child Development Scheme,
   Paranda, Tal. Paranda,
   Dist.Osmanabad.

5. Subhash Dnyandeo Vetal,
   President Anganwadi Sevika/helper Selection
   Committee, Paranda, Tal.Paranda,
   Dist.Osmanabad

6. Satyabhamabai W/o Mahadeo Katre,
   Age-Adult, Occu-Household,
   R/o.Dhagpimpri, Tal.Paranda, — RESPONDENTS
   Dist.Osmanabad

Mr.A.R.Devkate, Advocate for the petitioner.
Mrs.S.D.Shelke, AGP for respondent Nos. 1, 2 and 4.
Mr.S.B.Ghute, Advocate for respondent No.3.
Mr.A.S.More, Advocate for respondent No.6.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 26/08/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the order dated 02/07/2011 delivered by respondent No.3 and the order dated 12/10/2012 delivered by respondent No.2 Authority by which the selection of the petitioner as an "Anganwadi Sevika" has been set aside on the ground of allotment of marks.

3. The undisputed factors in this case are as under :-

a. Respondent No.3 advertised the post of "Anganwadi Sevika" in village Dhagpimpari.
b. In response to the said advertisement, the petitioner as well as respondent No.6 have applied alongwith other candidates.
c. The interviews were held on 10/05/2011.
d. The petitioner scored 57.50 marks and stood first in order of merits.
e. By appointment order dated 13/05/2011, the petitioner was appointed as an "Anganwadi Sevika" by respondent No.3.
f. The petitioner joined duties on 16/05/2011.
g. Respondent No.6 filed an appeal before respondent No.3 challenging the appointment of the petitioner.

h. By the impugned order dated 02/07/2011, the appointment was set aside by the Chief Executive Officer, who has himself moderated the interview marks and awarded respondent No.6, 4 out of 10 by increasing her score from 1.75 to 4.

i. Similarly, respondent No.3 C.E.O. moderated the marks of the petitioner by scaling down her score in interviews from 9.5 to 9 out of 10.

j. Appeal No.131/2011 preferred by the petitioner has been rejected by respondent No.2 Divisional Commissioner.

4. The petitioner submits that the selection and appointment to the post of "Anganwadi Sevika" was initiated by the GR Dated 05/08/2010. It is not prescribed in the said GR that the Interview Panel shall not allot less than 4 marks and more than 9 marks to any candidate.

5. Grievance of the petitioner is that respondent No.3 has interfered with the said result of the interviews on the basis of the circular issued by the Secretary, Women and Child Development Department, Mantralaya, Mumbai dated 25/05/2011 wherein it has been prescribed that no candidate invited for the interviews shall be allotted less than 4 and more than 9 marks.

6. Mr.Devkate, therefore, makes a grievance that the said circular

has been issued after the selection and appointment of the petitioner and the same cannot be granted retrospective effect. He, therefore, prays for the quashing and setting aside of the impugned judgments and restoration of the appointment of the petitioner as an "Anganwadi Sevika.

7. Learned Advocate Mr.More appearing on behalf of respondent No.6 does not dispute the above recorded fact situation. He, however, relies upon the judgment delivered by this Court dated 15/01/2015 in Writ Petition No.557/2013 with connected petitions, (Coram : A.B.Chaudhary, J.) in the matter of Priti Sanjay Bhange Vs.State of Maharashtra and others, especially paragraph Nos. 2, 3 and 4 which read as under :-

> *"2. The short point that is involved in the present petitions is whether the petitioners could be awarded ten marks out of ten in the interview or 9.75 marks out of ten. In view of the catena of decisions of the Hon'ble Supreme Court, the allotment of marks ten out of ten or bordering ten in the interview, in the cases of selection and appointment of Anganwadi Sevikas, in my opinion, the selection process stood vitiated as has been rightly been found by the Divisional Commissioner/Appellate Authority. It is seen that the marks obtained on the other counts have also not been given appropriate weight. In any case, the Divisional Commissioner has ordered for undertaking*

fresh selection process. The said order directing fresh selection process cannot be said to be unfair or unlawful particularly in the background of the facts narrated above.

3. It is not possible to interfere in extraordinary jurisdiction with the judicial discretion exercised by the Appellate Authority namely, the Divisional Commissioner as no patent error is found. The contention raised by Mr.Lakhe, learned counsel that the letter referred by the Commissioner is after selection of the petitioners and, therefore, cannot have retro-active application does not impress me since the law is well settled in respect of award of marks in the interview.

4. Mr.Mirza, learned Advocate contended that some of the prospective applicants including the petitioners involved in the writ petitions, might have become over-aged for applying. If that is so, the authorities to sympathetically consider their cases if permissible under the relevant rules or regulations."

8. Mr.More, therefore, submits that in the event, this Court is to interpret the effect of the circular dated 25/05/2011 to be prospective, the entire selection process at issue needs to be cancelled and a *denovo* selection be ordered.

9. Learned AGP appearing on behalf of the Statutory Authorities, has supported the impugned judgments.

10. In the Priti Bhange's case (supra), the Divisional Commissioner, Appellate Authority, considered the dispute regarding the allotment of marks and had ordered a fresh selection process to be resorted to. In the light of the said direction, this Court, in its writ jurisdiction, did not cause an interference on the ground that the said direction for conducting a fresh selection process could not be said to be unfair and unlawful particularly in the background of the facts narrated in the said case.

11. It needs no debate that this Court can interfere with the impugned order if it is found to be perverse and/or is likely to cause grave injustice to the litigating sides.

12. Considering the GR dated 05/08/2010 and the circular dated 25/05/2011, this Court has dealt with an identical situation in the Shilpa Dhanraj Kale case. Considering the facts set out in this case and those emerging from the judgment of this Court in the matter of Shilpa Dhanraj Kale Vs. Divisional Commissioner and others dated 03/08/2015, it would be apposite to reproduce paragraph Nos. 3 to 9 of the said judgment hereinbelow :-

> "*3. In the process for recruitment that was held for appointing an Anganwadi Sevika, steps were taken as per Government*

Resolution dated 05.08.2010. On the basis of qualifications of the respective candidates, the petitioner was awarded 77 marks out of 90 while respondent No. 4 was awarded 76 marks out of 90. In the interviews that were held subsequently the petitioner was awarded an average of 7.75 out of 10 while the respondent no. 4 was awarded 4.25 marks out of 10. The total marks out of 100 were then taken into consideration and it was found that petitioner had scored 84.75 marks while the respondent no. 4 had secured 80.25 marks. The respondent no. 2 thereafter approved the selection of the petitioner. Being aggrieved the respondent no. 4 filed an appeal before the Divisional Commissioner alleging that she was entitled for preference being a widow as stipulated in Government Resolution dated 05.08.2010. The Divisional Commissioner found that in the interviews that were held the petitioner had been granted full marks by two members and as same was contrary to certain directions issued by the Government, the selection of the petitioner was set aside with a direction to conduct a fresh process by holding interviews a fresh.

4. Shri K.P. Mahalle, learned counsel appearing for the petitioner submitted that there was no bar to grant full marks when the interviews were held for making selection of Anganwadi Sevika. He submitted that though two members had granted full marks to the petitioner the other two members had not done so and therefore it could not be said that the petitioner had been favoured by the interview committee which had conducted the interviews. He submitted that after the petitioner's selection on 16.05.2011, directions came to be issued on 25.05.2011 against

awarding full marks in interviews. Subsequently, Resolution dated 15.09.2011 came into effect and the Divisional Commissioner by considering directions and the Government Resolution issued subsequent to her selection have set aside the selection of the petitioner. It was, therefore, submitted that the directions relied upon by the Divisional Commissioner could not be given retrospective effect to hold that the petitioner's selection was bad in law.

5. Shri V. Dahat, learned counsel appearing for respondent no. 4 supported the impugned order by submitting that the relevant directions and Government Resolution dated 15.09.2011 were taken into consideration by the respondent no. 1 and, therefore, the impugned order to conduct the interviews afresh did not call for any interference. It was submitted that in the interviews that were held two members had granted full marks to the petitioner and the same was contrary to the communication dated 25.05.2011. As the appeal was pending when Government Resolution dated 15.09.2011 came into force, same should have been taken into consideration.

Smt. B.P. Maldhure, learned Assistant Government Pleader supported the impugned order by relying upon the Government Resolution dated 15.09.2011. Shri R. Joshi, learned counsel appearing for respondent no. 2 pointed out that the directions dated 16.05.2011 relied upon are subsequent to the selection of the petitioner.

6. I have considered the respective submissions and I have gone through the documents filed on record. The selection process to

appoint Anganwadi Sevika was conducted as per Government Resolution dated 05.08.2010. After the interviews were held the respondent no. 2 on 16.05.2011 upheld the selection of the petitioner on the ground that she had scored higher marks than respondent no. 4. Perusal of the memorandum of appeal preferred by respondent no. 4 indicates that a grievance was made that in terms of Clause E of the Government Resolution dated 05.08.2010, though the respondent no. 4 was entitled for preference being a widow the same was not granted. There were no allegations that the members of the Committee had either favoured the petitioner or granted her full marks in the interview. In the impugned order a reference has been made to certain directions issued by the State Government while holding the process of selection to be defective.

7. It is necessary to note that the respondent no. 2 approved the selection of the petitioner on 16.05.2011 by considering the provisions of Government Resolution No. 5-8-2010. Thereafter on 25.05.2011 directions came to be issued by the Ministry of Women and Child Development to the Chief Executive Officer that of the total of 10 marks, maximum marks of 9 and minimum marks of 4 should be awarded in the interviews. Thereafter on 15.09.2011 a Government Resolution was issued in which it was stated that no candidate should be granted less than 4 marks or more than 9 marks in the interviews. It is on the basis of the directions dated 25.05.2011 and the Government Resolution dated 15.09.2011 that the selection of the petitioner has been held to be invalid.

8. The directions dated 25.05.2011 and the Government Resolution dated 15.09.2011 could not have been interpreted in a retrospective manner so as to govern the interviews that were already held. The petitioner having been selected on 16.05.2011, the marks awarded in the interviews by two members could not be held to be illegal as being contrary to directions dated 25.05.2011 and Government Resolution dated 15.09.2011 that came into effect subsequent to the petitioner's selection. The position as prevailing on the date when the interviews were held would govern the situation. Reference in that regard can be usefully made to the decision of the Supreme Court in Madan Mohan Sharma and another Vs. State of Rajasthan and others MANU/SC/7190/2008 : (2008) 3 Supreme Court Cases 724 and the observations in para 11 as under:

> *"We have heard learned counsel for the parties and perused the record. Mr. M.R. Calla, learned Senior counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria were changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30.12.1996 whereby it was provided that higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement has been issued on the*

basis of the circular obtaining at the particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently."

9. It is also to be noted that there was no such stipulation in Government Resolution dated 05.08.2010 of giving maximum marks of 9 and minimum marks of 4. The selection process therefore having been held as per Government Resolution dated 05.08.2010 same could not have been faulted. Even otherwise it is to be noted that respondent no. 4 in her appeal had not raised a grievance of being unfairly treated by the members of the interview committee. Reliance is being placed on Government Resolution dated 15.09.2011 that is issued subsequent to selection of the petitioner."

13. Considering the above, I find from the instant case that the entire selection process was completed and the appointment order was issued to the petitioner prior to the introduction of the circular dated 25/05/2011. In the Shilpa Kale case (supra), this Court, therefore, concluded that the said circular shall have its effect prospectively and more so in the light of the fact that the Government of Maharashtra subsequently introduced the GR dated 15/09/2011 wherein it has now been specifically mandated that no candidate would be awarded /allocated less than 4 marks and more than 9 in

the selection process undertaken for appointment of Anganwadi Sevika / Madatnis.

14. The contention of respondent No.6 that the judgment of this Court in the case of Priti Bhange (supra) could be made applicable, can be said to be a mis-conceived submission since it is not indicated in the said judgment that the entire selection process was conducted and completed prior to the issuance of the circular dated 25/05/2011.

15. As such, both the impugned orders are rendered unsustainable and perverse.

16. In the result, both the impugned judgments dated 02/07/2011 and 12/10/2012 are quashed and set aside. This petition is, therefore, allowed. The petitioner shall, therefore, stand reinstated on the post of "Anganwadi Sevika."

17. Rule is made absolute in the above terms.

18. At this juncture, the learned Advocate for respondent No.6 prays for status-quo to be maintained for 8 (eight) weeks. The said

request has been opposed by the petitioner on the ground that she had already been appointed, had joined and was performing her duties till the grievance was raised by respondent No.6 in this litigation. Pursuant to the judgment delivered by the Appellate Authority, respondent No.6 has been appointed.

19. Considering the fact that respondent No.6 has been working for the last about 3 years, the effect of this judgment shall stand stayed for a period of 4 (four) weeks from today.

(RAVINDRA V. GHUGE, J.)