

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2395 OF 2014

RANJANA VISHWANATH SHAHANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Totala Rameshwar F.
AGP for Respondents 1 to 3 : Smt. Shinde V.A.
Advocate for Respondent 4 & 5 : Smt. Hoge Patil Ashwini S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 10, 2015
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PER COURT :-

1. Heard.
2. The contentions of Shri Totala, learned Advocate for the petitioner are as follows:-
 - (a) The petitioner had applied for appointment of Anganwadi Sevika / Madatnis with respect to village Solnapur, Taluka Paithan, District Aurangabad.
 - (b) She was issued with a call letter, dated 19.3.2011, by which, she was called upon to participate in the interviews scheduled on 24.3.2011.
 - (c) By appointment order dated 28.3.2011, the petitioner was appointed as Anganwadi Madatnis on temporary basis. An objection

was raised by respondent No.6, who was an unsuccessful candidate, thereby, challenging the appointment of the petitioner.

(d) By order dated 6.7.2011, the Chief Executive Officer - respondent No.4 cancelled the appointment of the petitioner on the ground that she has three children, prior to her appointment.

(e) The petitioner preferred an appeal before the Additional Commissioner, Aurangabad, praying for the quashing of the order dated 6.7.2011 passed by the fourth respondent.

(f) By the impugned judgment dated 22.3.2013, the appeal preferred by the petitioner was rejected and the order of the fourth respondent, dated 6.7.2011, was sustained.

(g) Being aggrieved by the impugned order, the petitioner has preferred this petition on 11.12.2013.

(h) Notification dated 28.5.2005 does not disqualify an applicant seeking appointment in Group "A" to "D" in Government service, merely on the ground of having more than two children on the date of commencement of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005.

(i) By Circular dated 1.7.2005, the said Rules were made

applicable to all services falling under Group “A” to “D” in the Government service.

(j) The appointment of the petitioner has been illegally cancelled on the ground that she has more than two children despite the fact that the third child was born to the petitioner on 11.1.2001, which is prior to the introduction of the Rules and which is squarely covered by the proviso to Rule 3 thereunder.

(k) The third respondent - Divisional Commissioner, Aurangabad has failed to appreciate the import and effect of the Rules, coupled with the Circular, dated 1.7.2005 in deciding the appeal filed by the petitioner.

(l) The concerned authority, while passing the impugned order, has failed to note that the notification, dated 5.8.2010, defining a “Small Family” could not have been made applicable in the face of the notification dated 28.5.2005.

(m) The impugned order be quashed and set aside and the petitioner be reinstated as an Anganwadi Madatnis in the light of the appointment order, dated 28.3.2011.

3. Shri Totala has drawn my attention to prayer clauses (B) and (C) of the petition, which read as under:-

"(B) This Hon'ble Court be pleased to quash and set aside the judgment and order passed by the Respondent No.4 Chief Executive officer, Zilla Parishad, Aurangabad dated 4/6.07.02011 vide outward No. ZPA/EBVSY/JK/Astha/2011/1177, whereby the appointment of the petitioner as Anganwadi Madatnis came to be cancelled and further the judgment and order dated 22.03.2013 passed by the respondent No.3 Divisional Commissioner, Aurangabad Division, Aurangabad in Case No.2013/VS/Karya-12/ABP/Appeal/PK-129/2011, whereby appeal of the petitioner is dismissed and confirmed the above orders of respondent No.4, by issuing necessary writ, order or directions with further directions to the respondents to allow the petitioner to discharge her duties as Anganwadi Madatnis at Village Solnapur, Tq. Paithan, Dist. Aurangabad.

(C) By issuing writ of certiorari or any other appropriate writ, order or directions, it be held and declared that the provisions contained in G.R. dated 05.08.2010 issued by the respondent No.1 particularly clause - 2(d) thereof regarding the definition of small family cannot be applied retrospectively. Therefore, petitioner cannot be disqualified for the post of Anganwadi Madatnis due to three children borne to her before the year 2002."

4. The learned AGP on behalf of respondents 1 to 3 and Smt. Hoge Patil, learned Advocate on behalf of respondents 4 and 5 have submitted as under:-

(a) The Notification dated 28.5.2005 and the circular dated 1.7.2005 are not applicable to the appointments of Anganwadi Madatnis.

(b) The Notification, dated 5.8.2010 is a Government Resolution introducing certain Rules exclusively in relation to appointment of Anganwadi Sevika / Mini Anganwadi Sevika and Anganwadi Madatnis under the Integrated Child Development Services (ICDS) Scheme, introduced in the State.

(c) By the said Government Resolution dated 5.8.2010 a “Small Family” has been specifically defined and the petitioner was therefore, ineligible for being appointed as an Anganwadi Madatnis.

(d) The State of Maharashtra has clarified by communication dated 29.6.2011 that the Rules made applicable by Circular dated 1.7.2005 are not applicable to the appointments of Anganwadi Sevika and Madatnis.

(e) The petitioner has mis-represented to the appointing authority that she has only one child.

(f) The petitioner has executed a false agreement on oath, dated 19.3.2011, indicating that she if it is found that she has a third child, her appointment be cancelled forthwith.

(g) Based on the said agreement, which was sworn on oath by the petitioner, the appointment order dated 28.3.2011 was issued to the

petitioner clearly mentioning that if it is noticed that she has more than two children, her appointment would be cancelled.

(h) In the above backdrop, the petitioner accepted the appointment order and did not bring it to notice of the appointing authority that she already had three children.

5. I have considered the submissions of the learned Advocates and I have gone through the petition paper book with their assistance.

6. The thrust of Shri Totala's submissions are on the ground that the Notification dated 28.5.2005, by which the Rules were introduced and made applicable by Circular dated 1.7.2005 could not be done away with on the strength of the Government Resolution dated 5.8.2010. He submits that these Rules are to be made applicable even to the employment under the ICDS Scheme. There has been no decision by any authority considering this controversy and as such the Notification dated 20.3.2005 deserves to be interpreted to the benefit of the petitioner especially due to the proviso below Rule 3.

7. I am unable to accept the contentions of Shri Totala for reasons more than one. Firstly, the petitioner has dis-entitled herself for any relief on the ground of mis-representation. The innocence sought to be conveyed by the petitioner cannot be believed for the reason that the Selection List declared by the appointing authority based on the applications made by the

candidates indicates that the petitioner had disclosed only one child. Secondly, without giving much weightage to the said Select List, the agreement signed on oath by the petitioner, which is in her mother tongue, clearly states that if it is noticed that she has a third child, her appointment as Anganwadi Madatnis shall be cancelled forthwith. I am unable to believe that the petitioner has sworn the said agreement without going through its contents.

8. Thirdly, the petitioner has accepted the appointment order dated 20.3.2011, wherein clause (8) clearly indicates that the appointment of the petitioner would be cancelled if it was noticed that she has three children. Despite the above, the petitioner has not come forward before the appointing authority to declare that she had three children and that she was not disqualified by virtue of the Resolution dated 28.5.2005. It was the sixth respondent, the unsuccessful candidate, who has exposed the petitioner by bringing it to the notice of the appointing authority that the petitioner had three children and had obtained employment fraudulently.

9. The Apex Court in the case of Kishore Samrite Vs. State of U.P., reported at (2013) 2 SCC 398, has observed as follows:-

“34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice-delivery system.

35. *With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.*

36. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate*

statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : Tilokchand H.B. Motichand v. Munshi, A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, Chandra Shashi v. Anil Kumar Verma, Abhyudya Sanstha v. Union of India, State of Madhya Pradesh v. Narmada Bachao Andolan, Kalyaneshwari v. Union of India)

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

38. *No litigant can play ‘hide and seek’ with the courts or adopt ‘pick and choose’. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd.)”*

10. It is thus, held by the Apex Court that any suppression of facts by a litigant, for self serving purposes needs to be deprecated and even if such a litigant may have a good case on merits, should be deprived of any relief. It is in this backdrop that I am unable to accede to the prayers put forth by the petitioner.

11. Fourthly, the Government Resolution dated 5.8.2010 is specifically introduced by the Women and Child Development Department in relation to the appointment of Anganwadi Sevika / Madatnis under the ICDS Scheme. It is not in dispute that the legality and validity of this Government Resolution has not been challenged by the petitioner before the appropriate Court.

12. It is pointed out by the learned AGP that this Government Resolution has been specifically introduced to define the terms and conditions of employment of Anganwadi Sevika / Madatnis. A "Small Family" has been defined to mean, "a family of husband and wife with two children or less". In the event a couple has one child and delivers twins or more after the introduction of the said Government Resolution, the birth of twins or more shall be construed to mean a single child since they are delivered in one single delivery.

13. The impugned judgment of the third respondent indicates that the concerned authority has considered the provisions made applicable to the ICDS Scheme under which the Anganwadi Madatnis is appointed. The concerned authority has, therefore, concluded that the petitioner was not

eligible for appointment as she had three children on the date of her application.

14. Shri Total has vehemently contended that any dis-qualification said to have been made applicable to the petitioner for having three children by virtue of the Government Resolution dated 5.8.2010, would amount to making the said Government Resolution applicable with retrospective effect. I do not find any merit in the said submissions for the reason that the said Government Resolution has not been introduced to do away with an existing Government Resolution made applicable to the ICDS Scheme which could be said to have rendered a candidate eligible for appointment as Anganwadi Madatnis despite having three children. The effect of the Government Resolution dated 5.8.2010, therefore, cannot be construed to have the effect of taking away of any existing benefit available to the petitioner or any right created in the petitioner by any earlier Government Resolution.

15. In the light of the above, I am not convinced that the petitioner could be held to be eligible for appointment as an Anganwadi Madatnis on the basis of the Rules introduced by Notification dated 28.5.2005. The impugned orders are therefore sustainable as I do not find any perversity in the same.

16. Needless to state, since there has been no challenge by the petitioner to the Government Resolution dated 28.5.2005, I have not dealt

with the legality or validity of the said Government Resolution and thus, I leave the said issue open.

17. This petition sans merits and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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