

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.746 OF 2014

Pushpakala D/o Rajaram Malewar

-vs-

State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.U.J.Deshpande, counsel for the petitioner.
Ms T.H.Udeshi, AGP for the respondents-State.

CORAM : SMT.VASANTI A. NAIK &
PRASANNA B. VARALE, JJ.

DATE : 29.06.2015.

By this petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dismissing the original application filed by the petitioner. The petitioner also challenges the order of the Maharashtra Administrative Tribunal refusing to review the order dismissing the original application.

The petitioner had applied for the post of Talathi in pursuance of the advertisement issued by the respondents in the year 2007. According to the petitioner, the petitioner was entitled to 5% additional marks, i.e. six marks in view of the Government Resolution, dated 19/03/1998, but without awarding six marks to the petitioner, the other candidates, who had secured 124 marks were appointed on the post of Talathi. The petitioner filed the original application seeking a direction to the respondents to grant additional marks to the petitioner and appoint her on the post of Talathi. In the said

original application, the respondents filed the reply. It was stated in the reply that apart from the fact that the petitioner was not entitled to additional marks, the petitioner had also failed to produce the “Small Family Certificate”, that was necessary. It was stated in the reply that in the absence of submission of the “Small Family Certificate”, the candidature of the petitioner was liable to be rejected. Despite the reply of the respondents, the petitioner did not file an affidavit before the Tribunal to point out that the petitioner had indeed submitted the “Small Family Certificate” along with the application. In view of the mandatory requirement in respect of production of the "Small Family Certificate", the Tribunal had no course to open, but to dismiss the original application of the petitioner for not producing the necessary certificate. The petitioner then filed a review application before the Tribunal and stated that she had filed the “Small Family Certificate” along with her application. The respondents, however, denied that the petitioner had submitted the "Small Family Certificate". The review application filed by the petitioner was dismissed. The petitioner has challenged both the orders of the Tribunal in the instant petition.

On hearing the learned counsel for the parties, it appears that there is no scope for interference with the orders of the Tribunal, in exercise of the writ jurisdiction. Firstly, the petitioner is seeking appointment on the post of Talathi in pursuance of the advertisement issued in the year 2007. The selection of the candidates was made and the candidates were appointed on the post of Talathi in the year 2009.

Though the respondents had categorically stated in the reply that the candidature of the petitioner was liable to be rejected, as the petitioner had not tendered the “Small Family Certificate” at the time of the application, the petitioner did not state in the additional affidavit that she had tendered the “Small Family Certificate” along with the application. In fact, in the rejoinder filed by the petitioner before the Tribunal, the petitioner had impliedly admitted that the “Small Family Certificate” was not submitted by her along with the application and the petitioner volunteered to submit the certificate if it was required by the respondents. In the review application, the petitioner took a somersault and stated that she had tendered the “Small Family Certificate” along with her application. The Tribunal did not find any truth in the statement of the petitioner in the review application and, therefore, rejected the review application. We do not find any illegality in the orders of the Tribunal. The petitioner has not approached this Court with clean hands. The petitioner had never stated on affidavit at any point of time before the dismissal of the original application that the petitioner had indeed tendered the “Small Family Certificate” to the respondents along with the application. Had the petitioner tendered the “Small Family Certificate”, the petitioner would have stated so, in her additional affidavit and also her rejoinder. The additional affidavit, is however, silent in respect of the submission of the “Small Family Certificate” and there is an implied admission in the rejoinder that the petitioner had not tendered the “Small Family Certificate” along with the application and was ready to submit the same,

if it was required. In the enquiry conducted by the respondents, it was found that the petitioner had not tendered the “Small Family Certificate” along with the application. The petitioner tried to improve her case in the review application as also in this writ petition. The petitioner is guilty of *suggestio falsi* and *suppressio veri*. The orders passed by the Tribunal are just and proper and cannot be lightly interfered with.

Hence, we dismiss the writ petition with costs.

JUDGE

JUDGE