

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 3377/2014.

Sandeep madhukar Bawankar and another

VERSUS

The Chairman, A.P.M.C. Tumsar and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : FEBRUARY 27, 2015.

Heard Shri S.A. Kalbande, learned Counsel
for the petitioners, Shri S. Paliwal, learned Counsel for
respondent nos.1 and 3 and Mrs. K.S. Joshi, learned
A.G.P. for respondent no. 2.

Reply-affidavit tendered on behalf of
respondent nos. 1 and 3 is taken on record.

Only question is – Whether respondent
no.3 who possesses 2 years Diploma i.e. Krushi

Padvika, issued by the Agricultural College, Kandri (Jamb) affiliated to Dr. Punjabrao Deshmukh Krishi Vidhyapeeth, Akola can be said to be eligible to compete with petitioners for selection to the post of 'Gardner' with respondent no.1 in terms of advertisement dated 18.09.2013 ?

Advertisement dated 18.09.2013, published by respondent no.1 shows a post of Mali (Gardner) in open category in the pay scale of Rs. 4440-7440 with grade pay of Rs. 1300/-. Educational qualification shown is 10th pass and certificate of training as 'Mali'.

Petitioners have got that certificate. They submitted that respondent no.3 who holds a higher qualification does not possess that training or that certificate, and therefore, is not eligible even to be considered.

Respondent nos. 1 and 3 have filed reply affidavit justifying the selection.

Learned A.G.P. has filed reply on behalf of respondent no.2 reiterating the same.

Shri Paliwal, learned counsel appearing for respondent nos. 1 and 3 has submitted that if the mark-sheet issued to petitioner no.2 is looked into, he is given marks under head 'Theory (Boudhik) and Practical'. Petitioner and respondent no.3 has also been given marks under those heads and for that purpose he relies upon the mark-sheet dated 13.02.2009. He submits that thus, respondent no.3 is eligible to compete with the petitioners and in selection process she is found far better and therefore, she has been rightly selected.

Shri Paliwal, learned counsel and Mrs. Joshi, learned A.G.P. submit that it is only for the employer to select best of the available candidates and as the better choice was available, respondent no.1 has selected respondent no.3. They submit that in absence of malafides, no case is made out for interference in extra ordinary jurisdiction.

The marks under head 'Theory or Practical' can be awarded in several subjects including Physics, Chemistry, Biology. Therefore, merely because in

mark-sheet of petitioner no.2 marks are given under these two heads, and mark-sheet of respondent no.3 shows allotment of marks under very same head, that does not mean that courses undertaken by them is one and the same.

Certificate issued by Dr. Punjabrao Deshmukh Krishi Vidyapeeth, Akola to petitioner no.2 shows that he has attended training course for Mali (Gardner) between 01.06.2006 to April, 2007. Petitioner no.1 Sandeep has been given mark-sheet which shows subjects like (1) Principles and Practices of Gardening, (2) Fruits, Vegetables and Flowers Cultivation, (3)Nursery Management, (4) Landscape Gardening. These subjects are mentioned in certificate for Mali training issued to him by Yeshwantrao Chavan Maharashtra Open University, Nashik.

In this background, when the subjects taught to respondent no.3, as described in her mark-sheet dated 13.08.2009 are looked into, they show (1) Fundamentals of Agriculture and Soil Management,

(2) Crop Conservation and Industry for Supplementary Agriculture, (3) Gardening Science, (4) Cattle Conservation and Milk Business, (5) Agricultural Extension, Education and Program, (6) Agricultural Management and Marketing. For all these 6 subjects separate marks are given for theory and practicals. Subject no.7 is “Sadhan Pratyakshi” and their for Agricultural Science, practical marks are allotted out of 200. Similarly, for Veterinary and Milk Business, marks are allotted out of 50. Thus, it is apparent that course undertaken by the respondent no.3 is totally different in content and also of superior nature and type. It does not show that she has been trained as Mali for the purpose of gardening.

In this situation, we find substance in the contention of petitioner that a person not eligible, has been selected for said appointment. Accordingly we grant prayer clause (i) of Writ Petition and quash and set aside the appointment of respondent no.3. It is open to respondent no.1 to proceed further with the recruitment process in accordance with law.

Writ Petition is, thus partly allowed and
disposed of. No costs.

JUDGE

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