

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) WP NO.1087 of 2016

17 WRIT PETITION NO. 1087 OF 2016

SANTOSH PANDURANG MORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners :Mr. Suryawanshi Pravin V
AGP for Respondent State: Mr. S.S.Dande
Mr.Avinash Deshmukh, Adv. for respondent no.4.

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CORAM : R. M. BORDE & P.R. BORA, JJ.
Dated: September 07, 2016

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PER COURT :-

1. The petitioner is objecting to the order passed by the Maharashtra Administrative Tribunal dismissing the Original Application presented by him, objecting to the appointment of respondent no.4. The petitioner and respondent No.4 competed for appointment to the post of Welder in the establishment coming under control of respondent nos. 2 and 3. The order of appointment has been issued in favour of respondent no.4 in the year 2008 whereas, the challenge to the order of appointment was raised by presenting Original Application before the Maharashtra Administrative Tribunal in the year 2011. It has been pointed out that the petitioner secured 82 marks out of 200 whereas the selected candidate secured 88 marks out of 200. On conversion, the proportionate marks, as per the prescribed formula, secured by the

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petitioner are 53.50 whereas, respondent no.4 has secured 53 marks. The petitioner seriously objects to the procedure of holding oral test and contends that the marks of the selected candidate have been artificially boosted to ensure his selection. It is pointed out that five members out of total eight Committee members, have awarded zero marks to the petitioners and thus, the petitioner has been awarded total 7 marks out of total 200; whereas, the selected candidate has been awarded 66 marks. Petitioner relies upon the judgment in the matter of **P. Mohanan Pillai Vs. State of Kerala & others** in Civil Appeal No.927 of 2007 decided by the Apex court on 23.3.2007.

The Apex Court, in the aforesaid matter, has observed that in respect of the allocation of marks for viva voce test, no hard-and-fast rule of universal application which would meet the requirements of all cases can be laid down. However, when allocation of such marks is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.

2. In the instant matter, it is true that the petitioner has been awarded quite low marks at the oral test, however, the marks secured by the selected candidate in the proficiency test are almost equal to the marks secured by the petitioner. Even if assuming that

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the marks allottable to the petitioner during viva voce test are intentionally reduced; still, it cannot be inferred that the selection panel has artificially boosted the marks receivable by the selected candidate so as to ensure his selection. The total marks secured by the selected candidate in the proficiency test, as has been said earlier, are almost equal to the selected candidates with a marginal difference of 0.5 marks. Considering this aspect, it cannot be said that there is any abuse of the process in respect of award of marks at the oral test. Apart from this, as has been stated earlier, the selected candidate is holding the post since 2008; almost since eight years and for the first time, challenge was raised to his selection only after passage of three years after the date of appointment. In exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, considering the facts of the instant case, no interference is called for.

The Writ Petition is devoid of substance and hence stands rejected.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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