

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8210 OF 2015

1 The Chief Executive Officer,
Zilla Parishad, Jalgaon.

2 Bal Vikas Prakalp Adhikari,
Ekatmik Balvikas Seva Yojna,
Amalner, Tq. Amalner.
Dist. Jalgaon.

...Petitioners...

Versus

1 Anita Sitaram Mali,
Age : 34 years, Occu. Nil,
R/o. Patonda, Tq. Amalner,
Dist. Jalgaon.

2 Bal Vikas Prakalp Adhikari,
Ekatmik Balvikas Seva Yojna,
Shindkheda, Dist. Dhule.

...Respondents...

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Smt.Chaitali R. Kutti-Choudhary, Advocate for
petitioners.

Shri Vinod Prakash Patil, Advocate for respondent no.1.

Smt.V.D. Jadhav, Advocate for respondent no.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 16.02.2016

ORAL JUDGMENT :

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

2] The petitioners are aggrieved by the judgment and order dated 17.5.2014 delivered by the Labour Court, Jalgaon, by which Complaint (ULP) No.38/2008 filed by respondent no.1 has been partly allowed. The petitioners were directed to pay Rs.75,000/- to the respondent no.1 – employee in lieu of reinstatement in service and full back wages.

3] The petitioners are also aggrieved by the judgment and order delivered by the Industrial Court, Jalgaon, dated 5.3.2015 by which Revision (ULP) No.17/2014 filed by respondent no.1 has been allowed and Revision (ULP) No.18/2014 filed by the petitioners has been dismissed.

4] I have heard the learned Advocates for the respective sides at length.

5] A host of factors have been canvassed. However, I find that the following issues are material while dealing with this petition :-

[a] Whether an order of termination with retrospective effect can be sustained ?

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[b] Whether the appointment of respondent no.1 can be sustained in the face of a false experience certificate having been filed, which fetched her 120 marks on the basis of alleged past experience ?

[c] Whether an appointment obtained on the basis of a forged document can be set aside pursuant to an agreement signed by respondent no.1 that if her appointment turns out to be based on a false certificate / document, her services shall be terminated without notice ?

6] In the light of the above, I have considered the submissions of the learned Advocates with reference to the date of the order of termination and the effect granted to the said order.

7] It is undisputed that the order of termination is dated 20.10.2008 and the service of respondent no.1 has been terminated retrospectively with effect from 15.11.2007. Such an order cannot be sustained in the light of the observations of the learned Division Bench of this Court in the matters of :

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[1] *Asaram Raibhan Dhage v. Executive Engineer & others (1989 II CLR 331)*

[2] *Secretary, Chowke Panchkiroshi Shikshan Prasarak Mandal v. Dilip A. Narvekar (1992 II CLR 672)*

[3] *Kum.Sulochana Daulatrao Thakare v. Sangam Shikshan Sanstha & others (2004(1) ALL MR 644).*

8] In the light of the above, the impugned termination order dated 20.10.2008 with effect from 15.11.2007 is rendered unsustainable.

9] Insofar as the second issue is concerned, it is undisputed that in the process of appointment of Anganwadi Madatnis to the village Patonda Tq.Amalner Dist.Jalgaon, each candidate was entitled to earn extra marks by giving weightage to their past experience.

10] There were eight examiners and each one was entitled to allot a maximum of 15 marks. Consequentially, respondent no.1 has acquired those 15 marks granted by each examiner (maximum 120 marks) and by virtue of the said marks, her total percentage stood at 64.13 placing her at Sr.No.1 in the merit list. On the basis of the said score, she was appointed as an Anganwadi Madatnis.

11] While giving her the appointment, she has

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entered into a contract with the petitioners. Clause 4 of the contract, which is in Marathi is relevant and which reads as under:-

"४. दिनांक १३.१०.२००६ रोजी भरती संदर्भात दिलेल्या जाहिरातीनुसार आपण अर्जासोबत सादर केलेली माहिती व प्रमाणपत्रे भविष्यात चुकीची, खोटी तसेच दिशाभूल करणारी असल्याचे निदर्शनास आल्यास व सिध्द झाल्यास माझी नेमणूक तात्काळ कोणतीही पुर्व सुचना न देता रद्द करण्यात येईल."

12] It is, therefore, apparent that respondent no.1 agreed for the cancellation of her appointment if it was found that any of the certificates submitted by her for seeking appointment as Anganwadi Madatnis turned out to be false.

13] Respondent no.1 has produced a certificate dated 20.9.2001 purportedly signed by the Child Development Project Officer Tq.Shindkheda Dist.Dhule indicating that respondent no.1 was working as Anganwadi Sevika from 7.3.1997 till 19.11.1998 at village Selu Tq.Shindkheda Dist.Dhule.

14] Learned Advocate for the petitioners points out a communication issued by the Child Development Project Officer, under the said scheme, Tq.Amalner Dist.Jalgaon and addressed to the Deputy Chief Executive Officer, Zilla Parishad, Jalgaon, at page no.133 of the petition

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paper book. The said document indicates that there were two villages under Taluka Shindkheda by name 'Shen Selu' and 'Jog Selu'. There is no dispute that there is no third village by name "Selu" under Taluka Shindkheda. At Shen Selu, An Anganwadi Karyakarti and Anganwadi Madatnis have been working from 28.10.1984 and 1.6.1985 respectively. At village Jog Selu, Anganwadi Karyakarti and Anganwadi Madatnis have been working from 18.10.1984.

15] The said officer has, therefore, stated that neither was respondent no.1 working at Shen Selu nor at Jog Selu as an Anganwadi Sevika for the period from 7.3.1997 to 19.11.1998. So also the certificate relied upon by respondent no.1, which is at page no.94 of the writ petition paper book, was never issued by the said officer. I, therefore, find that the said certificate was not a genuine document.

16] Despite the above fact situation, the Labour Court as well as the Industrial Court have surprisingly concluded that it is not necessary to consider whether the experience certificate dated 20.9.2001 is genuine or not since it is an insignificant document and carries no weightage.

17] In paragraph no.16 of the impugned judgment of the Industrial Court, it was concluded as under:-

"But when she was not given any preference while appointing to the said post as Anganwadi Helper on the basis of the said experience certificate, even if the said certificate was false, it was insignificant."

I find these conclusions of the Industrial Court to be perverse.

18] Learned Advocate for the petitioners has prepared a chart for the assistance of the Court setting out the details of the marks scored by all the six candidates. The same is taken on record and marked as Exhibit X for identification.

19] In the light of Exhibit X, if the conclusion of the Industrial Court in paragraph no.16, reproduced above, is sustained, then the marks scored by respondent no.1 (15 marks multiplied by 8) would have to be deleted from her score, which would bring down her total / tally to 49.13%, which would relegate her to Sr.No.5 in the merit list comprising of the six candidates. Needless to state that the Industrial Court should have applied its mind to this aspect of the matter while causing an

interference in the judgment of the Labour Court. In the light of the above, the appointment of respondent no.1 cannot be sustained.

20] Insofar as the third issue is concerned, the agreement signed by respondent no.1 with the petitioners, Clause 4 of which is reproduced above, cannot be ignored. Respondent no.1 has agreed to the termination of her appointment if any of the certificates produced by her turn out to be false or if her appointment is secured on false information. The said agreement dated 16.11.2006 is also placed on record.

21] The petitioners issued a show cause notice dated 22.4.2008 to respondent no.1 calling upon her to explain away the experience certificate, which she has obtained and relied upon while securing her appointment. Respondent no.1 has submitted a reply dated 12.5.2008 through Advocate Shri R.D. Barde. The petitioners considered the reply of the concerned Advocate on behalf of respondent no.1 and concluded that the experience certificate was not a genuine document. Consequentially, her appointment was terminated in the light of the show cause notice, reply of her Advocate and the agreement

signed by her.

22] In my view, considering the peculiar facts as above, a full-fledged departmental enquiry was not necessary. More over, the Labour Court as well as the Industrial Court should have considered this aspect in the facts and circumstances of this case. The Labour Court has interfered with the order of termination on the ground of violation of Section 25-F of the Industrial Disputes Act.

23] I do not find any conclusion by the Labour Court that respondent no.1 has raised a specific ground of no departmental enquiry having been conducted with regard to the false experience certificate.

24] In the light of the above, the appointment of respondent no.1 on the basis of a document, which is bogus, cannot be sustained. Similarly, considering Clause 4 of the Agreement signed by respondent no.1 coupled with the show cause notice and her reply through the Advocate, a sufficient opportunity of hearing was given to the respondent no.1 – employee.

25] The issue, therefore, turns upon whether respondent no.1 would be entitled for any relief on

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account of the order of termination being effected retrospectively. Considering my answers to issue Nos.1, 2 & 3 as above, the appointment of the respondent no.1 is not sustainable. Having come to this conclusion, the order of reinstatement granted by the Industrial Court deserves to be interfered with since the order of termination with retrospective effect in the peculiar facts of this case, as noted above, could be cured by directing the petitioners to pay the last drawn salary of respondent no.1 for the period from 15.11.2007 till 20.10.2008. If this view is not taken by this Court, an employee, who has acquired an employment on the basis of a forged document, would benefit merely on account of technicalities.

26] In the light of the above, this petition is partly allowed. The impugned judgments of the Labour Court dated 17.5.2014 and the Industrial Court dated 5.3.2015 stand modified. The petitioners shall pay the last drawn salary of respondent no.1 for the period from 15.11.2007 to 20.10.2008 within a period of six weeks from today. Since the petitioners have deposited an amount of Rs.1,60,700/- in this Court, it shall prepare a

calculation of the last drawn wages of respondent no.1 for the period from 15.11.2007 to 20.10.2008 and handover the said calculation to the learned Advocate for respondent no.1 within a period of two weeks from today. Respondent no.1 shall then be entitled to withdraw only that amount reflected in such calculation. The petitioners will be entitled to withdraw the rest of the amount.

27] The direction of the Industrial Court granting reinstatement with continuity of service and full back wages is quashed and set aside.

28] Rule is made partly absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)