

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 4044/2014

(Ku. Savita D/o Nagorao Tapare vs. State of Maharashtra and others)

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

Court's or Judge's order

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Mr. S.D.Chande, Advocate for the petitioner
Mr.Ambarish Joshi,Assistant Govt. Pleader for Respondent No.1
Ms. Amruta Gupta,Adv.h/for Mr.P. B. Patil, for Respondent No.3

**CORAM : SMT. VASANTI A.NAIK &
MRS. SWAPNA JOSHI, JJ.**

DATED : 7th June, 2016

Heard.

By this Petition, the petitioner seeks a declaration that the petitioner is eligible for appointment to the post of *Shikshan Sevak* (Teaching Assistant). The petitioner seeks a direction to the respondents to appoint her as *Shikshan Sevak* in the facts and circumstances of the case.

In pursuance to the Government Resolution dated 16.12.2009, by which the State had decided to conduct a Common Entrance Test for D.Ed. holders for appointment as *Shikshan Sevaks* in various Zilla Parishad schools, the petitioner applied for the said post. The written examination was conducted and the petitioner initially received

130 marks. Since the last selected candidate had secured 131 marks, the petitioner made a representation to the respondents that she was wrongly awarded 130 marks though she had answered some more questions, correctly. In view of the constitution of a Committee to look into the grievance of the aggrieved candidates, the petitioner appears to have made a representation to the respondents to revalue the answer papers. The representation of the petitioner dated 30.07.2011 was decided by the respondent no.3 on 7.3.2012 and the petitioner's marks were reduced by two. On revaluation, the petitioner has secured 128 marks. Consequently, the petitioner was not appointed on the post of *Shikshan Sevak*. The petitioner has challenged the action of the respondents in reducing the marks of the petitioner and has sought her appointment to the post of *Shikshan Sevak*, by filing the Writ Petition on 9.5.2014.

Shri S.D.Chande, learned counsel for the petitioner submitted that there were several irregularities in the procedure of selection. It is submitted that though the answer sheets were destroyed by the respondents after a period of fifteen days from the declaration of the original result, a show was made by the respondents that the answer-sheet of the petitioner was re-checked and the marks of the petitioner were reduced. It is

submitted that the entire record was destroyed by the respondents in the year 2010. It is stated that though the petitioner had made an application for securing the information in regard to the selection procedure under the Right to Information Act, the respondents have not supplied the information to the petitioner, till date. It is submitted that there were irregularities in the matter of appointment to the posts of *Shikshan Sevaks* and in the circumstances of the case, the petitioner should be appointed. It is stated that the aspect of delay in approaching this Court may not be looked into in the circumstances of the case as the respondents have suppressed the material fact, that the record in respect of selection was destroyed by the respondents, in the year 2010.

The counsel for the respondents submitted that the petition is liable to be dismissed on the ground of laches. It is submitted that the revaluation result was declared in March 2012 and the Writ Petition was filed on 9.5.2014. It is submitted that the question whether the petitioner is entitled to more than 130 marks in the written examination may not be considered, in exercise of the writ jurisdiction. The respondent no.3 denied that the mark-sheets were destroyed and a show was made that the mark-sheet of the petitioner was examined. It is submitted that the petitioner was rightly awarded 28 marks after revaluation.

On hearing the learned counsel for the parties, it appears that the Petition is liable to be dismissed for more reasons than one. The Petition suffers from laches. In view of the Government Resolution dated 16.12.2009, the petitioner had applied for the post of *Shikshan Sevak*. The examination was conducted in the year 2010 and the petitioner had secured 130 marks. The last selected candidate had secured more marks than the petitioner and the petitioner applied for revaluation. The answer-sheet of the petitioner was re-assessed and on 7.3.2012 and it was declared that the petitioner had secured only 128 marks. The petitioner did not do anything in the matter for more than two years, except making representations to the respondents seeking further re-assessment of the answer-sheet. The Writ Petition is filed on 9.5.2014, i.e. more than two years after the revaluation result was declared in furtherance of an advertisement that was issued in 2009. The petitioner has approached this Court in the year 2014 seeking a direction against the respondents to appoint the petitioner on the post of *Shikshan Sevak*. The Petition suffers from laches. If the petitioner did not secure the requisite information under the Right to Information Act, the petitioner has remedies under the Act of 2005. The petitioner is free to avail those remedies. However, it would not be proper for this Court to consider whether the petitioner has rightly secured 128

marks in the written examination, that too after a period of more than 6-years from the date on which the written examination was conducted. We do not find any merit in the submission made on behalf of the petitioner that the record and the answer sheets were destroyed in the year 2010. The respondents have seriously disputed the said statement. The matter cannot be reopened after a period of more than six years from the date on which the examination was conducted and more than four years from the date on which the revaluation results were declared. At this stage, we do not find any merit in the submission made on behalf of the petitioner that the Committee ought to have recorded reasons while reducing marks for two wrong answers. In any case, since this Court would not be in a position to consider whether the petitioner has answered the questions correctly or not, the relief sought by the petitioner cannot be granted. The judgment reported in (2008) 12 SCC 353: Ganpatbhai Solanki vs. State of Gujarat and others and relied on by the learned counsel for the petitioner cannot be made applicable to the facts of this case.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

JUDGE

JUDGE