

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.5734 OF 2006

Pratibha Vasantryao Kathar,
(Presently Sow. Pratibha w/o
Vinayak Parashar)
Age 34 years, Occ. Housewife,
R/o A-6, Sanjay Nagar,
Baijipura, Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra
through Secretary,
Ministry of Social Welfare,
department of Women & Child
Development, Mantralaya, Mumbai
2. The Project Officer,
Integrated Child Development Scheme,
Urban Project, Aurangabad
3. Manisha Gangaram Lahane,
Age 28 years, Occ. Service,
R/o Galli No.22, Sy. No.20,
New Baijipura, Aurangabad.
4. Vaishali Prakash Makasare,
Age 29 years, Occ. Service,
R/o C-7, Sanjay Nagar,
Near Amar High School,
Aurangabad.
5. Kalpana d/o Ramesh Pagade,
(Presently Sow. Kalpana w/o
Vinod Bhuigad),
Age 30 years, Occ. Service,
R/o Indira Nagar, New Baijipura,
Aurangabad.

... RESPONDENTS

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Shri S.R. Choukidar, Advocate for petitioner
Mrs. M.A. Deshpande, A.G.P. for respondents No.1 and 2
S/Shri B.H. Gaikwad & M.D. Shinde, Advocates for
respondents No.3 to 5 (absent)

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CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 6th September, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.):

1. By this petition, filed under Article 226 of the Constitution of India, the petitioner seeks a declaration that the selection of respondents No.3 to 5 on the post of Anganwadi Sevika of Baijipura, Indirangar area, Aurangabad is bad in law and illegal and also seeks an order against the respondent No.2 to appoint the petitioner on the post of Anganwadi Sevika and for consequential benefits arising therefrom. Some of the relevant facts for the purpose of deciding this petition are as under :

2. On 17/4/2016, the respondent No.2 issued an advertisement, inviting applications for filling up the posts of Anganwadi Sevika and Anganwadi Madatnis (Helper). Various conditions of eligibility were prescribed in the said advertisement issued by respondent No.2. On 29/4/2006, the applications were made by various candidates for the post of various Anganwadi Sevikas. So far as the post of Anganwadi Sevika for Baijipura is

concerned, the petitioner and the respondent No.4 had applied for the said post. The petitioner and the other candidates were interviewed by Selection Committee appointed under the Government Resolution dated 28/1/1997. The documents submitted by both the candidates were also considered by the Selection Committee. The Selection Committee found that the marks of the respondent No.4 were higher than the marks of the petitioner. The respondent No.4 was appointed to the said post of Anganwadi Sevika. The petitioner has thus filed this Writ Petition in this Court for various reliefs.

3. During the course of arguments, learned counsel for the petitioner did not press the challenge to appointment of respondents No.3 and 5 on the post of Anganwadi Sevika and accepted the contentions raised by respondents No.1 and 2 in the affidavit-in-reply that both these appointments were made by respondents No.1 and 2 for another Ward, for which the petitioner had not applied and pressed the relief only insofar as appointment of respondent No.4 is concerned.

4. Learned counsel for the petitioner invited our attention to the advertisement issued by respondents No.1 and 2 and also various certificates showing the qualification of the petitioner i.e. Bachelor of Arts (B.A.), obtained by the petitioner

on 8/1/1998, certificate issued by Jan Shikshan Sansthan, Aurangabad for passing Montessori Teachers Training Course, certificate issued by Department of Education, Bureau of Government Examinations in Maharashtra State, passing Government Commercial Certificate examination, certificate issued by Department of Horticulture, Government of Maharashtra, passing Food & Vegetable Processing and Preservation Training.

5. Learned counsel for the petitioner submits that, insofar as appointment of respondent No.4 by the respondents No.1 and 2 is concerned, though under the advertisement issued by respondents No.1 and 2 the respondent No.4 was not the resident of Baijipura and was resident of some other locality, the respondents No.1 and 2 considered her application and appointed her in breach of the terms and conditions of the advertisement issued by respondents No.1 and 2 and also the relevant Government Resolution. In support of this submission, the learned counsel invited our attention to a certificate issued by Shri Vaidyanath Shikshan Prasarak Mandal, Parli Vajinath issued in favour of respondent No.4. He also placed reliance upon the residence certificate and would submit that, even in the said certificate, no place of birth of the respondent No.4 was mentioned showing the address of Baijipura. He submits that,

the said certificate would only show the address of Sanjaynagar, Aurangabad, which may be in some other locality.

6. Learned counsel for the petitioner invited our attention to the affidavit-in-reply filed by respondents No.1 and 2 and would submit that, the respondents No.1 and 2 have overlooked the non-compliance of the said conditions that though the respondent No.4 did not belong to the locality of Baijipura, the respondents No.1 and 2 appointed her in violation of the terms and conditions of the appointment. He also invited our attention to the representation made by the petitioner on 18/2/2006, raising these issues and would submit that, there was no response to the said representation made by the petitioner.

7. Learned counsel for the petitioner invited our attention to the death certificate of the husband of respondent No.4 and would submit that, in the death certificate of the husband, his place of residence was mentioned of some other locality and not Baijipura.

8. Insofar as additional 20 marks given to the respondent No.4 on the basis of she being a widow under the Government Resolution is concerned, it is submitted by the

learned counsel for petitioner that, the respondent No.4 had not produced any proof in support of her claim to be a widow and thus, merely on the basis of her statement, the respondents No.1 and 2 could not have granted her the benefit of additional 20 marks.

9. The next submission of learned counsel for the petitioner is that, though in the application form the respondent No.4 had not produced any certificate of her experience, the respondents No.1 and 2 have granted marks in respect of the so called experience of the respondent No.4. He submits that, no marks for experience of the petitioner were granted to her. He submits that, the petitioner was a graduate whereas the respondent No.4 has only passed 12th Standard. The respondents No.1 and 2 thus ought to have considered the qualification of the petitioner, which was higher than the qualification of the respondent No.4 while appointing her.

10. Mrs. Deshpande, learned A.G.P. for respondents No.1 and 2, on the other hand, invited our attention to the Government Resolution dated 14/1/2004 and would submit that, under the said resolution, a Selection Committee of 4 officers from different fields was appointed for the purpose of selection of the candidates after considering the documents produced by the

candidates and after taking their interview. She submits that, the said Selection Committee, after considering the documents of all the candidates, made recommendation for appointment of the meritorious and suitable candidates.

11. Learned A.G.P. invited our attention to the resolution dated 9/2/2005 prescribing the qualification for appointment of the candidates to the said post. She also placed reliance on the annexures to the said resolution prescribing for various marks to be allotted to the candidates under various categories such as widow, reserved category candidates, experience of more than one year, training in Anganwadi/ Balwadi course etc.

12. Learned A.G.P. also invited our attention to the resolution dated 28/12/2005 and would submit that, by the said resolution, the earlier Government Resolution dated 9/12/2005 was amended and the marks based on interview of the candidates was increased from 10 to 20 and the marks on the documents was reduced from 90 to 80.

13. Learned A.G.P. invited our attention to the marks given to all the candidates including the petitioner and respondent No.4 on the basis of the documents produced by them and also the marks allotted to them in interview. She

submits that, insofar as the petitioner is concerned, the petitioner was granted 50 marks out of 80 marks based on the documents produced by her and was granted 11.33 marks in interview out of 20 marks, totaling to 61.33 marks whereas the respondent No.4 was allotted 75 marks out of 80 marks based on the documents produced by her and 16.33 marks out of 20 marks, totaling to 91.33 marks.

14. Insofar as submission of the learned counsel for the petitioner that the respondents No.1 and 2 have considered the case of the respondent No.4 for the residence from Ward of Baijipura though no document is produced by the respondent No.4, learned A.G.P. invited our attention to the residence certificate relied upon by the petitioner herself and would submit that, while issuing the said certificate, the officer had considered various documents produced by the respondent No.4 including the voters list. She submits that, the respondents No.1 and 2 considered the said residence certificate issued by Tahsildar, Aurangabad, clearly mentioning that the respondent No.4 was resident of Sanjaynagar and was staying at the said place since last five years. The respondents No.1 and 2 had also considered the electoral list of Sanjaynagar consisting of her name in the same in Baijipura Ward.

15. Insofar as the submission of the learned counsel for the petitioner that the petitioner was more meritorious than the respondent No.4 is concerned, it is submitted by the learned A.G.P. that, insofar as graduate degree obtained by the petitioner is concerned, she was granted more marks than the respondent No.4. However, in the other categories, the respondent No.4 secured more marks than the petitioner. She submits that, even if for the experience, 15 marks granted to the respondent No.4 are excluded from the 75 marks granted to her, the total marks obtained by respondent No.4 would be still higher than the marks of the petitioner. She submits that, the respondent No.4 had produced her experience certificate before the Selection Committee.

16. A perusal of the record indicates that, as per Government Resolutions relied upon by the learned A.G.P., the Selection Committee of various officers was appointed by the Government for the purpose of selecting candidates, based on the documents produced by the candidates which were required to be produced in terms and conditions of the advertisement, the Government Resolution, and also based on the interview of those candidates. Out of 100 marks, 80 marks were to be considered based on the documents produced by the candidates whereas 20 marks from the interview.

17. A perusal of the record produced by the respondents No.1 and 2 along with affidavit-in-reply clearly indicates that insofar as petitioner is concerned, she was allotted 25 marks based on her education, 15 marks based on her caste and 10 marks based on her certificate of Anganwadi/ Balwadi course produced by her. There were no marks granted to the petitioner insofar as her experience is concerned and also in view of the petitioner not being widow or did not fall under any other category mentioned therein. Insofar as respondent No.4 is concerned, she was granted 20 marks in view of her qualification having passed 12th Standard, 15 marks she being a widow, 15 marks based on her caste, 15 marks based on her experience and 10 marks in view of she having produced certificate of completing Anganwadi/ Balwadi course. In interview, she has secured 16.33 marks as against 11.33 marks allotted to the petitioner.

18. Insofar as the submission of the learned counsel for the petitioner that the respondent No.4 being not the resident of the same Ward i.e. Baijipura is concerned, a perusal of the residence certificate relied upon by the petitioner herself indicates that, the various documents produced by the respondent No.4 such as declaration dated 21/4/2016, report

submitted by the Talathi, Aurangabad, dated 21/4/2016, ration card, election identity card, electricity bill, telephone bill, it was certified by the Tahsildar, Aurangabad that the respondent No.4 was resident of Baijipura, Aurangabad since last five years. The respondents No.1 and 2 have considered such documents including voters list. We are, therefore, not inclined to accept the submissions of the learned counsel for the petitioner that the respondents No.1 and 2 had only considered the application of the respondent No.4 for the Baijipura Anganwadi though she did not prove that she was resident of the said Ward.

19. Insofar as submission of learned counsel for the petitioner that, on the death certificate of the husband of respondent No.4 the address mentioned was of different locality and thus, the respondents No.1 and 2 ought to have considered the said address while considering her case for the post of Anganwadi Sevika for Baijipura Ward is concerned, in our view, there is no substance in this submission of learned counsel for the petitioner. The respondent No.4 had produced several documents showing the proof of her residence in Baijipura Ward which have been rightly considered by the respondents No.1 and 2. Merely because a different Ward is mentioned on the death certificate of the husband of respondent No.4 much prior to the date of making an application for the said post of Anganwadi

Sevika by the respondent No.4 would not advance the case of the petitioner.

20. Insofar as submission of learned counsel for the petitioner that the respondent No.4 has not produced any proof of she being a widow is concerned, the learned counsel for the petitioner himself invited our attention to the death certificate of the husband of respondent No.4, which itself proves that the respondent No.4 was widow on the date of making an application for the said post.

21. Insofar as submission of learned counsel for the petitioner that the experience certificate was though produced by the petitioner, no marks were allotted to her by the Selection Committee is concerned, a perusal of the record does not indicate that any such certificate of experience of the petitioner was produced before the Selection Committee. Be that as it may, even if the petitioner would have been granted additional 15 marks based on her so called experience and respondent No.4 would not have been granted such marks, the grand total of the marks allotted to the petitioner would have been much less than the total of the marks allotted to the respondent No.4 by the Selection Committee.

22. We do not find any infirmity in the process of selection conducted by the Selection Committee appointed under the Government Resolution, which was comprising of four senior officers. The petitioner has failed to demonstrate before this Court that her case was wrongly rejected by the Selection Committee or that the appointment of respondent No.4 was contrary to the terms and conditions of the advertisement and any of the Government Resolutions. The petition is totally devoid of merit. We, therefore, pass the following order :

ORDER

Writ Petition is dismissed. Rule is discharged. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/