

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

WRIT PETITION NO. 3111 OF 2015

Champabai w/o Bhalchandra Landge	..	Petitioner
Versus		
The State of Maharashtra & ors.	..	Respondents

WITH

WRIT PETITION NO. 3118 OF 2015

Nanda w/o Dashrath Gavhane	..	Petitioner
Versus		
The State of Maharashtra & ors.	..	Respondents

WITH

WRIT PETITION NO. 6542 OF 2015

Kavita w/o Kishor Jagtap	..	Petitioner
Versus		
The State of Maharashtra & ors.	..	Respondents

WITH

WRIT PETITION NO. 6544 OF 2015

Archana w/o Manoj Jamdar	..	Petitioner
Versus		
The State of Maharashtra & ors.	..	Respondents

Mr.A.V. Rakh, Advocate for petitioner in WP No.3111 & 3118 of 2015.
Mr.A.R. Devakate, Advocate for petitioner in WP No.6542 & 6544 of 2015.
Mrs.M.A. Deshpande, A.G.P. for respondent/State.
Mr.S.V. Deshmukh, Advocate for respondent No.3 in all petitions.

**CORAM : S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATED : 01.02.2017

P.C. :-

1. All these writ petitions are filed assailing the order passed by the Divisional Commissioner, thereby directing fresh selection process for appointment of Anganwadi Sevika in the said villages.

2. The petitioners in Writ Petition Nos.3111 & 3118 of 2015 were initially working as Anganwadi Madatnis and are subsequently appointed as Anganwadi Sevika under order dated 20.04.2013, pursuant to Government Resolution dated 05.08.2010.

3. In January, 2011, an advertisement was issued by the Zilla Parishad for filling in posts of Anganwadi Sevika by direct nomination. The said selection process was not continued further for a long time and call letters for interview were issued only in March, 2013. Prior to that the petitioner in Writ Petition No.3111 of

2015 had passed 10th standard in October, 2012 and became qualified to be appointed as Anganwadi Sevika. So also, the petitioner in Writ Petition No.3118 of 2015 was qualified to be appointed as Anganwadi Sevika in April, 2012, according to the Government Resolution dated 05.08.2010. These petitioners applied for being appointed as Anganwadi Sevika and they are appointed on 20.04.2013 as Anganwadi Sevika. This order appointing them as Anganwadi Sevika was assailed by the petitioners of Writ Petition Nos.6542 & 6544 of 2015, by filing objections. The Chief Executive Officer, Zilla Parishad dismissed their objection. They filed appeal before the Divisional Commissioner. The Divisional Commissioner partly allowed the appeal, thereby directing fresh selection process to be conducted. All the parties are aggrieved by the said order.

4. Mr. Rakh, learned Counsel for the petitioners in Writ Petition Nos.3111 & 3118 of 2015 submits that the petitioners were qualifying all the terms and conditions

as per the Government Resolution dated 05.08.2010 and they are validly appointed as Anganwadi Sevika. It was erroneous on the part of the Divisional Commissioner to set aside their appointment. The selection process commenced pursuant to the advertisement of January, 2011 was never proceeded further. As the petitioners were eligible and qualified, they were legitimately appointed.

5. Mr.Devakate, learned Counsel for the petitioners in Writ Petition Nos.6542 & 6544 of 2015 contends that the authorities have played fraud. They did not proceed further with the selection process till the candidates working as Anganwadi Madatnis passed their 10th standard examination and became qualified to be appointed as Anganwadi Sevika. They deliberately protracted the selection process. Though there was no stay to the said selection process by the Court, the selection process was not conducted. This Court in Writ Petition No.9040 of 2011 with connected writ petition had only passed interim order that the appointment made would be subject to the

decision of the said petition. As such, it was incumbent upon the authorities to proceed ahead with the selection process. The petitioners in Writ Petition Nos.3111 & 3118 of 2015 cannot take advantage of the wrong committed by the authorities. The authorities showed undue favour to them. This aspect has been rightly considered by the Divisional Commissioner in its order. However, the Divisional Commissioner committed error in directing fresh selection process. The selection process which was continued had almost concluded. The marks were also given. The interview was mere formality and the petitioner in Writ Petition No.6544 of 2015 was the only qualified candidate to be appointed. This aspect needs to be considered.

6. The learned Counsel for the Zilla Parishad submits that the delay was not deliberate. However, there was code of conduct and also order of stay of the Court. As such the selection process could not be continued.

7. Mr. Devakata, learned Counsel further submits that the order of this Court in Writ Petition No.904 of 2011 with connected writ petition was also not carried further as direction was given to complete the selection process within 12 weeks.

8. We also heard the learned Addl. Govt. Pleader.

9. The factual matrix about the date of the selection process, issuance of advertisement, the persons working as Anganwadi Madatnis subsequently becoming qualified to be appointed as Anganwadi Sevika and the appointment of these petitioners as Anganwadi Sevika on 20.04.2013 are not disputed.

10. The bone of contention is that the petitioners working as Anganwadi Madatnis became qualified for the first time to be appointed as Anganwadi Sevika only in April & October, 2012 and prior to the said date the selection process had already commenced in January, 2011.

Because of the delay committed by the authorities, the right in favour of the persons who had applied pursuant to the advertisement could not be curtailed.

11. There is no dispute that the petitioners appointed on 20.04.2013 as Anganwadi Sevika were duly qualified to be appointed and Government Resolution dated 05.08.2010 would squarely apply to them. Prior to their appointment the selection process was not concluded. It appears that there was delay on the part of the authorities to conclude the selection process. The reason given of stay of the Court does not appear to be convincing. The authorities certainly could have proceeded further with the selection process and ought to have concluded the selection process as per the stipulation laid down in the advertisement. We do not find any justification in not adhering to the same. Be that as it may, the said selection process is not concluded till date. It is trite that even name of the candidate in select list does not give the candidate

indefeasible right to be appointed. On 20.04.2013, the petitioners in Writ Petition Nos.3111 and 3118 of 2015 are already appointed as Anganwadi Sevika and on the said date they were qualified and eligible to be appointed as per Government Resolution dated 05.08.2010. As those persons who had applied to selection process do not have any vested right to get appointment order. The challenge to the appointment of Anganwadi Sevika as per Government Resolution dated 05.08.2010 may not be permissible.

12. Considering the aforesaid conspectus of the matter, the order passed by the Divisional Commissioner is required to be set aside and is hereby set aside.

13. The writ petition is accordingly disposed of, however, with no order as to costs.

[K.L.WADANE, J.]

[S.V.GANGAPURWALA, J.]