

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

WRIT PETITION NO. 2187 OF 2008

The Maharashtra Public Service
Commission, through Deputy Secretary,
Bank of India Building,
03rd Floor, Mahatma Gandhi Road,
For, Mumbai. .. Petitioner

Versus

1. Dr. Miss. Karuna Mahadeo Dongardive,
Age : 26 Years, Occu. : Private Practice,
R/o C/o Shri M. K. Dongardive,
H. No. 1-13-72, Gautam Nagar,
Ghati Area, Near Tare Kirana Stores,
Aurangabad.
2. Dr. Miss. Prerna Panditrao Ghorpade,
Age : 26 Years, Occu. : Private Practice,
R/o 14, Asha Nagar, Nandanvan Colony,
Aurangabad.
- (Petition is dismissed against the
respondent No. 2 vide Registrar (J)
order dated 03.08.2009.
3. Dr. Shalaka Madhavrao More,
Age : 27 Years, Occu. : Private Practice,
R/o C/o Mngala M. More,
24, Sneha Nagar, Ambajogai,
Dist. Beed.
4. The State of Maharashtra,

5. The Principal Secretary,
Agriculture, Animal Husbandry
and Fisheries Department,
Mantralaya, Mumbai – 32.
6. Pradeep Dashrath Satpute,
Age : 29 Years, Occu.
R/o Tisgaon, Taluka Pathardi,
Dist. Ahmednagar.
7. Dr. Ashok Manik Sathe,
Age 31 years, Occu. .
R/o Phaltan, Dist. Satara.
8. Balkrishna Bhika Kamble,
Age : 31 years, Occu.
R/o Morwad, Tal. Karmala,
Dist. Satara.

.. Respondents

Shri Mukul Kulkarni, Advocate for the Petitioner.

Shri Ajay Deshpande, Advocate for Respondent Nos. 1, 3, 6 to 8.

The petition is dismissed as against the Respondent No. 2.

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 31ST AUGUST, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J) :-

. The petitioner assails the judgment of the Maharashtra Administrative Tribunal allowing Original Applications filed by respondent Nos. 1, 2 and 3 thereby quashing the selection process.

2. Mr. Kulkarni, the learned advocate for the petitioner submits that, respondent Nos. 1, 2 and 3 participated in the selection process pursuant to the advertisement issued by the present petitioner for the post of Live Stock Development Officer. The respondent Nos. 1 to 3 were not selected and found not suitable for the post of Live Stock Development Officer from the Scheduled Caste (Female) category. The Tribunal only on the ground that, interviews could not have been the mode of selection, has set aside the selection process. The respondent Nos. 1 to 3 during the selection process had never raised any objection with regard to the category opted by respondent Nos. 1 to 3. The screening test was not conducted, because there were 24 posts earmarked for S.C. (Female) category and 34 applications were received. Out of 34 applications only 30 applicants were eligible as per the eligibility criteria fixed in advertisement. The ratio to be maintained is three candidates for one post. As only 30 candidates were found eligible as per the advertisement and the posts were 24 screening test was not conducted. According to the learned counsel no illegality has been committed by the petitioner.

3. Mr. Deshpande, the learned counsel for respondent Nos. 1, 3 and 6 to 8 submits that, the selection based on interviews only can never be a mode of selection for Class – II posts. The Apex Court has limited the marks to be allotted for interviews at

12.5%. The learned counsel relies on the judgment of the Apex Court in a case of **Praveen Singh Vs. State of Punjab and others** reported in **2000 AIR SCW 4024**. The learned counsel submits that, the advertisement requires screening test to be conducted. Screening test was not conducted. When only 30 applications were received and 24 posts were meant for SC (Female) category, the petitioner could not have filled in the post from S.C. (Male) candidates. The benchmark for reserved category has to be lower. According to the learned counsel, the respondent Nos. 1 to 3 possess the post graduate qualification and they have been discarded. The marks in the interview are allotted as per the sweet will and whims of the members. Such a selection process is bad in law, not recognized and has been rightly set aside by the Tribunal.

4. We have considered the submissions canvassed by the learned counsel for respective parties and have also gone through the judgment of the Tribunal.

5. The condition in the advertisement provides that the selection will be decided on the basis of performance in the interview alone. The condition No. 5 reads thus :

5 Viva – Voce and Personality Test :- The candidates who attain qualifying marks in the Screening Test and who are eligible for the post according to the provisions mentioned in

this notification, will only be called for interview by the Commission. They will have to attend the interview at their own expenses at Mumbai.

6. Another condition provides that, if suitable lady candidates from SC, ST, DT(A), NT(B), SBC, NT(C), NT(D) & O.B.C. categories are not available to fill up the vacancies reserved for them, then the posts will be filled in by suitable Male candidates from respective categories.

7. The respondents participated in the selection process without any demur and protest. After having failed in the selection process challenged selection process by filing Original Applications before the Tribunal. The grievance of the respondents could have been very well considered, had the respondents challenged the advertisement and methodology adopted by the petitioner. It is trite that a candidate having participated in the selection process and failed in the same, is not subsequently entitled to challenge the selection process. On the said count the grievance made by respondents need not be considered. The said aspect has not been considered by the Tribunal while passing the impugned order.

8. Though we hold that respondent Nos. 1 to 3 could not have challenged said selection process after participating therein and failed therein, the procedure that has been adopted by the

petitioner is certainly to be deprecated. For Class – II post the selection cannot be purely on the basis of performance in the interview alone.

9. The selection on the basis of interview alone would pave path for favouritism or it can leave the selection to the subjective satisfaction of the members of the selection committee without assessing objectively. The whims and fancies of the members of the Selection Committee cannot be ruled out. In such case and for the said reason, the Apex Court in a case of **Praveen Singh Vs. State of Punjab and others** (supra) had made following observations.

9. What does Kulshreshtha's case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings." A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In *Ashok Kumar's case* [*Ashok Kumar Yadav v. State of Haryana* (1985) 3 SLR 200 : (AIR 1987 SC 454 : 1986 Sab IC 1417), this Court however in no uncertain terms observed: There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact tests the man himself and is therefore regarded as an important tool along with the *written examination*.

10. It is also almost more than twelve years have lapsed, the respondent Nos. 6 to 8 are also selected and functioning.

11. Considering the above, Rule is made absolute in terms of prayer clause "A". Of course with aforesaid observations, which the petitioner is required to adhere to. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 18

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