

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

WRIT PETITION NO. 7504 OF 2013

Vimal Sopan Mudgudkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. P. Bhoomkar, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 and 2.

Shri Ajinkya Reddy, Advocate for Respondent Nos. 3 and 4.

Shri N. B. Khandare, Advocate for the Respondent No. 5.

WITH

CONTEMPT PETITION NO. 495 OF 2013

IN

WRIT PETITION NO. 7504 OF 2013

Vimal Sopan Mudgudkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. P. Bhoomkar, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 and 2.

Shri Ajinkya Reddy, Advocate for Respondent Nos. 3 and 4.

Shri N. B. Khandare, Advocate for the Respondent No. 5.

WITH

WRIT PETITION NO. 8705 OF 2013

Rajshree Vikrant Suryawanshi

and another

.. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Mayur V. Salunke, Advocate h/f Shri V. D. Salunke,

Advocate for Petitioners.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 1.

Shri Vinod M. Vibhute, Advocate for Respondent Nos. 2 and 3.

Shri N. B. Khandare, Advocate for Respondent Nos. 4 to 7, 10, 11, 13 and 14.

Shri S. V. Kshirsagar, Advocate h/f Shri Ajay S. Deshpande, Advocate for the Respondent No. 9.

**WITH
WRIT PETITION NO. 8706 OF 2013**

Savita Shivaji Rathod .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Mayur V. Salunke, Advocate h/f Shri V. D. Salunke, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 1.

Shri Vinod M. Vibhute, Advocate for Respondent Nos. 2 and 3.

Shri S. V. Kshirsagar, Advocate h/f Shri Ajay S. Deshpande, Advocate for the Respondent No. 4.

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

DATE : 10TH SEPTEMBER, 2018.

FINAL ORDER :

. All these petitions deal with the selection process for the post of Anganwadi Karyakarti/Anganwadi Supervisor undertaken by respondent Nos. 2 and 3.

2. The petitioner in Writ Petition No. 7504 of 2013 was initially selected and issued with appointment order.

Subsequently, on the complaint/representation of the respondent No. 5 in the said writ petition, the question papers were verified. The answer key was revised and the respondent No. 5 thereafter is appointed. The petitioner's appointment is cancelled and the petitioner stands relieved. The petitioners in Writ Petition Nos. 8705 of 2013 and Writ Petition No. 8706 of 2013 are unsuccessful candidates in the selection process. They have challenged the selection process itself.

3. Mr. Bhoomkar, the learned advocate for the petitioner in Writ Petition no. 7504 of 2013 submits that, after concluding the selection process, in the select list the petitioner stood in merit. The petitioner was issued with the appointment order on 03.09.2013 and she joined the duties on 04.09.2013. Abruptly on 13.09.2013 vague notice was issued to the petitioner. The petitioner replied the same. However, without issuing any order cancelling appointment of the petitioner, nor issuing any appointment order to the respondent No. 5, the respondent No. 5 is allowed to join inspite of orders of stay passed by this Court on 21st September, 2013. The learned counsel submits that on 21st September, 2013, the petitioner was on leave and could not have been relieved. The learned counsel further submits that, the Government Resolution dated 16th July, 2003 does not permit reassessment of the answer sheets after fifteen days. In the present case, the results were declared on 18.08.2013 and for the

first time the respondent No. 5 filed a complaint on 07.09.2013. The same could not have been entertained by the respondents in view of the G. R. dated 16.07.2003. The learned counsel further submits that, the respondent No. 5 is allowed to join on the basis of ante dated document. The petitioner has filed Contempt Petition No. 495 of 2013 for the same purpose. This Court may take cognizance of the said fact and punish the respondents for the contempt committed of the orders passed by this Court dated 21.09.2013.

4. Mr. Reddy, the learned advocate for the respondent/Zilla Parishad submits that, the answer key of question Nos. 29 and 43 was wrong. The same was pointed out by the respondent No. 5 and thereafter revised answer key was published on 11.09.2013. It was found that the answers given for question Nos. 29 and 43 in answer key were erroneous, hence correct answer key was published and papers were reassessed on the same day. Upon reassessment of answer papers, the respondent No. 5 got 56 marks and marks of the petitioner remained unchanged. As the respondent No. 5 got more marks, the respondent No. 5 was issued with the appointment order and the respondent No. 5 joined on 19th September, 2013. The petitioner was aware that, her appointment stood cancelled. The mother of the petitioner on 17.09.2013 had made a grievance with the Hon'ble Guardian Minister that appointment of her daughter has

been erroneously cancelled and that she has worked till 15.09.2013. This shows that, the petitioner was well aware that her services stood terminated. The respondent No. 5 had joined the service on 19.09.2013 as per the order dated 13th September, 2013.

5. Mr. Salunke, the learned counsel for petitioners in Writ Petition No. 8705 of 2013 and Writ Petition No. 8706 of 2013 submits that, the respondent/Zilla Parishad had changed the selection process in the midst. The same is not permissible. Initially hall tickets were issued to petitioners, wherein a particular methodology was prescribed. As per earlier hall tickets issued, the examination was postponed and fresh hall tickets were issued. The same was for sole reason to favour a particular candidate. The learned counsel submits that, the question papers were also not printed in a particular manner. The examination was not conducted as per G. R. dated 04th March, 2005. Clause 3 and 4 of the said G. R. has been flouted. All this has been done only to favour particular candidate. The questions were supposed to be objective. The same has been changed at the eleventh hour. Respondents could not have changed the procedure in the midst of the selection process. All this has been done to favour a particular candidates. As the process has been changed in the midst of the selection process, the fact that, petitioners have participated in the selection

process do not affect their right to challenge.

6. The learned counsel for the Zilla Parishad submits that, the instructions given in the question paper were required to be followed. The petitioners were to mark the answer selected by them in the relevant question paper. The candidates have followed instructions provided in the question paper/answer sheet and it cannot be said that, it is the change made with an ulterior motive. The answer given by the candidate is considered for giving marks and mode or method adopted by him for marking the answer is not given much weightage. In view of reassessment of marks done by the Zilla Parishad, all the answer papers were re-examined and the answer sheets were assessed in proper manner. No illegality or irregularity has been committed.

7. We have also heard the learned counsel for respective selected candidates.

8. We have considered the submissions canvassed by the learned counsel for respective parties.

9. There is no dispute that the petitioner in Writ Petition No. 7504 of 2013 was initially selected and appointed. Subsequently on 07th September, 2013 a complaint was made by the respondent No. 5 with regard to the answer key. The results were declared

on 18.08.2013. The Government Resolution dated 16.07.2003 prescribes that the answer papers can be re-assessed, if an application is given within fifteen days. In the present case, the application was given by the respondent No. 5 beyond 15 days.

10. We would have considered the contention of the petitioner, had the issue been limited to the re-examination. However, the dispute was with regard to the answer key pursuant to which answer papers were assessed. It is accepted by respondents that answer key with regard to question Nos. 29 and 43 published by them was wrong and erroneous. The wrong answer key was published at the end of the Zilla Parishad for which the candidates cannot be faulted with. When it was brought to the notice of the Zilla Parishad that the answer key was wrong and, therefore, revised answer key was published on 11.09.2013 and pursuant to the revised answer key, answer papers were reassessed. The respondent No. 5 was not seeking reassessment on the ground that her questions have been wrongly assessed and was seeking reassessment on the basis of wrong answer key published earlier and subsequently correct answer key has been published on 11.09.2013. Clause 5 of the Government Resolution dated 16.07.2003 would not apply in the present case.

11. It appears that, pursuant to the revised answer key, marks of the respondent No. 5 have increased and the respondent No. 5

would be in a better footing than the petitioner in the select list. Pursuant to that, the respondent No. 5 has been asked to join and the respondent No. 5 has joined on 19.09.2015. The petitioner stood relieved thereafter on 20.09.2013. This Court passed an order that the petitioner shall not be relieved, if not already relieved on 21.09.2013.

12. The arguments of the learned counsel for the petitioner cannot be accepted that the petitioner was not aware of the selection of the respondent No. 5 in view of the representation given by the mother of the petitioner on 17.09.2013, which specifically states that, the petitioner has worked only upto 15.09.2013 and that selection committee has taken a meeting and the selection of the petitioner is cancelled. This would show that the petitioner was not on duty after 15.03.2013 and that the petitioner was aware that her selection has been cancelled.

13. As far as Writ Petition No. 8705 of 2013 and Writ Petition No. 8706 of 2013 are concerned, the petitioners had participated in the selection process without any demur. Fresh hall tickets were issued upon the written test been postponed. No grievance was raised by petitioners when fresh hall tickets were issued on the postponed date of examination.

14. The grievance appears to be about methodology in marking the correct answer. The Zilla Parishad on affidavit clarified in respect of weightage and methodology of giving answer. They have examined papers on the basis of answers properly given. The right answers were given the marks. The G. R. dated 04th March, 2005 relied by the learned counsel for petitioners would not inure to the benefit of petitioners. The Zilla Parishad has very categorically in the affidavit submitted that, the answer of the candidate is considered for giving marks and mode or method adopted for marking the selected answer is not given weightage. Answer papers were reassessed as per the revised answer key and correct answers have been given marks. Even otherwise the allegations against the particular selected candidates does not appear to have been specifically made. It is trite that, after having participated in the selection process and on being unsuccessful thereof, the candidate is not entitled to challenge the selection process.

15. In the light of the aforesaid conspectus of matters, no case for interference in the writ jurisdiction of this Court is made out. Writ petitions as such are dismissed. No costs.

16. As discussed above the petitioner was already relieved from service prior to the interim order passed by this Court as such no question arises of respondents committing contempt of

order of this Court. The Contempt Petition No. 495 of 2013 as such stands dismissed.

[S. M. GAVHANE, J.]

bsb / Sept. 18

[S. V. GANGAPURWALA, J.]

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Sudhakar
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by Bhalchandra
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2018.09.12
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