

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

WRIT PETITION NO. 9870 OF 2015

Miss Sheetal Gulab Patil,
Age 35 years, occupation
Service – Accountant,
Resident of Conservator of
Forest, Dhule Forest Division,
DHULE

...Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Forest Department,
Mantralaya, MUMBAI 32.
(Copy to be served on Govt.
Pleader, High Court, Bench:
Aurangabad)
2. Smt.Sunita Singh,
Chief Conservator of Forest
In the office of Principal Chief
Conservator of Forest (HDFF)
Maharashtra State, Nagpur
Vanbhavan, Civil Line,
Ramgiri Road, Nagpur.
3. Dr.S.S.Shrivastava,
Chief Conservator of Forest
In the office of Principal Chief
Conservator of Forest (HDFF)
Maharashtra State, Nagpur
Vanbhavan, Civil Line,
Ramgiri Road, Nagpur.
4. Shri.P.N. Patil,
Conservator of Forest
Working Plan Nashik,
Near Sharnapur Police Chauki,
Tryambak Road Nashik.
5. Shri.D.U.Patil,
Assistant Conservator of Forest,
(Regional and Wild Animals),
SHIRPUR, Dhule Division,

Dhule.

6. Shri.J.A. Patil,
Chief Conservator of Forest
(Territorial and wild life)
Nandurbar behind Panchayat Samiti,
Nandurbar, Dist. Nandurbar.
7. Miss Ujwala Madhurkarrao Harsulkar,
Age 33 years, Occupation nil,
resident Of New Jalna, Kabadi
Moholla, House no. 2.13.54
Behind Gadiya Jewellers,
JALNA.
8. Chief Conservation Officer of Forest,
Dhule at Dhule. ... Respondents

Mr.G.V.Wani, Advocate for Petitioners
Mrs.M.A.Deshpande, A.G.P. for Respondent Nos. 1 to 6, 8
Mr.Suresh Dhongde with Mrs. Suchita Dhongde, Advocates
for Respondent No.7

WRIT PETITION NO. 638 OF 2016

1. The State of Maharashtra,
Through Secretary,
Forest Department,
Mantralaya, Mumbai.
2. Smt.Sunita Singh,
Present, Regional Selection Committee
Chief Conservator (Regional) of
Forest Dhule.
3. Dr.S.S.Shrivastava,
Member Secretary, and Dy.Conservator
of Forest, Mevasi Division, Taloda.
4. Shri.P.N. Patil,
Dy. Conservator of Forest
Dhule Forest Division, Dhule
5. Shri.D.U.Patil,
Asstt. Conservator of Forest
(Regional and Wild Animals),
Shirpur Dhule Division, Dhule.

(3)

6. Shri.J.A. Patil,
Asstt. Conservator of Forest
(Encroachment and Abolition)
Dhule Forest Division, Dhule. ...Petitioners
(Ori. Respondents No.1 to 6)

Versus

1. Miss Ujwala Madhukarrao Harsulkar
Age : 33 years, Occp.Nil.
R/o Kabadi Mohalla, H.No.2.13.54
Behind Gadiya Jwellers, Jalna.
2. Miss. Sheetal Gulab Patil
Accountant, Chief Conservator of Forests
Dhule. ... Respondent
(Resp.No.1 is Ori.Applicant
& Resp.No.2 is ori.Resp.No.7)

Mrs.M.A.Deshpande, A.G.P. for Petitioners

**CORAM : S.V.GANGAPURWALA AND
A.M.DHAVAL, JJ.**

DATE: APRIL 24, 2018

ORAL JUDGMENT : (Per S.V.GANGAPURWALA, J)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally at admission stage.
2. These writ petitions are filed against the order of the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad dated 14.09.2015 in Original Application No. 476 of 2013.
3. The State had conducted selection process for the post of Accountant pursuant to the advertisement No. 2/2012

(4)

dated 10.09.2012. On conclusion of the selection process, the petitioner in writ petition No.9870 of 2015 was selected and appointment order is issued in her favour. Respondent No. 7- Miss Ujawala Madhukarrao Harasulkar filed original application No.476 of 2016 before the Tribunal being aggrieved by her non-selection.

4. The Tribunal allowed the original application holding that the marks given to the candidates were changed subsequently in the second list published. Ms.Harsulkar has secured more marks and the same have been reduced subsequently. The Tribunal also directed inquiry to be conducted against the members of the interview committee.

5. Mr. Wani, the learned counsel for the petitioner in writ Petition No. 9870 of 2015 submits that the Tribunal failed to consider that in the first list published, there was interpolation. The first list was published without the concurrence of the interview committee. The list published itself shows that the original marks allotted to respondent No.7- Ms Harsulkar has been changed and tampered with. On getting this knowledge, the members of interview committee have again reconsidered the same and thereby has corrected the marks as were originally awarded. It was an error on the part of the Tribunal to disbelieve the affidavit

filed by the members of the interview committee. The minutes of the meeting were also placed on record to prove *bona fides* on the part of the respondent. The *mala fides* can not be attributed to the members of the committee. They were independent persons. The petitioner had stood at Sr.No.1.

6. The learned A.G.P. for the petitioner in writ petition No.638 of 2016 submits that the Personal Assistant Mr.Khairnar published the list and it was noticed by the interview committee that the marks originally given have been tampered with. They had not instructed the Personal Assistant Mr.Khairnar to publish the list. The interviews were video recorded. The members of the interview committee again went through the video and thereafter corrected the marks. The original marks given were much less. The same marks were given after verifying the video recording and considering the answers given by respondent No.7 - Ms Harsulkar. In fact, the members of the interview committee have taken corrective measures as regards the tampering of marks. They have acted *bona fidely*. Even the minutes of the meeting would convey the same. The learned A.G.P. submits that the further order directing inquiry against the members of the interview committee is unwarranted.

(6)

7. Mr. Dhongde, learned counsel for the respondent No. 7 - Ms Harsulkar submits that the Tribunal has considered the material on record threadbare and thereby, has arrived at correct conclusion. The list as per the marks given by the members of the interview committee was uploaded. The respondent No. 7 - Ms Harsulkar had secured more marks than the present writ petitioner. However, subsequently, with *mala fide* intention, the marks given to the respondent No. 7 in the oral interview were reduced. This was done to favour the present writ petitioner. The case put forth by the State is highly improbable. In the original mark sheet, the members of the interview committee have given total 50 marks to respondent No. 7. The total marks obtained by the petitioners have been reduced from 20 to 10.15, which is erroneous. According to the learned counsel, it is only in the case of the present respondent No. 7, the marks are changed. There was no necessity to upload the second list when the first list was already uploaded. It cannot happen that the marks could be wrongly given by all four members of the interview committee.

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

gone through the Judgment delivered by the Tribunal.

9. The interview committee had video recorded the proceedings of the interview i.e. questions asked and the answers given by the candidates. The State had produced the cassette of the video recording done of the oral interviews. We asked the learned A.G.P. to produce the transcript of the video recording in respect of the answers given by respondent No. 7. The said transcript is produced. It is taken on record and marked as 'X' for identification.

10. In written examination, petitioner Ms Sheetal Gulab Patil is given 144 marks and respondent No. 7 Ms Harsulkar has secured 139 marks. The dispute is only about the marks given in the oral test (interview). The oral interview was of 25 marks. Upon perusing the list of marks, the original list of marks of each member of the interview committee shows interpolation in respect of the marks given to respondent No. 7 Ms Harsulkar. In all the original marks sheets of the individual members of the interview committee, there appears to interpolation in the marks given to the respondent No. 7 - Ms Harsulkar. However, as far as the marks given to the petitioner is concerned, there does not appear to be any interpolation except the marks given by

one member of the interview committee, namely Mr. I.A. Shaikh. The minutes of meeting were recorded. The members of the interview committee found the list to be uploaded with interpolated marks. The same was brought to the notice of the original recruitment committee. The committee decided to confirm the overwriting marks after going through the video recording and accordingly after viewing the video clipping of the entire interview, the marks were corrected/reconfirmed. In fact, it would appear that the members of the interview committee have taken corrective measures and has corrected the wrong doings. If the list showing interpolated marks is allowed to stand, then certainly, injustice would have been done. There is no personal bias of members of interview committee against the respondent No. 7 nor there are allegations of *mala fides* against the members of the interview committee.

11. We asked for the transcript of the video recording about the questions asked by the members of interview committee to the respondent No. 7 and the answers given by respondent No. 7. Perusal of the said transcript, it is manifest that in respect of 90 % of the questions, respondent No.7 did not give any answers. We are not expert on the subject. If answers would have been given, we

would not have been in a position to verify about correctness of the answers being not experts of the subject. However, on perusal of the transcript, it transpires that respondent No. 7 has not been in a position to give any answers to the questions asked.

12. Considering the said aspect of the matter, the reasoning adopted by the Tribunal is not probable. The Tribunal ought to have considered that the first list uploaded shows that the marks given to respondent No. 7 were overwritten and tampered. The members of the interview committee after viewing video recording of the interview have taken corrective measures and thereafter given marks. There was no reason to disbelieve the members of the interview committee and they have also filed affidavit to that effect. In written as well as oral the petitioner Ms. Sheetal Gulab Patil has secured more marks. It was erroneous on the part of the Tribunal to direct appointment of the respondent No. 7 in place of the present petitioner.

We have also considered the marks given to the other candidates. The marks given to the other candidates are much less and setting aside the impugned order would not affect the other candidates also. The order passed by the

Tribunal directing the appointment of the present respondent No. 7 is quashed and set aside.

13. The Tribunal has also directed inquiry against the members of the interview committee. The finding of mala fide against the interview committee is improper. However, it is a fact that the members of the interview committee ought to have been more diligent. Their approach was casual. They did not maintain the confidentiality. The list ought to have been in their custody till it was final and could not have allowed to go into the hands of the Personal Assistant. They did not supervise the same properly. They shall be more diligent in future. The directions given by the Tribunal to conduct inquiry against the members of the interview committee is set aside.

14. The rule is made absolute in above terms.

15. The writ petitions are allowed. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)