

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO. 5018 OF 2014

Smt. Pornima W/o Vinod Patil,
Age; 29 years, Occupation; Service,
Resident of Hirapur, Taluka; Parola,
District; Jalgaon.

PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through The Secretary,
Women and Child Development Department,
Mantralaya, Mumbai – 32.
- 2) The Appellate Authority/
Chief Executive Officer,
Zilla Parishad, Jalgaon,
District; Jalgaon.
- 3) The Child Development Project Officer,
Under Integrated Child Development Scheme
Parola, Taluka Parola,
District; Jalgaon.
- 4) Vaishali Ganesh Patil,
Age; 26 years, Occupation; Nil,
Resident of Hirapur, Taluka Parola,
District; Jalgaon.

RESPONDENTS

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Shri. B.R. Warma, Advocate for Petitioner
Shri M.M. Nerlikar, A.G.P. for Respondent No.1
Shri. N.B. Suryawanshi, Advocate for Respondent
Nos. 2 & 3
Shri S.V. Bhokare and Shri M.L. Dharashive, for
Respondent No. 4

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**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date of Judgment : 26.02.2019.

JUDGMENT : (Per Sunil K. Kotwal, J]

Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. This petition is filed for quashment of order dated 6.6.2014, passed by respondent No. 2 the Chief Executive Officer, Zilla Parishad, Jalgaon, dismissing the appeal filed by the petitioner and cancelling her appointment as 'Anganwadi Sevika'. Respondent No. 1 is the State of Maharashtra, respondent No. 3 is the Child Development Project Officer, Parola, District Jalgaon and respondent No. 4 is the complainant, on whose complaint the appointment of the petitioner was cancelled.

3. Heard, Shri. B.R. Warma, learned counsel for the petitioner, Shri. M.M. Nerlikar, learned A.G.P. for respondent No. 1, Shri. N.B. Suryawanshi, learned counsel for respondent Nos.

2 & 3 and Shri S.V.Bhokare and Shri M.L. Dharashive, learned counsel for Respondent No. 4.

4. Learned counsel for petitioner submits that in accordance with the scheme framed by the State of Maharashtra and the procedure prescribed under the Government Resolution dated 5.8.2010 for selection and appointment of 'Anganwadi Sevika', the petitioner was appointed as 'Anganwadi Sevika' on 28.02.2011 and she joined her duties at Hirapur village, Taluka Parola, District Jalgaon. Subsequently, on the complaint/representation submitted by respondent No. 4, the appointment of the petitioner was cancelled by respondent No. 2, by order dated 9.12.2011. Prior to it, on 25.5.2011, the authorized officer of the Government, issued guidelines to all Zilla Parishads', regarding allotment of marks in the selection process. Relying on these guidelines, the appointment of the petitioner was erroneously cancelled by respondent No.2.

5. Learned counsel for petitioner has

pointed out that being aggrieved by the order dated 9.12.2011, the petitioner has filed writ petition No. 1915 of 2012 before this Court and this Court by allowing that petition, remanded the matter to respondent No. 2 for fresh hearing after giving opportunity of hearing to the petitioner. The matter was reconsidered by respondent No. 2 and again by passing order on 6.12.2013, respondent No. 2 maintained his order regarding cancellation of appointment of the petitioner, relying on some unauthorized guidelines.

6. The contention of the learned counsel for petitioner is that once the selection process of 'Anganwadi Sevika' is over, on the basis of subsequent guidelines, the selection of the petitioner as 'Anganwadi Sevika' cannot be cancelled. He placed reliance on "Bishnu Biswas & Ors. v. Union of India & Ors." (2014 (3) Supreme 201), wherein it is ruled that recruitment process cannot be changed mid way.

7. Learned AGP for respondent No. 1

supported the impugned order passed by respondent No. 2, on the ground that the selection of the petitioner was predetermined by the Selection Committee, as the mark list prepared by the Selection Committee regarding the oral interview, indicates that more than maximum marks were given by one of the member of Selection Committee, in the column of physical fitness. He has pointed out that in oral interview, 100% marks were given to the petitioner by all members of the Interview Committee, which is abnormal. The learned AGP submitted that the selection of the petitioner was malafide act of the Selection Committee.

8. Learned counsel for respondent No. 4 submits that respondent No. 4 was the candidate having highest educational qualification and therefore, if one additional mark given to the petitioner is deducted from her total ten marks secured in the interview, the marks of the petitioner and respondent No. 4 will be equal and in that case, as per Clause 4 of the Government Resolution, the petitioner cannot be selected.

9. At the outset, we must make it clear that the ratio of "Bishnu Biswas & Ors. v. Union of India & Ors." (supra) is not applicable in the case at hand, for the simple reason that during recruitment process it was not changed in mid way. It is noted that the petitioner was appointed on 28.2.2011 as 'Anganwadi Sevika' and the disputed guidelines were issued on 25.9.2011 i.e. after recruitment process was over. The guidelines were considered by the Appellate Authority only after the selection process was over.

10. Otherwise also, after examining the selection process carried by the Selection Committee, Parola, it emerges that respondent No. 4 secured highest marks on the basis of her educational qualification. The petitioner was the second highest. However, if the marks obtained by the petitioner and respondent No. 4 in oral interview are considered, it reveals that out of ten, ten marks were given to the petitioner and only four marks were given to respondent No. 4. Therefore, respondent No. 4 secured 59 marks out of 100 marks and the petitioner secured 60 marks

out of 100 marks. It also emerges that for physical fitness, the maximum marks allotted were only two marks. However, one of the member of the Selection Committee has given three marks, out of maximum two marks to the petitioner and one mark to respondent No. 4. This indicate absolute partiality by selection committee. This circumstance on record together with equal marks allotted by all Members of the Selection Committee in oral interview to the petitioner, is sufficient to hold that the Selection Committee had predetermined to select the petitioner as 'Anganwadi Sevika' and they intentionally allotted minimum marks to respondent No. 4 in oral interview.

11. Thus, if one extra mark given to the petitioner is deducted from her total marks, the marks secured by petitioner comes to 59 out of 100 i.e. equal to the marks secured by respondent No. 4. Clause 4 of the Government Resolution dated 5.8.2010 regarding the process for selection of 'Anganwadi Sevika' provides that if more than one candidate secure equal marks, then highest

qualification or date of birth or experience shall be chronologically considered. Thus, Clause 4 of the Government Resolution indicates that when the education qualification of respondent No. 4 was more than the petitioner, in any case, the petitioner cannot be selected for the post of 'Anganwadi Sevika'. Thus, otherwise also, this petition being devoid of merits, deserves to be dismissed.

12. Accordingly, Writ Petition No. 5018 of 2014 is dismissed.

13. Parties to bear their respective costs.

14. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALWADE)
JUDGE

mahajansb/