

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

LETTERS PATENT APPEAL NO. 193 OF 2010

IN

WRIT PETITION NO. 3043 OF 2009

Sonali d/o. Chandrakant Navthar,
Age: 21 years, Occ: Anganwadi Sevika,
R/o. Kherdi, Tal: Khultabad,
Dist: Aurangabad.

... APPELLANT
(Ori. Petitioner)

VERSUS

- 1) Smt. Sangeet Uttam Warkad,
Age: 24 years, Occ: Anganwadi Sevika,
R/o.Kherdi, Tal: Khultabad,
Dist: Aurangabad.
- 2) The Child Development Project Officer,
Integrity Child Development,
Khultabad, Dist: Aurangabad.
- 3) The Block Development Officer,
Panchayat Samity, Khultabad,
Tal: Khultabad, Dist: Aurangabad.
- 4) The Chief Executive Officer,
Zilla Parishad, Aurangabad.
- 5) The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

... RESPONDENTS

...
Mr. Ajay Deshpande, Advocate i/b Mr. A. V. Patil, Advocate for Appellant.
...

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

DATE : 14th January, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. The appeal is filed to challenge the order made by the learned Single Judge, which is of dismissal. The writ petition was filed for relief of quashing and setting side the order made by the learned Divisional Commissioner, Aurangabad in Appeal No.15 of 2009 by which the selection of the present Appellant on the post of Anganwadi Sevika was quashed and set aside and the order was made to start new process of selection.

2 Heard the learned counsel for Appellant.

3 The submissions made and the record show that in the selection process for village Kherdi, Tahsil Khultabad, District Aurangabad, the Appellant was selected on the post of Anganwadi Sevika and this decision was challenged before the Divisional Commissioner by Respondent No.1/Smt. Warkad, who had

participated in the selection process. After giving hearing to both the sides and after perusal of record of selection process and resolution, the Commissioner held that the selection process was not properly followed and there was substance in the allegations made by the Appellant. There were some mistakes also like showing less marks for educational qualification to the Appellant. When she had passed XIIth standard examination weightage of only 20 marks was given when she was entitled to weightage of 25 marks. There was allegation that no questions at all were asked to the Appellant and more marks were given to the selected candidate when she had passed only IXth standard examination and it was a case of favoritism. When interviews were taken on 8th August, 2008, the select list was published on 18th February, 2009.

4 The Commissioner has considered all the aforesaid contentions and has come to the conclusion that the selection process was not properly conducted and there is substance in the allegations made by the Appellant. It needs to be kept in mind that the entire record was available before the Commissioner and after subjective satisfaction he took that decision. The learned Single Judge also

perused the record and he did not find any error in the order made by the learned Commissioner. The learned counsel for Appellant submitted that in view of the interim relief granted by this Court, for about 9 years, the Appellant has been working and so she needs to be protected.

5 This Court has carefully gone through the record and particularly the marking system. There was no written test and as per the procedure adopted, weightage was to be given to the educational qualification. The candidates who had passed Xth standard examination was entitled to get 20 marks, the candidates who had passed XIIth standard examination was entitled to get 25 marks and the graduate candidates were entitled to get 30 marks. In the Interview Committee, there were members like MLA, Chairman of *Panchayat Samiti*, one member of *Samiti* and three officers like Block Development Officer, Project Officer and Medical Officer. The pattern of giving marks in interview shows that to all those candidates, who were having higher qualification than the selected candidate, in interview, less marks were given and that is how attempt was made to see that she gets more total number of marks than all the candidates,

who were having higher educational qualification. There were 11 candidates and out of 11 candidates, 9 candidates were having higher educational qualification than the selected candidate, but to all of them less marks were given in interview and the pattern shows that all the members of the Committee gave more marks to the selected candidate than any other candidate. This is clear favoritism and the mark list itself is sufficient to infer that there were *malafides*, there was favoritism. It needs to be kept in mind that one member of the Interview Committee was MLA and inference is easy that he influenced the others. All the three political members gave 30 marks each to the selected candidate and the remaining three employees gave 30, 26 and 28 marks. No other candidate was given even 26 marks by any member of the Interview Committee. In view of these circumstances and as the matter involves subjective satisfaction of the Commissioner and he has power to set aside such resolution, selection, this Court holds that no interference is possible in the decision given by the learned Single Judge of this Court.

6 The learned counsel for Appellant placed reliance on some observations made by the Apex Court and this Court in the

following cases:

- a) **1990 AIR(SC) 434**, (*Dalpat Abasaheb Solunke Vs. B. S. Mahajan (Dr.)*);
- b) **2008 S(upp.) AIR(SC) 1533**, (*Chandra Prakash Singh & Ors. Vs. Chairman, Basti Gramin Bank & Ors.*);
- c) **2014 AIR(SC) 1570**, (*Bishnu Biswas and others Vs. Union of India and others*);
- d) **AIR 1981 Supreme Court 487**, (*Ajay Hasia etc. Vs. Khalid Mujib Sehravardi and others*);
- e) **(2008) 2 Supreme Court Cases 119**, (*M. V. Thimmaiah and others Vs. Union Public Service Commission and others*); and
- f) **Writ Petition No.5111 of 2010**, (*Smt. Kalpana Suryakant Somwanshi Vs. The Divisional Commissioner and others*) dated 30th July, 2010, decided by this Court (Coram: V.R. Kingaonkar, J.).

7 The facts and circumstances of each and every case are always different and as already observed the subjective satisfaction

for each matter is necessary on the basis of facts of that case. It can be said that the decision taken by the Interview Committee was seriously affected by *malafides* though directly no allegation of *malafides* was made. Proper candidates having higher educational qualification were not selected and the selection process did not involve taking the written test. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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