

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

WRIT PETITION NO. 9161 OF 20171

Dhiraj s/o Ramdas Mote **... Petitioner**
Age 37 years, Occu: Nill,
R/o Prithivi Park, Padhegaon,
Taluka and Dist. Aurangabad.

VERSUSA

1. The State of Maharashtra,
Through the secretary, Revenue
and Forest Department,
Mantralaya, Mumbai 400 032
2. The Additional Principal Chief
Conservator of Forest,
(Admn Subordinate Cadres)
M.S., Nagpur
3. The Chief Conservator of Forest
(T), Aurangabad Forest Division,
Aurangabad.
4. The Deputy Conservator of Forest
(T), Aurangabad Forest Division,
Aurangabad.
5. Anil Suryakant Jondhale
Driver, R/o D-91/10, Shivajinagar,
11th Scheme, Garkheda Area,
Aurangabad.
6. Ganesh Kailas Aakhade
Driver, , R/o H.No.10-322,
Main Road, Ranjangaon,
Shenpunji, Near Balkrishna
Petrol Pump, Aurangabad.
7. Santosh Vasantryao Adsul
Driver, R/o N-11, G-10/11,
Navjeevan Colony, Hudco,
Aurangabad
8. Shaikh Azim Shaikh Karim
Driver, R/o Kiradpura,
Behind arafat Masjid Gali No.3
Aurangabad.

9. Uday Palhad Dasare,
Driver, R/o H.No.63 MHADA
Rankrupa Colony, Sahanoorwadi,
Aurangabad
10. Dinkar Wamanrao Shinde,
Driver, Jalal Dhaba, Pimpalner,
Tq. Aundha(Nagnath),
District Hingoli
11. Sandeep Devidas Thamke,
Driver, Plot No.4, Mayur Apt.,
Kailas Nagar, Shrinagar, Nanded
12. Pratap Mangilal Pawar, ... Respondents
Galli No.b-6, Smashan Maruti
Road, Sanjay Nagar, Baijipura,
Aurangabad.

Mr.V. D. Sapkal, Advocate for the petitioner,
Mr.S. G. Karlekar, AGP for respondent
Mr.Avinash S.Deshmukh, Advocate for respondent Nos.5to12

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

RESERVED ON : 13.02.2019

PRONOUNCED ON : 01.03.2019

JUDGMENT (Per A. M. Dhavale, J.):

1. Rule. Rule made returnable forthwith. By consent of the parties, writ petition is taken up for final disposal.

2. The petitioner, an unsuccessful candidate in the process of recruitment of Drivers in forest department, assails the order of Maharashtra Administrative Tribunal dated 08.03.2017 dismissing Original Application No.454/2016 filed by him and the order dated 13.12.2016, whereby Original Application No.202/2015

filed by successful candidates(Respondents Nos.5 to 12) was allowed and the communication setting aside the recruitment process was cancelled and also declaration that formula adopted for allotting marks i.e. 40:40:10 is illegal and for direction to adopt formula of 20:20:10 and to freshly prepare merit list.

3. Mr. V. D. Sapkal, learned Advocate for the petitioner argued that in response to advertisement dated 01.03.2012 issued by forest department of the State, the petitioner, though belonging to S.C. category, applied from open merits and participated in the recruitment process of three drivers. According to the petitioner, he performed well in the proficiency test and was eligible. He was listed at Serial No.7 for oral interview. However, his candidature was rejected on the ground that his caste was shown as reserved category. According to the petitioner, marking system prescribed in the Government Resolution dated 19.10.2007, was not followed. He had appeared for interview but because of faulty marking system, he was not selected. Rules provided 50 marks for proficiency test, 40 marks for physical fitness and 10 marks for oral interview and wherever, physical fitness was not relevant, 90 marks were for proficiency test.

The R.T.O. and M.S.R.T.C. were authorized to give marks 20 or 40 each, but the mark-list of the marks given by them was not available and thus the selection process was not valid. The members of the recruitment committee committed fraud and illegalities in grant of marks, ignoring the instructions in advertisement.

4. The petitioner approached the authority, the Caste-Tribe Federation and enquiry was held by the respondent No.2. By communication dated 09.03.2015, the whole recruitment process was quashed and set aside by the Chief Conservator of Forest (Respondent No.3). Respondent Nos. 5 to 12, who were successful candidates, challenged the said order by filing Original Application No.202/2015. The Maharashtra Administration Administrative Tribunal set aside the communication/order dated 09.03.2015 by order dated 13.12.2016.

In the said Original application, an application for intervention filed therein by the petitioner was disposed of by the tribunal on 13.04.2016 as withdrawn but the petitioner was granted liberty to challenge the communication dated 09.03.2015.

5. The petitioner, thereafter, preferred Original

Application No. 454/2016 for modification of the communication/ order dated 09.03.2015 to the extent of driver for commencement of the selection process from the stage of allotment of marks and to allot marks as per Government Resolution dated 19.10.2007 with proportion of 90:10 [90=40 marks for written test + 50 marks for proficiency (i.e. 20 for LMV, 20 for HMV and 10 marks for ACF) whereas 10 marks for interview]. The Tribunal dismissed the original application by order dated 08.03.2017

6. Learned Advocate Mr. V. D. Sapkal submitted that the Tribunal has accepted that the marking system was faulty and not as per the Government Resolution dated 19.10.2007. The recruitment process should have been set aside from the stage of allotment of marks and there should have been fresh process for recruitment of driver from the stage of allotment of marks.

7. Mr. S. G. Karlekar, learned A.G.P. appearing for respondents 1 to 4 has filed the affidavit-in-reply of Deputy Conservator of Forest and submitted that earlier recruitment process was conducted by the Deputy Conservator of Forest without any authority. As per the Government Resolution dated 19.10.2007, the composition

of the recruitment committee was not proper. The selection committee headed by the then Deputy Conservator of Forest acted illegally and without following due process in issuing the appointment orders. The appointed candidates have joined services and they are working since April, 2012. The respondent No.2, Additional Principal Chief Conservator of Forest had directed respondent No.3 to hold enquiry. The enquiry revealed that the whole process of recruitment was grossly illegal, improper and contrary to the provisions of Government Resolution Dated 19.10.2007. Respondent No.2 had cancelled the recruitment by his communication dated 09.03.2015 and 06.04.2015. The said order was challenged by respondent Nos. 5 to 12 and the Tribunal quashed and set aside the said communication by order dated 13.12.2016. The petitioner has not challenged the selection process on the grounds of improper selection committee. The petitioner only desires modification of the section list. He had earlier filed Original Application No.756/2012 which was dismissed on merits. This material fact was suppressed.

8. Learned A.G.P. referred to the reply of

Respondent No.4, wherein it was admitted that marking system was faulty and the composition of recruitment committee was also faulty. Due to faulty marking system, the merit list was substantially disturbed, giving advantage to respondent No.7 and disadvantage to others. The selection process was vitiated on account of malafide action. Disciplinary action against could not be taken against the then Deputy Conservator of Forest, as before that he had retired. As the order dated 09.03.2015 has been set aside by the Tribunal, there is no question of preparation of fresh list. The petition is devoid of merits and deserves to be dismissed.

9. Shri Avinash Deshmukh, learned Advocate for respondent Nos. 5 to 12 submitted that the petitioner has filed intervention application in the original application filed by respondent Nos. 5 to 12. If the Selection committee was wrong, it was wrong for all but the persons selected by the committee on other posts are working since 2012. The tribunal had properly considered all the aspects and has allowed the original application of respondent Nos. 5 to 12 on the basis of parity and there was no fraud by respondents

Nos. 5 to 12. The learned counsel submitted that the petitioner was at Serial No.7. Even on adopting the correct marking system the petitioner would have remained at Serial No.7 and would not be eligible. Therefore the writ petition is not maintainable and deserves to be dismissed.

10. We have considered the arguments advanced by the learned Advocates for the respective parties. We find that though the composition of the recruitment committee was not as per the rules, the petitioner is not challenging the validity of the recruitment process. He is challenging the recruitment process from the stage of allotment of marks. In the writ jurisdiction, this Court cannot go into the appreciation of facts and cannot interfere unless the administrative authorities have ignored the material facts or considered inadmissible material or the actions taken are contrary to the provisions of law or the findings are shockingly unreasonable.

11. In the present case, the Government Resolution dated 19.10.2007 provides for constitution of selection committee for filling of Group 'C' posts at District level as follows:

(1)	Collector	Chairman
(2)	Chief Executive Officer	Member
(3)	District Employment Exchange Officer	Member
(4)	District Social Welfare Officer	Member
(5)	District Tribal Development officer.	Member
(6)	District Sainik Welfare Officer	Member
(7)	Head of the Department of the concerned department or its representative of the office/ department where the posts are to be filled in.	Member

The note shows that in case of recruitment of posts of common category i.e. Clerk-typist, Senior Clerk, Driver, Head of the department shall not form part of the committee.

12. In the present Case, the Committee consisted the Deputy Chief Conservator of Forest, Assistant Chief Conservator of Forest, Deputy Collector (Rehabilitation), District Social Welfare Officer, Tribal Project Development Officer. Thus, instead of Collector, there was Deputy Collector. Chief Executive Officer, District Employment Officer, District Sainik Welfare were not members. Deputy Conservator of Forest and the Assistant Chief Conservator of Forest should not have been the Members of the Committee but they acted as president and secretary of the Committee.

13. Clause 5 of the Government Resolution dated 19.10.2007 provides that for the posts of Driver proficiency test, physical fitness test and oral interview are necessary. Fifty Marks will be for proficiency test, 40 marks for physical test and 10 marks for oral interview. The Committee, however, conducted the recruitment process by allotting 40 marks for written test, 40 marks by R.T.O. for L.M.V. and 40 marks for HMV by Traffic Inspector/MSRTC. Then all the members of committee gave separate marks for oral interviews and average of the same was taken out of 10. There are no marks allotted for physical fitness. In case of driver, there could not have been written test. There should have been only proficiency test of 90 marks and remaining 10 marks could have been given for oral interview. In the present case, marks were allotted out of 190 and then converted into out of 100. The marking system is undisputedly faulty.

14. The department has filed affidavit of successor of Respondent No.4, Deputy Chief Conservator of Forest admitting that the composition of recruitment committee was improper as well as marking system adopted was also faulty. The Conservator of Forest had conducted enquiry

and by order/communication dated 09.03.2015, whole selection process was quashed on above grounds. The marking system was faulty and fraudulent to favour respondent No.7. There was manipulation in the marking. The mark-sheet of some of the members of the committee were not available. In the light of these facts, the recruitment process was cancelled.

15. Prima facie, the grounds stated by the respondent No.2 for cancellation of the recruitment process were such that the Maharashtra Administration Tribunal should not have interfered with the impugned order. In Original Application No. 202/2015, learned Member of the Tribunal, factually agreed that the composition recruitment committee was faulty and was not as per the Rule. The Deputy Conservator of Forest and Assistant Conservator of Forest should not have been members, whereas the District Collector was supposed to be the President of the Selection Committee but he was not there in the process. The marking system was also found to be faulty. However, relying on **Girjesh Shrivastava Vs. State of M.P. 2010 (10) SCC 707** and **Bhavikkumar Shriramji Tandale Vs. State of Maharashtra 2013 (70 Bom. C.R. 716**, the Tribunal has

arrived at a finding that the appointment orders were passed on 04.04.2012, the applicants/present respondents 5 to 12 were working on the said posts since then. There were other employees also selected by the same recruitment committee and they were also working. The Tribunal applied the principle of parity and quashed and communication cancelling recruitment process dated 09.03.2015 and 06.04.2015

16. We feel that the Department should have challenged this order but the Department did not challenge the same. The petitioner, in Orig. Application No. 454/2016 filed before the Tribunal, has not challenged the recruitment process and has challenged only the marking system and has claimed that he should have been selected. We find that the petitioner's claim cannot be accepted for the following reasons:

(a) The petitioner had earlier filed original application No. 756 of 2012 which was heard on merits and was dismissed on 09.01.2013. This material fact has been suppressed by the petitioner and the said decision was not challenged by him by way of writ. In the light of this fact, the subsequent original application No. 454/2016, on the same fact, was not

maintainable at all. On this sole ground the original application should have been dismissed and the petitioner has no case to challenge the judgment in Original Application No. 454/2016. The petitioner is playing fraud by material suppression of facts. No relief can be granted to such litigant.

(b) Secondly the petitioner is well aware that the composition of recruitment committee was faulty and not as per the Rules. The petitioner is not objecting for the breach of rules in formation of the recruitment committee as it will be against his interest. He is only challenging the marking system and seeks to quash the recruitment process from the stage of allotment of marks. This dual policy is not permissible. If the selection was faulty, it was faulty in its entirety. The petitioner cannot call upon us to ignore the material deficiency in constitution of the Committee and only to consider the faulty system of marking for granting benefits to the petitioner.

(c) The tribunal has considered the fault in the marking system and has come to the conclusion that even if the marking would have been given as desired

by the petitioner, the petitioner still would have been listed at Serial No.7 in the merit list. The tribunal has observed that there were only five posts of open category and the petitioner had applied from open category. In the advertisement, only three posts are shown with no post for the open category. Even assuming that there were five posts, still the petitioner would have no chance.

(d) The petitioner is seeking retest from the stage of interview. When there is no serious miscarriage of justice, this Court will not invoke its jurisdiction under section 226 and 227 of the Constitution. Thus, there is no substance in this petition and the petitioner is not entitled for any of the reliefs.

17. The only question is whether the selection of respondent No.5 to 12 by recruitment committee formed contrary to the provisions of law and faulty marking system, should be continued or not. Respondent No.5 to 12 are working since 2012. Respondent nos.2 and 3 held departmental enquiry and came to the factual finding about the fraud, manipulation and favouritism. The tribunal should not have ignored these facts. There

cannot be parity in the matter of illegality. However, we find that the order of the tribunal setting aside the impugned communication in Orig.Application No.202/2015 has not been challenged either by the petitioner or by the Department. Respondent Nos. 5 to 12 are serving for more than six years. In the circumstances, it is not desirable to invoke powers to quash the order of the tribunal in Orig.Application No.202 of 2015 and restore the order of cancellation of recruitment process.

18. In the light of above, the writ petition is dismissed. No costs.

(A. M. DHAVALÉ, J.)

(S. V. GANGAPURWALA, J.)

JPC