

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

913 WRIT PETITION NO.12198 OF 2016

Sau.Vijaya Savalaram Chaure
Age: 45 years, Occu.: Nil,
R/o. Kuher, Tal.Sakri,
Dist.Dhule .

..Petitioner

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Rural Development & Panchayat Raj
Department,
Mantralaya, Mumbai – 400 032.
2. The State of Maharashtra,
Through the Secretary,
The Women and Child Welfare Department,
Mantralaya, Mumbai 400 032.
3. The Divisional Commissioner,
Nasik Division,
Nasik.
4. The Chief Executive Officer,
Zilla Parishad, Dhule.
5. The Child Development Project Officer,
The Central Child Development Scheme,
Dahivel, Tal.Sakri,
Dist.Dhule. ..Respondents

...
Advocate for Petitioner : Shri Shrikant S. Patil
AGP for Respondents – State : Shri S.K.Tambe
Advocate for Respondent Nos.4 & 5 : Shri Rahul Pawar

...
CORAM : P.R.BORA, J.
DATE: 4th July, 2019

ORAL JUDGMENT:-

1. The petitioner has challenged the order dated 29.11.2013

passed by the Chief Executive Officer, Zilla Parishad, Dhule i.e. respondent No.4 herein, whereby the selection of the present petitioner on the promotional post of Anganwadi Supervisor has been cancelled and her services are terminated.

2. The petitioner was appointed as Anganwadi Sevika at Kuher, Taluka Sakri, District Dhule, in the year 1987 and since then she was continuously working on the said post upto 2006. In the year 2006, applications were invited by Zilla Parishad, Dhule, for the post of Anganwadi Supervisor from the candidates who were working as Anganwadi Sevika. For the selection to the post of Anganwadi Supervisor, written examination was prescribed and oral interviews were also to be held. Accordingly, the petitioner appeared for the written examination and the oral interview, and was selected and appointed on the post Anganwadi Supervisor.

3. The selection of the petitioner was challenged by one Jijabai Deva Sable by filing Regular Civil Suit No.226 of 2006, in the Court of Civil Judge, Senior Division at Dhule. The learned Civil Judge dismissed the said Civil Suit vide the Judgment and order passed on 11.04.2008.

4. The petitioner successfully completed the period of probation of one year and entry in that regard was taken in her service book vide order dated 26.06.2009 passed by the competent authority.

5. In the year 2009, to the surprise of the petitioner, her services were abruptly terminated by respondent No.4 and one Mangala Kalu Gawali was appointed on the said post of Anganwadi Supervisor. Aggrieved by the aforesaid order, the petitioner preferred Writ Petition No.570 of 2009 before this Court. This Court vide order passed on 09.12.2010, set aside the order of termination dated 03.12.2009, observing that it was in utter disregard of the principles of natural justice. Pursuant to the order passed by the High Court in the aforesaid Writ Petition, petitioner was reinstated in the services w.e.f. 28.02.2011 and was posted at Shirose, Beat Dahivel.

6. On 20.04.2011, respondent No.4 issued show cause notice to the petitioner requiring her to explain as to why her selection shall not be cancelled for not securing the minimum required marks in the written examination held for the selection on the post of Anganwadi Supervisor. The petitioner duly replied the said notice on 27.04.2011. Respondent No.4, however,

discarding the explanation submitted by the petitioner, passed the order dated 28.05.2012, thereby cancelling the selection of the petitioner on the post of Anganwadi Supervisor and terminated her services w.e.f. 28.05.2012. Aggrieved by the order passed by respondent No.4, petitioner preferred Appeal before the Divisional Commissioner, Nashik, (respondent No.3 in the present petition) which came to be dismissed on 17.09.2012. The petitioner, then, filed Writ Petition No.8733 of 2012, challenging both the orders passed by respondent Nos.4 and 3 respectively. On 23.09.2013, this Court quashed and set aside the order of termination dated 28.05.2012 passed by respondent No.4 and confirmed by respondent No.3, and remitted the matter to respondent No.4 for deciding it afresh. The petitioner accordingly appeared before respondent No.4 on 18.10.2013, and also submitted her detail reply. Respondent No.4, however, confirmed the order earlier passed by him on 28.05.2012. The petitioner thereupon preferred Writ Petition before this Court, however, withdrew the same with liberty to file an Appeal before the Divisional Commissioner and accordingly filed such an Appeal before the Divisional Commissioner. The Divisional Commissioner, Nashik on 09.10.2014, partly allowed the Appeal filed by the petitioner and directed respondent No.4 to seek guidance from the Government authorities to take the further

decision in the matter of the petitioner. Accordingly, some correspondence was made whether the condition of minimum marks can be relaxed. The concerned authorities, however, declined to provide any such relaxation and ultimately the services of the petitioner came to be terminated. Eventually, the petitioner has approached this Court by filing the present petition.

7. Shri S.S.Patil, learned Counsel appearing for the petitioner has assailed the impugned order and the previous orders on various grounds. The learned Counsel submitted that in the written examination, which was held at the very initial stage i.e. in the year 2006, the petitioner was held to have secured 36 marks out of 75 marks. The learned Counsel pointed out that the minimum marks for qualifying the candidate to be called for interview and for appointment on the post of Anganwadi Supervisor, was 35. The learned Counsel further submitted that on the basis of the marks secured by the petitioner in the written examination, her oral interview was taken and she was selected. The learned Counsel, further submitted that thereafter, the petitioner successfully completed the period of probation of one year and accordingly the entry of her completing the probation period successfully was taken in her Service Book. The learned

Counsel pointed out that thereafter, the petitioner is continuously working on the post of Anganwadi Supervisor and not a single complaint is made against her doubting her performance or competence.

8. The learned Counsel further submitted that one Mangala Kalu Gawali made a complaint in the year 2009 and on her complaint, reassessment is stated to have been done of the marks secured by the petitioner in the written examination held in the year 2006. In the said verification, marks secured by the present petitioner have been reduced to 33. The learned Counsel submitted that according to the Government Circular dated 04.03.2005, reassessment of the marks secured by the candidate was permissible within 15 days of declaration of the result of the written examination. The learned Counsel submitted that there was no such application made within the said period and such an application came to be made in the form of complaint filed by one Mangala Kalu Gawali after lapse of three years i.e. in the year 2009. The learned Counsel submitted that such course was wholly impermissible. The learned Counsel further submitted that the application belatedly filed by Mangala Kalu Gawali could not have been considered by the Zilla Parishad authorities on the sole ground that no such objection was raised

by her within the period of 15 days as prescribed in the Government Circular dated 04.03.2005. The learned Counsel further submitted that while considering the complaint of Mangala Kalu Gawali, the Zilla Parishad authorities were bound to consider the service record of the petitioner and more particularly, the fact that the petitioner had successfully completed the period of probation of one year on the post of Anganwadi Supervisor. The learned Counsel submitted that the action so taken by respondent No.4 is unsustainable, arbitrary and against the principles of natural justice as well as in violation of the guidelines prescribed under the Government Circular dated 04.03.2005. The learned Counsel submitted that it was a deliberate attempt to any how terminate the services of the present petitioner so as to accommodate complainant Mangala Kalu Gawali. The learned Counsel, in the circumstances, prayed for setting aside the order passed by respondent No.4.

9. Shri Rahul Pawar, learned Counsel appearing for respondent Nos.4 and 5 supported the impugned order. However, to a query made by this Court as about the belated action taken by the Zilla Parishad of reassessing the marks secured by the petitioner in the written examination held in the year 2006, there was no satisfactory explanation from the side of Zilla Parishad.

On further query made by this Court as about the vacancies of the post of Anganwadi Supervisor, the learned Counsel for respondent Nos.4 and 5, informed that presently there are five such vacancies. In view of the information so provided, though this Court was initially of the opinion that the complainant was a necessary party to the present petition, did not insist for adding the said complainant as party to the present petition since even if the petition is allowed, it is not likely to cause any adverse effect on the services of the said complainant, who has been appointed as Anganwadi Supervisor on the post, which become vacant after cancellation of the appointment of the present petitioner.

10. I have given due consideration to the submissions made on behalf of the learned Counsel appearing for the parties. I have perused the impugned order as well as the previous orders passed in various proceedings including Writ Petitions filed before this Court. It is not in dispute that in the written test held in the year 2006 for the post of Anganwadi Supervisor, the petitioner had appeared and was declared to have secured 36 marks in the said written test. It is also not in dispute that the promotional appointment was made as per the procedure prescribed in the Government Resolution dated 04.03.2005. As

provided in the said Resolution, the candidates securing more than 35 marks in the written test only were eligible to be called for oral interview. Since the petitioner had secured 36 marks, she was called for oral interview and since she secured adequate number of marks in the oral interview, was declared to have been selected for the appointment on the promotional post of Anganwadi Supervisor. Accordingly, she was appointed on the post of Anganwadi Supervisor initially on probation for one year. It is the matter of record that petitioner successfully completed the period of probation and consequently was made permanent on the said post.

11. The material on record reveals that the appointment of the petitioner on the promotional post of Anganwadi Supervisor was challenged by one Jijabai Deva Sable in Regular Civil Suit No.226 of 2006 filed by her in the Court of Joint Civil Judge, Senior Division at Dhule. In the said Civil Suit, the selection process was challenged and it was alleged that the present petitioner was illegally promoted to the post of Anganwadi Supervisor. In the said Civil Suit, the Chief Executive Officer, Zilla Parishad Dhule as well as the Child Development Project Officer were the defendants. Defendant No.3 - Child Development Project Officer filed written statement in the said matter and the said written

statement was adopted by Chief Executive Officer, Zilla Parishad, Dhule. The copy of the written statement filed by defendant No.3 in the said Civil Suit is filed on record by the petitioner. Perusal of the said written statement reveals that all allegations challenging the selection process were denied by the said defendants. It was the categorical defence of said defendants that the entire selection process was carried out in observance of the guidelines laid down in the Government Resolution dated 04.03.2005. The selection of the present petitioner on the post of Anganwadi Supervisor by promotion was thus justified by the respondents.

12. The material on record reveals that subsequently on the complaints received from K.R.Gangurde and Smt.Mangala Kalu Gawali an enquiry was conducted and in the said enquiry it was revealed that the answer sheets were not correctly checked. In reassessment of answer sheet of the present petitioner, the marks secured by her were reduced from 36 to 33. As noted herein above, the candidate aspiring for the post of Anganwadi Supervisor was expected to secure minimum 35 marks to qualify himself to be called for the interview. It is the contention of the respondents that since the petitioner did not secure the qualifying marks, her selection was liable to be cancelled and

was rightly cancelled. The petitioner has seriously disputed the process of re-checking of her answer sheet. According to her, there was no mistake in the answers given by her.

13. Apart from the rival contentions as aforesaid, the real issue according to me which needs to be addressed is of the “propriety” and “reasonableness” of the action taken by the respondents. After having considered the material on record, it appears to me that there was no propriety in directing re-assessment of the answer sheet in the year 2009 of the written test conducted in the year 2006. In the Government Resolution dated 04.03.2005, on the basis of which the written test was conducted and the selection process was carried out for the appointment on the post of Anganwadi Supervisor, the period prescribed for reassessment of the answer sheet was of only 15 days.

14. Admittedly, no one applied for reassessment of the answer sheet of the present petitioner in the aforesaid period. Further, as noted herein before in Regular Civil Suit No.226 of 2006, the present respondents had denied the allegations raised about the selection process. In the written statement, the present respondents have justified the selection of the present petitioner

on the post of Anganwadi Supervisor. Subsequently, it appears that a decision was taken to get the answer sheet reassessed in view of the complaints made by K.R.Gangurde and Smt.Mangala Kalu Gawali. According to the respondents, in the reassessment of the answer sheet of the present petitioner, the marks secured by her were reduced from 36 to 33. There is no explanation provided on behalf of the respondents as to which method was used for assessment of the answer sheet in the year 2006. No such material is placed on record showing that there was a key prepared indicating the model answers of the questions put to the candidates in the written test held at that time. In the circumstances, there is reason to believe that the person, who subsequently assessed the answer sheet of the petitioner may give different marks than given by the earlier assessor. From the material on record, it further appears that the answers to two questions which were held to be right by the earlier assessor are held to be wrong by the subsequent assessor. In such circumstances, the appropriate method would have been to get the answer sheet moderated by a third person senior in the rank to both the assessors, who assessed the answer sheet of the petitioner.

15. There is no such allegation against the petitioner, at least

no such material is placed on record showing that any role much-less any objectionable role was played by the petitioner in falsely getting increased her marks in the written test.

16. It has to be further stated that it is not the case of the respondents that the performance of the petitioner during last six years on the post of Anganwadi Supervisor is unsatisfactory or that she is noticed to be incompetent to hold the promotional post of Anganwadi Supervisor. In a query made by the Court, it was informed by the learned Counsel for the Zilla Parishad that the Zilla Parishad does not have any grievance about the performance of the petitioner on the post of Anganwadi Supervisor nor any complaint is received about the performance of the petitioner. In the circumstances, it does not appear to me that only on the basis of reassessment of answer sheet of the petitioner that too after a period of about six years, any action was liable to be taken against the petitioner. The procedure adopted by the respondents in cancelling the promotion of the respondents does not stand to the test of "reasonableness" and hence cannot be sustained. Further, as is informed by the learned Counsel appearing for Zilla Parishad, at present there are five vacancies for the post of Anganwadi Supervisor. In the circumstances, even if the present petition is allowed, it may not

result into removal of Smt.Mangala Kalu Gawali, who has been appointed as Anganwadi Supervisor after cancellation of the appointment of the present petitioner. Said Smt.Mangala Kalu Gawali and present petitioner both can be accommodated since the posts of Anganwadi Supervisor are vacant.

17. For all above reasons, the order dated 28.05.2012, which has been reaffirmed vide decision rendered on 29.11.2013 deserves to be set aside. Consequently, the order passed in Appeal No.2 of 2014 by Divisional Commissioner, Nashik on 09.10.2014 also stands set aside. Respondent Nos.4 and 5 are directed to reinstate the petitioner on the post of Anganwadi Supervisor with immediate effect with all consequential benefits. Writ Petition stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT