

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.538 OF 2014

Ms. Abidabanu Najirkhan Mulla,]
At A/p Kanheri, Tal. Khandala,]
District Satara.]..Petitioner

Versus

- 1] The Jilha Parishad Satara,]
Through Deputy Executive Officer (Bal Kalyan)]
Jilha Parishad Satara.]
- 2] District Selection Committee,]
(Jilha Niwad Samiti)]
Jilha Parishad, Satara.]
- 3] Ms. Sangita Raghunath Kakade,]
A/P Chimangaon, Tal. Koregaon, Dist- Satara.]
- 4] Mrs. Sandhya Devanand Bendre,]
A/P Borgaon, Taluka District Satara.]
- 5] The State of Maharashtra.]..Respondents

WITH
WRIT PETITION NO.11952 OF 2013

- 1] Mrs. Vaishali Chandrakant Pawar,]
At Tupewadi, Post Dahiwadi, Tal. Man,]
District Satara.]
- 2] Mrs. Vandana Baban Gujar,]
A/P Apshinge, Taluka, District Satara]..Petitioners

Versus

- 1] The Jilha Parishad Satara,]
Through Deputy Chief Executive Officer]
(Bal Kalyan) Jilha Parishad Satara]
- 2] District Selection Committee,]
(Jilha Niwad Samiti)]
Jilha Parishad, Satara.]
- 3] Karishma Allabaksha Inamdar,]
At Gandhinagar Post Kashil,]
Taluka District Satara.]
- 4] Sushama Shashikant Bhome,]
387, Kasaba Peth, Phalatan,]
Taluka Phalatan, District Satara.]
- 5] The State of Maharashtra.]..Respondents

WITH
WRIT PETITION NO.2658 OF 2014

Smt. Sangita Satyanarayan Shedage,]
Age 43 years, At & Post Bhartgaon,]
Taluka & District Satara.]..Petitioner

Versus

- 1] The State of Maharashtra,]
Through the Secretary,]
Rural Development Department,]
Mantralaya, Mumbai-32.]
- 2] The Secretary,]
Woman and Child Welfare Department,]
Mantralaya, Mumbai-32.]
- 3] The Collector, Satara.]
- 4] The Chief Officer, Zilla Parishad,]

- Satara.]
- 5] The Special District Social Welfare Officer, Satara.]
- 6] The Project Officer, Integrated Adivashi Development Project, Ghodegaon, District Pune.]
- 7] The Deputy Chief Officer, Zillah Parishad, Satara (Child Welfare/ Grampanchayat).]
- 8] Smt. Usha Sanjay Mithari, residing at & Post Shirwal, Tal. Khandala, District. Satara.]
- 9] Smt. Suvarna Vitthal Karande @ Suvarna Baban Kanthe, residing at Goregaon Nimb, Post Dhondewdi, Tal. Khatav, District. Satara.]
- 10] Smt. Kavita Hindurao Shelake @ Indira Rajaram Mohite, residing at & post Shelkewadi (Mhasoli), Tal. Karad, Dist. Satara.]
- 11] Smt. Sujata Sunil Kadam @ Sujata Dattatraya Gore, residing at & Post Malegaon, Tal. & District. Satara.]
- 12] Smt. Mandatai Ramesh Shendage @ Mandatai Tatyaba Gofane, residing at Tamkhada, Post Powarwadi, Tal. Phaltan, District. Satara.]
- 13] Smt. Bebi Laxman More, residing at & Post Birwadi,]

- Tal. Mashwar, District. Satara.]
- 14] Smt. Suvarna Dilip Kanase @]
Suvarna Dattajirao Patil,]
residing at Swarajya Nagar,]
Golibar Maidan, Godoli,]
Tal & District. Satara.]
- 15] Smt. Sangita Suresh Savant @]
Sangita Jaysingh Dhamal,]
residing at & Post Limb,]
Tal. & District. Satara.]
- 16] Smt. Sima Rajendra Kasture @]
Sima Sadashiv Vani,]
residing at Koregain Bajarpeth,]
Janai Galli, Tal. Koregaon,]
District. Satara.]
- 17] Smt. Chaya Anand Magdum,]
residing at & Post Wathar Colony,]
Tal. Khandala, District. Satara.]
- 18] Smt. Karishma Allabax Inamdar @]
Memunnisa Mohammad Yakub Mulla,]
residing at Gandhinagar, Post Kashil,]
Tal & District. Satara.]
- 19] Smt. Sushama Shashikant Bhome @]
Madhuri Madhav Kulkarni,]
residing at 387, Kasaba Peth,]
Phaltan, Taluka Phaltan,]
District Satara.]
- 20] Smt. Vaishali Chandrakant Pawar,]
residing at Tupewadi, Post Dahiwadi,]
Taluka Man, District. Satara.]
- 21] Smt. Vandana Baban Gujar,]

- residing at Apsinge, Taluka and]
District Satara.]
- 22] Smt. Mayavati Dhondiram Nimbalkar,]
residing at Khalchi-Belmachi,]
post Kikali, Taluka Wai,]
District Satara.]
- 23] Manisha Sunil Nikam,]
residing at Vechale, Taluka and]
District Satara.]
- 24] Jayashri Rajendra Jagtap,]
residing at Songaon Tarf,]
Satara, Taluka and District Satara.]..Respondents

Mr. Satish Talekar a/w Ms. Madhavi Ayyapan I/by Talekar And Associates, Advocate for the Petitioner in WP No.538 of 2014.

Mr. P. A. Pol a/w Mr. Sharad Suryavanshi & Ranjit Hatkar I/by Pol Legal Juris, Advocate for the Petitioner in WP No.2658 of 2014.

Mr. Kuldeep Nikam a/w Mr. Devendra Gaikwad, Advocate for the Petitioners in WP No.11952 of 2013 & for Respondent Nos.20 & 21 in WP No.2658 of 2014.

Mr. N. K. Rajpurohit, AGP for Respondent – State in all the Writ Petitions.

Mr. S. A. Sawant I/by Mr. Sagar Kasar, Advocate for Respondent No.3 in WP No.538 of 2014.

Mr. U. P. Warunjikar a/w Mr. S. A. Pilankar, Advocate for Respondent No.1 in WP No.538 of 2014 & WP No.11952 of 2013 & for Respondent Nos.4 & 7 in WP No.2658 of 2014.

Mr. Sharad Bhosale I/by Mr. Dilip Bodake, Advocate for Respondent No.4 in WP No.538 of 2014 & for Respondent Nos.8 to 12, 14 to 18 in WP No.2658 of 2014.

Mr. Anant Vadgaonkar, Advocate for Respondent No.3 in WP No.11952 of 2013.

Mr. Prasad B. Kulkarni, Advocate for Respondent No.4 in WP No.11952 of 2013.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 4th MARCH, 2019**

ORAL JUDGMENT (B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2] Since the question involved in all these Petitions is common, the same are heard together and disposed of by this common judgment and order.

3] In Writ Petition No.538 of 2014, the Petitioner challenges the selection of Respondent Nos.3 & 4 to the post of Anganwadi Supervisor, being contrary to the Government Resolutions.

4] In other two Petitions, the Petitioners challenge the selection of private Respondents on the ground of arbitrariness committed by the Selection Committee in selection process and prayed for quashing and setting aside the appointments of private Respondents in those Petitions.

5] It is the contention of the Petitioner in Writ Petition No.538 of 2014 that as per the advertisement as well as, as per the Government Resolution dated 12th March 2008, the experience of the candidates earned by them while working in aided or unaided private institutions, as Anganwadi Sevika or Balwadi Sevika cannot be taken into consideration for considering the qualifying experience. It is the case of the Petitioner that Respondent No.4 was working for four years and three months in a private school as per the documents placed on record by her. As such, she did not possess requisite experience of ten years, which experience is required to be of rendering services only in Zilla Parishad. Insofar as Respondent No.3 is concerned, it is the contention of the Petitioner that though as per the Government Resolution dated 4th March 2005, Respondent No.3 having rendered only 14 years of service was entitled to five marks, but, however, interpolating the record, marks have been changed from five to ten, thereby making her eligible for selection.

6] Insofar as other two Petitions are concerned, it is submitted by learned counsel for the Petitioners that in accordance

with the Government Resolution dated 4th March 2005, the marks were to be allotted on the basis of the written examination out of 75 marks. It is submitted that out of remaining 25 marks, the procedure for allotment is specifically prescribed in the said Government Resolution. Out of the said 25 marks, the bifurcation provides that if a candidate is graduate, such a candidate would be entitled to five marks. If a candidate has experience of 11 to 15 years, such a candidate would be entitled to have five marks. If a candidate has experience of more than 15 years, he is entitled to ten marks. It is submitted that the only discretion with the Selection Committee is with regard to the ten marks out of said 25 marks. It is however submitted that Selection Committee without taking into consideration the said Government Resolution, exercised its discretion for allotment of the entire 25 marks. The Petitioners have placed on record a chart to show the sample of how the authorities have acted in an arbitrary manner. Perusal of the marks would reveal that if the calculation was done as per the Government Resolution dated 4th March 2005, the Petitioners would get one mark out of 10 marks in the oral interview, whereas Respondent No.8 after the calculation would get ten marks in the oral interview. It is therefore

submitted that the entire selection process is vitiated and liable to be set aside.

7] Mr. P. A. Pol, learned counsel for the Petitioners further submits that the Petitioners have made a specific allegation that the Collector, who is the chairman of the Selection Committee was not present in the selection process and in spite of that he has been shown to have participated in the selection process. According to the learned counsel for the Petitioners, the said allegation is not denied. It is submitted that though the Zilla Parishad has denied the same, the Collector, who is party Respondent has not filed his reply. It is submitted that the document obtained by the Petitioners under the Right to Information Act (RTI) would reveal that at the relevant time, the Collector had participated in the procession of one Dr. Narendra Dabholkar, an activist who was murdered.

8] Mr. U. P. Warunjikar, learned counsel for the Zilla Parishad submits that since the only selection process of 16 candidates is under challenge, it is not necessary to set aside the selection process of entire 23 candidates.

9] Mr. S. A. Sawant, learned counsel appearing on behalf of private Respondents in Writ Petition No.538 of 2014 submits that the Petitioners having participated in the selection process, now cannot challenge the selection process. Learned counsel relies on the judgment of the Hon'ble Apex Court in the case of **Dhananjay Malik and others Vs. State of Uttaranchal and others**¹ in support of the aforesaid proposition.

10] For appreciating the rival submissions, it will be relevant to refer to the eligibility criteria in the advertisement dated 8th July 2013. A true translated version of the said advertisement provides for eligibility, which reads thus :-

“Eligibility :-

1. Secondary School Certificate Examination passed i.e. to say 10th Standard passed (herein, the other examinations declared equivalent to this examination, by the government, are included).
2. Continuous 10 years honorary service as 'Aanganwadi Sevika' as on the date 4/8/2013 (herein, the service put in as 'Balwadi Sevika'/ Teacher/Assistant shall be considered).
3. 'Aanganwadi Sevika' whose minimum age is below 55 years as on the date 4/8/2013, shall be eligible to apply for the post of lady supervisor.”

¹ (2008) 4 SCC 171.

It could thus be seen that the advertisement provides that on the cut-off date i.e. on 4th August 2013, a candidate must have rendered ten years uninterrupted service as Balwadi Sevika/Shikshika/Madatnis.

11] It will be relevant to refer to the following observations of the Hon'ble Apex Court in the case of **Ashok Kumar Sharma and others Vs. Chander Shekhar and another**² :-

“The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself.”

² (1997) 4 SCC 18.

It could thus be seen that what is relevant is either the date of the application or the date as prescribed in the application for eligibility.

12] The Government Resolution dated 12th March 2008, and particularly paragraph 9 thereof would be relevant. A true translated version thereof reads thus :-

“9. As per the enclosed Appendix 'A', if holds (possesses) minimum more than one year service/experience, in order to get 10 marks for the same, hereafter marks should be given if possesses experience in the government recognised institute such as Anganwadi/Mini Anganwadi of Integrated Child Development Project, Zilla Parishad, Social Welfare Department, Central and State Social Welfare Board, Municipal Corporation/ Municipality/ Municipal Council, Cantonment Board. For this purpose, service/experience of the private institution should not be held valid. Moreover, although there is experience in respect of recognised or aided institution, the same should not be held valid. Because the appointment of teachers there, is made by the private institutions.”

13] It could thus be seen that for being entitled to get additional marks of experience, it is necessary that a candidate must have experience only in the Anganwadi/Mini Anganwadi of Integrated Child Development Project, Zilla Parishad, Social Welfare

Department of the State or Central Government, Municipal Corporation, Municipal Council and Cantonment Board. It specifically provides that for being eligible to the said ten marks, experience in private aided or unaided institutions shall not be considered while considering the allotment of ten marks.

14] It will also be relevant to refer to the Government Resolution dated 4th March 2005.

- “1. Objective type written examination of 75 marks should be conducted.
2. Viva voce of 25 marks should be conducted. Its division should be made as given under.
 - (a) If candidate is minimum graduate – 5 marks.
 - (b) For service as an Anganwadi Volunteer 10 marks, out of which 5 marks if service is minimum 11 to 15 years and 10 marks if more than 15 years service has been completed.
 - (c) Maximum marks, to be given : 10 marks.
by the selection committee
3. After checking of answer sheets, merit list of the candidates, securing minimum 35 marks should be prepared. The candidates securing less than 35 marks are not eligible for selection.
4. As soon as viva voce is completed on the last day, list of marks, secured in written as well as in viva voce examination should be prepared in descending order and should be displayed on the Notice Board.”

15] It could thus be seen that in the selection process for the

Anganwadi Supervisors, the allotment of 75 marks is on the basis of written examination to be conducted. Paragraph 2 thereof clearly provides that as to in what manner 25 marks shall be allotted. Clause (a) thereof provides that if a candidate is graduate, he will get five marks. Clause (b) provides that for an experience between 11 to 15 years, a candidate will get five marks and for an experience above 15 years, a candidate would get ten marks. Clause (c) thereof provides that the Selection Committee would be entitled to allot marks on the basis of oral interview out of ten marks. It is thus clear that discretion of the committee is with regard to ten marks out of 25 marks, and 15 marks are required to be given on the objective basis as provided in the said Government Resolution.

16] Perusal of the material placed on record would reveal that Respondent No.4 in Writ Petition No.538 of 2014 in her application itself has stated that she was working from 2003 to 2008 in Navin Marathi School, Nagathane. The experience certificate would show that she was working on honorary basis from 3rd June 2003 to 19th April 2008. She has worked in the school run by Zilla Parishad only after 2008. On her own showing, out of her

ten years experience, she has worked for four years and three months in a private school. If that is deducted, then Respondent No.4 would not have been eligible, since she did not satisfy the minimum eligibility criteria of ten years experience. Insofar as Respondent No.3 in Writ Petition No.538 of 2014 is concerned, perusal of her application itself would reveal that on the cut-off date i.e. on 4th August 2013, her experience was of 14 years. As such, as per clause (b) of the Government Resolution dated 4th March 2005, she was entitled for allotment of only five marks. However, perusal of the material placed on record would reveal that she has been allotted ten marks. Not only that but the material placed on record would also show that there has been interpolation in the proceedings of the Selection Committee, vide which her experience has been shown to be changed from 14 years to 15 years and marks from five to ten against that column. Mr. S. A. Sawant, learned counsel tried to justify the same that on the date of interview she was in fact having 15 years experience. We do not find any substance in the said submission. It is a settled principle of law that the eligibility has to be taken into consideration as per the provisions made in the advertisement. When the advertisement

specifically gives cut-off date of 4th August 2013, the relevant date is 4th August 2013 and not the date of the interview.

17] Admittedly, the relevant date is 4th August 2013. On the said date, Respondent No.3 in Writ Petition No.538 of 2014 was possessing 14 years of experience and not 15 years and as such, merely because of the date of interview, she was having 15 years of service would not entitle her to get ten marks. She would be entitled only to five marks.

18] Insofar as the selection process challenged in other two Writ Petitions is concerned, perusal of the same would reveal that the Selection Committee has granted marks in its discretion out of 25. When the Government Resolution specifically prescribes the manner in which the allotment of the marks to be done, then it has to be done in that manner alone. The Selection Committee has to do bifurcation within 25 marks as per clauses (a), (b) & (c). Perusal of the material placed on record would reveal that bifurcation has not been made as per the said Government Resolution. Perusal of the material placed on record by the learned counsel for the Zilla Parishad itself would reveal that there has been interpolation at

more than one places. Perusal of the record would further reveal that on the chart of the marks given, there is signature of only Women and Child Development Officer of the Zilla Parishad and signatures of other members of the Selection Committee are absent. There appears to be substance in the allegations of the Petitioners that other members including the Collector have not participated in the selection process and the selection process has been done in the arbitrary manner, by one member of the Committee. For an instance, the Petitioner's case would reveal that though the Petitioner got 15 marks out of 15 on the objective basis, she has been given only one mark out of ten in the interview. It is to be noted that though the Petitioner has specifically averred that the Collector was not personally present in the selection process, the Collector has not denied the said allegation, though he was party Respondent. The Petitioners have also placed on record a document obtained under RTI, which shows that on the date of the interview, after participating in the selection process, the Collector went to meet family members of the deceased Dr. Narendra Dabholkar alongwith Hon'ble Chief Minister. As such, there is a grave doubt with regard to the fairness and impartiality in the selection process.

19] Insofar as the judgment of the Hon'ble Apex Court in the case of *Dhananjay Malik (supra)* is concerned, no doubt that a candidate having participated in the selection process cannot challenge either the advertisement or the rules governing the selection process on the ground that the selection process was conducted in an arbitrary manner. However, it is only after the selection process is complete, a candidate can come to know about the irregularities that are committed in the selection process and that the selection process is not conducted as per the norms in the Government Resolution. As such, we do not find that the present case is covered by the case of *Dhananjay Malik (supra)*.

20] Insofar as the contention of Mr. U. P. Warunjikar that the Court need not set aside the entire selection process of 23 candidates, but should restrict the relief only insofar as private Respondents in the Petition.

21] It will be relevant to refer to the following observations of the Hon'ble Apex Court in the case of *Krishan Yadav and another Vs. State of Haryana and others*³ :-

³ (1994) 4 SCC 165.

“20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as “fraud unravels everything”. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.”

22] It will be further pertinent to note to the following observations of the Hon'ble Apex Court in the case of Union of India and others Vs. O. Chadradhar⁴ after discussing the law laid down in the case of *Krishan Yadav (supra)* :-

“In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each

⁴ (2002) 3 SCC 146.

selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of *Krishan Yadav* applies to the facts of the present case.”

23] It could thus be seen that the law on the issue is well settled. Only when it is possible for the Court to segregate part of the selection process, which can be said to be non-arbitrary and legal, the Court would not set aside the entire selection process. However, in the present case, entire selection process has been conducted in a manner, which is illegal, arbitrary and contrary to the norms laid down and it is not possible to segregate the valid selection and invalid selection either and, therefore, it would be appropriate to set aside the entire selection process. It will also be relevant to note that with respect to the very same Zilla Parishad, in a similar selection process, this Court in Writ Petition No.5335 of 2000 and Writ Petition No.178 of 2004, vide judgment and order 30th September 2002, found that the selection process conducted to be not in a legal manner and set aside the selection process.

24] In that view of the matter, we have no option but to set aside the selection process conducted on the basis of the advertisement dated 8th July 2013. We therefore pass the following order :-

ORDER

- I] The selection process conducted on the basis of the advertisement dated 8th July 2013 is quashed and set aside.
- II] The selection process is directed to be conducted de-novo on the basis of the said advertisement.
- III] Needless to state that the eligibility would be as prescribed in the said advertisement as on the cut-off date prescribed in the said advertisement.
- IV] We clarify that we have set aside the allotment of only 25 marks in the selection process conducted in the year 2013. Needless to state that marks obtained by the candidates in the written

examination out of 75 marks, would be taken into consideration.

V] The fresh interviews would be conducted by the Selection Committee strictly in accordance with the Government Resolutions dated 4th March 2005 and 12th March 2008.

VI] Since the selection process pertains to the year 2013 and since what is now required to be done is only allotment of 15 marks on the objective basis and 10 marks on the basis of oral interview of the candidates, the same shall be done within a period of six weeks from the date of uploading of the order.

VII] It is further directed that the candidates selected as per the selection process to be conducted as directed herein-above would get their seniority from the date on which the private Respondents were initially appointed in accordance with the

(6)-WP-538-14 & group .doc.

impugned selection process.

VIII] Rule is therefore made absolute in the aforesaid
terms.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]