

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

**SECOND APPEAL NO. 787 OF 2017
WITH
CIVIL APPLICATION NO. 1546 OF 2017**

Jana Ramesh Kavade	... Appellant
Versus	
Zilla Parishad, Solapur and others	... Respondents

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Mr. Ashok B. Tajne for the Appellant.
Mr. A.S. Kulkarni for Respondent Nos. 1 to 3.
Ms Tanaya D. Goswami, AGP for Respondent No.4.
Mr. Sarang Aradhye for Respondent No.5.

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CORAM : SANDEEP K. SHINDE, J.
DATE : 06th FEBRUARY, 2019.

P. C.:

1. Heard learned Counsel for the parties.
2. The State of Maharashtra in implementation of its Integrated Child Development Scheme, issued resolutions from time to time for appointment of '*Anganwadi Sevika*'. In pursuance to the Government Resolution dated 28th November, 2000 the appellant was selected as Anganwadi Sevika on 13th December, 2004 at village Dhavlas and as such, the Chief Executive Officer, Zilla Parishad, Solapur issued the order of selection of the appellant along with other four candidates. The said order

contemplates that the actual appointment would be subject to verification of the relevant documents.

3. It appears, a complaint was made against the appellant and enquiry was initiated. In the meantime the State has issued Government Resolution dated 9th February, 2005 superseding the Government Resolution dated 28th November, 2000 contemplating a new selection process for selecting and appointing Anganwadi Sevikas. It appears from the record that new selection process was undertaken for appointing Anganwadi Sevika, in the village Dhavlas. In this selection process the appellant as well as respondent No.5 participated. Respondent No.5 was found suitable to be appointed as '*Anganwadi Sevika*'.

4. Be that as it may, vide Government Resolution dated 9th February, 2005, all earlier Government Resolutions were superseded. In spite of this fact the appellant had filed Special Civil Suit on 2nd September, 2005 seeking appointment as Anganwadi Sevika in view of selection order dated 13th December, 2004.

5. I have gone through the plaint. Undisputedly, the Government Resolution dated 9th February, 2005 superseded its earlier Resolution dated 28th November, 2000 pursuant to which the appellant was selected. The suit was filed in November 2005

i.e. after second Government Resolution came into force. The plaint also does not refer to her participation in selection process undertaken by the respondents in pursuance to new Government Resolution dated 9th February, 2005.

6. The trial Court in its judgment dated 21st January, 2011 in paragraph thirty has recorded the finding that the appellant herein participated in the new selection process in view of the policy decision dated 9th February, 2005 and in the said selection process it was found that the appellant has passed only 9th standard level and not B.A. part II as declared by her. The trial Court further recorded that in the selection process respondent No.5 was found suitable to be appointed on merit. The trial Court dismissed the suit and Regular Civil Appeal met with the same fate.

7. Learned Counsel for the appellant has not disputed the fact that the appellant had participated in the new selection process for the post of '*Anganwadi Sevika*' at village Dhavlas. Learned Counsel has also not disputed the finding recorded by the trial Court that the selection of respondent No.5 as Anganwadi Sevika for the village Dhavlas was on merit. The only contention raised by him is that, since other selected candidates were given appointment pursuant to selection order dated 13th December,

2004 and having found that the complaint allegedly made against her was frivolous, the selection order dated 13th December, 2004 is required to be implemented by issuing appointment order. In support of this submission learned Counsel has taken me through cross examination of the witness of the Zilla Parishad who has stated that the complaint made against the appellant was frivolous.

8. Be that as it may, a fact cannot be ignored that the appellant's selection was pursuant to the Government Resolution dated 28th November, 2000, which was superseded by the Government Resolution dated 9th February, 2005. In view of this the selection order dated 13th December, 2004 is rendered infructuous or otios. It is not appellant's case that the resolution dated 9th February, 2005 saves all selections made pursuant to earlier resolutions. Further, it cannot be ignored that the post for which the appellant was selected in December, 2004, the selection process was initiated afresh by the respondents in view of the G.R. dated 9th February, 2005 and in that selection process the appellant had participated. It may also be stated that the appellant was not found suitable on merit.

9. Learned Counsel for the appellant has brought to my notice the order passed by the Deputy Chief Executive Officer of the Zilla

Parishad dated 4th October, 2016, whereby the appellant was appointed temporarily as stop gas arrangement, in view of the order passed by the learned Civil Judge, Senior Division, Pandharpur in the suit filed by the appellant. It appears the learned Civil Judge injuncted the Zilla Parishad from filling up the post of Anganwadi Sevika at village Dhavlas. In view of it the officers of the Zilla Parishad, appointed the appellant as Anganwadi Sevika until disposal of the suit proceedings. This order was continued by this Court till date. Resultantly, respondent No.5 who was found meritorious and suitable candidate could not appointed.

10. Learned Counsel for the appellant finally submitted for no fault on the part of appellant, her appointment was deferred pending enquiry into complaint made against her. He urged, in enquiry, complaint was found frivolous. He thus urged that the respondents shall consider the case of appellant for appointing her as Assistant to Anganwadi Sevika as contemplated in Clause-2 of the G.R. dated 9th February, 2005. In my view, considering the facts of the case, respondents shall consider the appellant's application if made for appointing her as '*Assistant Anganwadi Sevika*' if found otherwise eligible, within six months from the date an application made by the applicant.

11. In view of the aforesaid facts, in my view appeal does not give rise to any substantial question of law. It is accordingly dismissed, however, the ad-interim protection granted by this Court shall continue for a period of six weeks from today.

12. In view of dismissal of appeal, civil application does not survive and same is also disposed of.

(SANDEEP K. SHINDE, J.)