

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION No.1361 OF 2018

IN

WRIT PETITION No. 7716 OF 2017 (D)

Ku. Sangita D/o Vishnu Awsar

vs.

The Divisional Commissioner, Amravati Division, Amravati & Ors.

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S.R.Deshpande, Advocate for applicant.
Shri. M. S. Joshi, AGP for respondent No.1.
Shri. T. M. Zaheer, Advocate for respondent Nos.2 & 3.

CORAM : Manish Pitale J

DATED : 04.09.2019

The applicant in this review application was the original writ petitioner. In the order dated 21.12.2018 passed by this Court, while issuing notice in the review application, it was recorded that Government Resolution dated 02.03.2015 was not brought to the notice of this Court, when the writ petition was dismissed by order dated 04.12.2018. As a consequence, the implication of the said Government Resolution dated 02.03.2015 was not taken into consideration by this Court while dismissing the writ petition filed by the applicant herein.

2. A bare reading of the Government Resolution dated 02.03.2015, would show that it had a direct impact on the nature of the submissions made on behalf of the

rival parties and upon testing the correctness or otherwise of the order dated 07.11.2017 passed by the respondent No.1 Divisional Commissioner, which was the subject matter of challenge in the writ petition. Therefore, it becomes clear that the order dated 04.12.2018 passed by this Court dismissing the writ petition in ignorance of the Government Resolution dated 02.03.2015, needs to be reviewed. Accordingly, the review application is allowed and the order dated 04.12.2018 passed by this Court dismissing the writ petition No.7716 of 2017 is recalled.

3. As a consequence, the writ petition filed by the petitioner (review applicant) needs to be considered in the light of the aforesaid Government Resolution dated 02.03.2015.

4. The controversy in the present case concerns appointment to the post of Anganwadi Sevika in district Buldhana. An advertisement dated 10.06.2013 was issue initiating the process for making appointment on the said post. In the said process the petitioner was appointed on the said post by order dated 30.05.2016. This was made subject matter of challenge by the respondent No.5 Rekha Ghate by filing appeal before the respondent No.1 Divisional Commissioner. The appeal was dismissed but, the order of appointment dated 30.05.2016 issued in favour of the petitioner was set aside. Thereupon, the respondent No.1 directed that the selection process initiated by advertisement dated 10.06.2013 was

required to be revived and it was directed to be completed in terms of Government Resolution dated 15.09.2011.

5. When this Court considered the writ petition on merits on 04.12.2018, none had appeared on behalf of the petitioner and upon hearing the counsel representing the respondent, this Court found that the findings rendered by the respondent No.1 could not be said to be erroneous and that considering clause 8 in subsequent Government Resolution dated 13.08.2014, which provided that process of selection initiated prior to issuance of the said Government Resolution would continue as per the earlier Government Resolution dated 15.09.2011, it was held that the direction given by the respondent No.1 Commissioner to complete the process as per the earlier Government Resolution dated 15.09.2011 was correct and did not deserve any interference.

6. During the pendency of the writ petition and before it was dismissed by order 04.12.2018, a fresh selection process in terms of directions given by the respondent No.1 Commissioner had been undertaken as per the directions given in interim order of this Court, and it was informed that one Aparna Balkrushna Ingale was selected. Since this Court dismissed the writ petition, a direction was given that further steps regarding the culmination of the said fresh selection process may be undertaken by respondent Nos.1 to 4.

7. But when the subsequent Government Resolution dated 02.03.2015 is perused, it becomes clear that the same has a direct impact on the present case and that the order dated 07.11.2017 passed by the respondent No.1 Commissioner is rendered erroneous, because it is passed in ignorance of the said Government Resolution dated 02.03.2015. It is important to note that the said Government Resolution dated 02.03.2015, specifically states that selection process initiated prior to issuance of Government Resolution dated 13.08.2014, must be completed by 31.03.2015 and it is further specifically provided that if such selection process is not completed then it would automatically stand cancelled. It is further provided in the Government Resolution dated 02.03.2015 that consequently new selection process would have to be undertaken, which would have to be in terms of Government Resolution dated 13.08.2014. It is also directed that such new selection process would have to be undertaken immediately.

8. These, specific directions provided in the said Government Resolution dated 02.03.2015 have a direct impact on clause 8 of the Government Resolution dated 13.08.2014, which had provided that selection process already undertaken before issuance of the said Government Resolution would continue in terms of earlier Government Resolution holding the field, particularly Government Resolution dated 15.09.2011. The aforesaid clause of Government Resolution dated

13.08.2014, read with Government Resolution dated 02.03.2015, would show that such selection process initiated prior to issuance of Government Resolution dated 13.08.2014 was required to be completed in any case by 31.03.2015. In other words, no selection process after 31.03.2015 could have been continued on the basis of earlier Government Resolution dated 15.09.2011. This aspect was completely ignored by the respondent No.1 Commissioner while passing order dated 07.11.2017. In fact this aspect has a direct impact even on the order dated 30.05.2016, whereby the petitioner was appointed on the said post of Anganwadi Sevika.

9. Therefore, it becomes clear that the clause (3) of the impugned order dated 07.11.2017 passed by the respondent No.1 Commissioner was wholly unsustainable and that it deserves to be quashed and set aside. The selection process pursuant to advertisement dated 10.06.2013 could not have been revived at all beyond 31.03.2015, as per Government Resolution dated 02.03.2015.

10. This Court finds that on a proper interpretation of Government Resolutions dated 13.08.2014 and 02.03.2015, while no interference is warranted in that part of the order of respondent No.1 Commissioner dated 07.11.2017, whereby the appointment order issued in favour of the petitioner was set aside, but clause (3) of the said order deserves

interference.

11. In view of the above, the writ petition is partly allowed only to the extent that clause (3) of the order dated 07.11.2017 passed by the respondent No.1 Commissioner is quashed and set aside.

12. It is directed that the respondent Nos. 1 to 4 shall now undertake immediate steps for initiating fresh selection process for the post of 'Anganwadi Sevika' in terms of Government Resolution dated 13.08.2014 and Government Resolution dated 02.03.2015. The selection process by fresh advertisement in terms of Government Resolution dated 13.08.2014 would be undertaken immediately and in any case within a period of two weeks from today. Consequential steps also be taken expeditiously so as to ensure that the said post of Anganwadi Sevika is filled in accordance with law at the earliest.

13. It is made clear that the petitioner and the contesting respondent, if eligible, may take part in the fresh selection process if so advised. Writ Petition is disposed of accordingly. Needless to say, the interim order passed in the Writ Petition stands vacated.

JUDGE