

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

911. CIVIL APPLICATION No. 394 OF 2020
IN
REVIEW APPLICATION (Stamp) No. 33442 of 2019
IN
LETTERS PATENT APPEAL No. 193 of 2010

Sonali D/o Chandrakant Navthar ...Applicant
VERSUS
Smt. Sangeeta Uttam Warkad and others ...Respondents

Mr. Ajay Deshpande, Adv., h/f. Mr. A.V. Indrale, Adv. for applicant

CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.
DATE : 5th March, 2020

ORDER :

1. The proceeding is filed for condonation of delay of 245 days caused in filing Review Petition for review of the judgment delivered by this Court in Letters Patent Appeal No. 193 of 2010 on 14th January 2019. The L.P.A. filed by the present applicant is dismissed on merits by this Court. As the submissions made show that even after deciding the matter, no further steps are taken by the employer to give effect to the decision and others could not get appointment as '*Anganwadi Sevika*' and present applicant had gone upto the Hon'ble Supreme Court to challenge the decision given by

this Court, this Court asked the learned Counsel for the applicant to make out case both for condonation of delay and for showing that there is some arguable case in review proceeding. If in delay condonation proceeding, if notice is issued without ascertaining these things, this will unnecessarily cause harassment to the party-respondents and the matter may remain pending for indefinite period. Ordinarily, the intention of persons, like the petitioner, is to protract the things and that is why the learned Counsel was asked to show that there is some arguable case in the review proceeding.

2. Respondent Smt. Sangeeta Uttam Warkad had challenged the selection and appointment of present applicant Sonali D/o Chandrakant Navthar for the post of '*Anganwadi Sevika*'. The Divisional Commissioner, Aurangabad, after hearing both the sides, held that the selection process was not properly followed and there was substance in the allegations made by respondent Smt. Sangita. Less marks were given to Smt. Sangita for educational qualification when she had passed 12th standard examination. Weightage of 20 marks was given, when she was entitled for weightage of 25 marks. Allegations were made that no questions were at all put to her and more marks than Sangita were given to Sonali when she had passed only 9th standard examination. The case was made out for

favouritism and so the Commissioner set aside the order of the selection and appointment. This decision of the Commissioner was challenged before the learned Single Judge of this Court. The learned Single Judge upheld the decision of the Commissioner and then Letters Patent Appeal bearing LPA No. 193/2010 was filed by applicant Smt. Sonali before this Court.

3. This Court considered the Letters Patent Appeal on merits of the matter. This Court considered the marking system and the procedure, which was to be followed for the selection process. The weightage, which was required to be given for higher qualification, was considered by this Court. As per the record, the procedure was not followed for selection of candidates by the Interview Committee. There was a pattern clearly appearing that all those candidates, who were having higher educational qualification, were given less marks by Interview Committee and by using that *modus operandi*, the candidate, present applicant Sonali, who had passed only 9th standard, was selected. It was noted that all the three political members of the Committee had given 30 marks, each, to applicant Sonali and the remaining three members had given 30, 26 and 28 marks. No other candidate was given more than 26 marks by the Interview Committee. The Commissioner found that

there were malafides and this finding was upheld by the learned Single Judge of this Court.

4. In the application filed for condonation of delay, it is contended that some delay is caused for approaching this Court and that is on account of prevailing facts and circumstances, which were beyond the control of the applicant. It is contended that the applicant is a poor lady and her husband is agriculturist and she was required to collect necessary record and only after that, she could approach this Court for filing the present proceeding.

5. The aforesaid contentions made, are not at all correct and true. Copy of the order passed by the Hon'ble Apex Court in a Petition filed for Special Leave to file Appeal bearing No. 4184/2019 is on the record. By the order dated 15th February 2019, the Special Leave Petition came to be dismissed by passing the order as follows:

" *Heard.*

We do not find any good ground warranting interference with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is accordingly dismissed.

Pending applications, if any, shall also

stand disposed of. ”

6. When the matter was decided by the Hon'ble Apex Court on 15th February 2019, the present proceeding came to be filed on 14th October 2019. The applicant was able to spend for filing the litigation in Supreme Court and she had filed two proceedings in this Court, like Writ Petition before the learned Single Judge and the Letter Patent Appeal before the Division Bench. This circumstance shows that she can afford to spend and, want of resources is not a true ground. Further, when the matter was dismissed by the Hon'ble Apex Court on 15th February 2019 and as per the practice, the orders are uploaded in the computer system immediately, it cannot be said that she was required to take steps for collecting record. In any case, the circumstance that she had filed the proceeding in the Hon'ble Apex Court, is not at all mentioned in the present matter. This Court holds that no sufficient cause is shown by the applicant for condonation of delay.

7. The order delivered by this Court in Letters Patent Appeal No. 193/2010 itself shows that the present applicant had protracted the things by using one or the other tactics. The select list was published on 18th February 2009 and it appears that after getting posting, she continued to work on the post for the entire

period till the decision given by this Court, due to interim orders passed by this Court. It will be interesting to note as to whether the employer removed her after vacating of the interim relief. There is possibility that she has so much influence that she succeeded in stopping further process after the decision of the dispute. The circumstances cannot be ignored while considering the proceeding filed for condonation of delay as condonation of delay involves the use of discretionary power.

8. The learned Advocate for the applicant submitted that the Commissioner or this Court could not have considered the contention of respondent Smt. Sangita that she was having higher educational qualification. He submitted that in the application, no such contention was made though there was record to show that she was having higher educational qualification. This Court has considered that contention while discussing the marking system given for the process of interview and selection. Thus, this point cannot be considered again by this Court.

9. The learned Counsel for the applicant submitted that this Court has not properly considered the ratio of decision in *Writ Petition No. 5111 of 2010 - Smt. Kalpana Suryakant Somwanshi Vs. the Divisional Commissioner and others, decided on 30th July 2010,*

by the learned Single Judge of this Court. That case is considered by this Court. The learned Counsel for the applicant then submitted that on 8th November 2019, the Full Bench of this Court decided ***Writ Petition No. 4542 of 2011 - Sangita Ulhas Gadilkar Vs. the State of Maharashtra and others*** and in that decision, it is held that the Divisional Commissioner does not have jurisdiction to set aside the appointment of 'Anganwadi Sevika' made pursuant to the recommendation of the Selection Committee, constituted under the Integrated Child Development Scheme under Section 267-A of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961. The learned Counsel submitted that as there is said decision, the judgment delivered by this Court needs to be reviewed and the order passed by the Commissioner needs to be set aside. This submission is also not at all acceptable. This Court decided the matter on 14th January 2019 and the decision of the Full Bench came on 8th November 2019. Even if the application of the decision is accepted as it is, without considering applicability to the facts of the present matter, it can be said that the said decision cannot be considered in the present matter as that is not within the scope of review proceeding. Thus, there is no case at all in review proceeding.

10. Aforesaid circumstances show that applicant Smt. Sonali is protracting the things. It is unfortunate that though there are all these orders in existence, she succeeded in protracting the things. So, this Court holds that no case is made out for condonation of delay and the proceeding stands dismissed.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Madkar