

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1249 OF 2020

Ruturaj S/o Dattatraya Sarode,
Age 27 years, Occu. Nil,
R/o Pandurang Nagar, Pipeline Road,
Savedi, Ahmednagar,
Tal. & District Ahmednagar

... Petitioner

VERSUS

- 1] The State of Maharashtra,
Through its Principal Secretary,
Co-operation Department,
Mantralaya, Mumbai – 32
- 2] The Divisional Joint Registrar,
Co-operative Societies, Nashik,
Tal. & District Nashik
- 3] The District Deputy Registrar,
Co-operative Societies, Ahmednagar
- 4] The Chairman of the Inquiry Committee
and the then Divisional Joint Registrar,
Co-operative Societies, Nashik,
Division, Nashik
- 5] The Member of the Inquiry Committee
and Assistant Registrar,
Co-operative Societies, Ahmednagar,
Tal. & District Ahmednagar
- 6] The Member of the Inquiry Committee
and District Deputy Registrar,
Co-operative Societies, Ahmednagar,
Tal. & District Ahmednagar
- 7] The Ahmednagar District Central
Co-operative Bank,
Through its General Manager,
Station Road, Ahmednagar,
Tal. & District Ahmednagar

... Respondents

...
Mr. S.S. Thombre, Advocate for petitioner
Mr. S.G. Karlekar, AGP for respondent – State
Mr. V.R. Dhorde, Advocate for respondent no. 7
Mr. R.R. Karpe, Advocate for caveator
...

**CORAM : DIPANKAR DATTA, CJ
AND
RAVINDRA V. GHUGE, J.**

DATE : JUNE 15, 2021

JUDGMENT (PER – DIPANKAR DATTA, CJ) :

1. For the purpose of filling up vacancies on the post of Clerk in the establishment of Ahmednagar District Central Co-operative Bank, a recruitment process was initiated. In connection therewith, a select list was prepared and submitted for approval of the competent authority. Several complaints were lodged by persons aggrieved by the select list. They alleged that the select list was tainted because of nepotism, favouritism etc. that crept in, in the recruitment process. To unearth the truth, a four-member committee was appointed to enquire into the complaints that were received. Based on the report of enquiry dated 17th January, 2018, the Joint Registrar, Co-operative Societies, Department of Co-operation cancelled the select list by an order dated 28th February, 2018.

2. There was an earlier round of litigation before this Court, wherein cancellation of the select list by the Joint Registrar was challenged. The petitioners included the bank as well as the selectees. A coordinate Bench of this Court by its common judgment and order dated 5th April, 2019 disposed of all the writ petitions [Writ Petition No. 8811 of 2018 (filed by the bank) with connected petitions] with the following order :

“ 22. For the reasons aforesaid, the Writ Petitions are disposed of in terms of the following order :-

ORDER

- (i) Writ Petition No.8811/2018 is partly allowed.
- (ii) The impugned decision dated 28.2.2018, cancelling the select lists is hereby partly set aside.
- (iii) The cancellation of select lists to the extent of 36 candidates selected for the post of Junior Officers, mentioned at Page No.289 of the enquiry report – Part I – whose names find place in the select list appearing at Pages 363 to 375 of the enquiry report (Paper Book Pages 391 to 421 of Writ Petition No.8811/2018); and 28 candidates selected for the post of Clerk (Page 443 of the enquiry report Volume II (Pages 431 to 456 of Paper Book of Writ Petition No.8811/2018) is upheld.
The respondent No.3 shall, however, again scrutinise the entire record of these candidates and take a final decision about their selection within a period of six months from today.
- (iv) The decision of cancellation of the selection of other candidates named in the select lists is, thus, set aside.

- (v) In view of the above order, Writ Petitions No.2666/2018, 2671/2018, 2689/2018, 2690/2018, 2691/2018 and 2695/2018 and the pending Civil Applications therein are disposed of.

Rule made partly absolute in above terms.”

3. Pursuant to the aforesaid order of the coordinate Bench, further enquiry was conducted. Although in pursuance of the further enquiry report several selectees ultimately came to be appointed, the petitioner was not considered for appointment. Aggrieved thereby, the writ jurisdiction of this Court has been invoked by the petitioner.

4. The prayer in this writ petition is for quashing the enquiry report and for a direction on the respondents to offer appointment to the petitioner.

5. Upon notice being issued to the respondents, an affidavit-in-reply has been filed on behalf of the respondent no. 2 (The Divisional Joint Registrar, Co-operative Societies, Nashik). Paragraphs 5 and 6 of such affidavit, being relevant for a decision on this writ petition, are quoted below:

“5. I say and submit that, 3 members enquiry committee formed by the Respondent No.2 on 16/04/2019 (page No.67) had submitted its report dtd. 09/12/2019 (page No.225) to the Respondent No.2 on 10/12/2019, wherein it was mentioned that, there is possibility of appointment of petitioner getting favoured, he being a grandson of Mr. Jagannath Devrao Ralebhat Director of Respondent No.7 Bank alongwith 3 other candidates. Hence, it

was informed to Respondent No.7 not to give an appointment to the petitioners along with other 3 candidates amongst whom two were reported by the enquiry committee having related to the either directors / office bearers or managing director of Respondent No.7 Bank.

6. I say and submit that, as an enquiry committee was formed along with an expert Mr. Jayank K. Aher (Retired State Examiner of Documents CID M.S.) on accordance with the order passed the Hon'ble High Court at Aurangabad on dtd.05/04/2019. It is true that, expert Mr. Jayank K. Aher has not mentioned anything adverse about the petitioner but the inquiry committee has specifically mentioned that, the petitioner along with 2 other candidates being related to the either directors/officer bearers or managing directors of Respondent No.7 Bank. Should not be appointed as their appointment can be favoured. It is further submitted that, rule 57 of Maharashtra Co.Op. Societies Rules 1961, there is a prohibition against being interested in contracts, there is a settled practice, rather a procedure to give an appointment letter (Subject to certain terms and conditions) to the selected candidates by the concerned establishment which would amount to a contract between that specific establishment and the candidates. Hence, petitioner being the grandson of Jagganath Relabhat director of Respondent No.7 Bank hence the Respondents has rightly stated in report that, there is possibility of appointment of getting favoured."

6. At the hearing, Mr. Thombre, learned advocate appearing for the petitioner contended that there is no evidence to suggest that the petitioner's grandfather had in any manner influenced or even attempted to influence the selectors for the purpose of inclusion of the petitioner's name in the select list. Merely on the basis of surmises and conjectures, the petitioner has been denied appointment

although other selectees have been appointed. He has, accordingly, prayed for relief as claimed in the writ petition.

7. Mr. Karlekar, learned AGP has, however, contended that the petitioner has no indefeasible right of appointment merely because his name was included in the select list prior to its cancellation. He submits that it is the requirement of administrative fairness that the recruitment process must be free from the vices of nepotism, favouritism and the like; and since the petitioner's grandfather is a director of the bank, there is every likelihood of there being means other than lawful which might have induced inclusion of the petitioner's name in the select list. He has, accordingly, prayed for dismissal of the writ petition.

8. Having heard learned advocates for the parties and on perusal of the materials on record, we are firmly of the opinion that this is not a case for interference of this Court in exercise of its extra-ordinary writ jurisdiction. Mr. Karlekar is right in his contention that a candidate for a public employment does not acquire an indefeasible right of appointment merely because his name is included in the select list/merit list.

9. In **Shankarsan Dash V. Union of India** reported in **(1991) 3 Supreme Court Cases 47**, a Constitution Bench of the Supreme Court had the occasion to observe as follows:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. ***"

10. Law, as laid down, is that the authority responsible for making appointments from the merit list/select list cannot act arbitrarily. Any decision has to be taken *bona fide* and for appropriate reasons. If indeed exclusion of the petitioner were prompted by an arbitrary act or without any reason, the Court would have to examine how far the respondents are justified in their decision to exclude the petitioner from the zone of consideration for appointment. It is not the case here that the respondents have not assigned a single reason for not offering appointment to the petitioner. The averments contained in the reply affidavit of the respondent no. 2 quoted above does suggest the reason for which the petitioner was not offered

appointment. Such respondent perceived that the possibility of inclusion of the petitioner's name in the select list being the result of favouritism cannot be totally ruled out. That, of course, is a plausible view and law is well settled that if two views are possible in a given situation and the authority adopts any one of such views, which is not an absurd or unreasonable view, the Court in exercise of its judicial review power would not substitute its view for the view taken by the authority.

11. It is based on such consideration that the writ petition is liable to fail and, accordingly, stands dismissed. No costs.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]

arp/