

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

WRIT PETITION NO.1742 OF 2010

Smt. Surekha w/o. Arvind Bhandare
@ Kerabai d/o. Madhukar Khandade ..Petitioners

Vs.

1. The State of Maharashtra
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Zilla Parishad, Latur
Through its Chief Executive Officer
4. The Selection Committee for
Anganwadi Sevika and Helper
at Anandwadi, Post. Chapoli,
Tq. Chakur, Dist. Latur
5. Suchita d/o. Chandrakant Malwade
@ Suchita w/o. Ramkishan Shelke ..Respondents

Mr.S.A.Wakure, Advocate for petitioner
Mr.S.P.Tiwari, AGP for respondent nos.1 and 2
Mr.A.V.Hon, Advocate for respondent nos.3 and 4
Mr.S.N.Patil, Advocate for respondent no.5

**CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 04, 2021
PRONOUNCED ON : MARCH 18, 2021**

ORDER :-

Heard learned counsel appearing for the parties.

2. The petitioner has filed this Writ Petition for the following main reliefs:-

D. That by making rule absolute, the judgment and order passed by respondent no.2 dated 22.09.2009 No.2008/DB/Desk-2/ZPVP/ CR-64, confirming the selection/appointment order passed by respondent no.3 and 4 in favour of respondent no.5 for the post of Anganwadi Karyakarti of Anandwadi, Tq. Chakur, Dist. Latur, may kindly be quashed and set aside and it may be held that respondent no.5 is not entitled for the post of Anganwadi Karyakarti of Anandwadi, Tq. Chakur, Dist. Latur.

E. By issuing writ of mandamus or any other appropriate writ, order or directions the respondents No.3 and 4 may kindly be directed to take steps to appoint the petitioner as Anganwadi Karyakarti i.e. Kindergarten Worker of Anandwadi, Tq.Chakur, Dist.Latur.

3. Respondent no.4 issued a proclamation-cum-advertisement dated 20.06.2008 for filling up one post each of Anganwadi Karyakarti and Anganwadi Madatnis for village Anandwadi, Tq. Chakur, Dist. Latur. Both the petitioner and respondent no.5 made applications for appointment to the post of Ananganwadi Karyakarti. The candidates were to be

subjected to a test carrying 100 marks. The details thereof had been given in the proclamation/advertisement. The documents relating to the educational qualification, caste, widowhood, etc. were required to be submitted along with the application. It was specifically mentioned in the proclamation/advertisement that no document would be received after 05.07.2008.

4. The selection committee conducted interviews/ viva-voce of the candidates on 25.11.2008. Out of 100 marks. 30 marks were reserved for interview. In all, nine candidates were to be interviewed. The petitioner secured 52.17 marks out of 100, while respondent no.5 secured 58.83 marks. Respondent no.5 has, therefore, been given appointment.

5. The petitioner preferred a representation-cum-appeal under Section 267-A of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1967, to the Divisional Commissioner, Aurangabad. She has, however, been unsuccessful therein. Hence, present Writ Petition.

6. Learned counsel for the petitioner would submit that out of 70 marks reserved for educational qualification, caste claim and other criteria, both the petitioner and respondent no.5 are shown to have secured 35 marks each. According to learned counsel, respondent no.5 had not submitted her caste certificate. Out of 70 marks, 10 marks were reserved for caste claim. The petitioner had submitted her caste certificate indicating to have belonged to Other Backward Class (O.B.C.). In spite of there having been a stipulation in the proclamation/advertisement that no certificate would be received post 05.07.2008, the authorities concerned, only with a view to favour respondent no.5, permitted her to submit her caste certificate thereafter. On subtracting 10 marks of respondent no.5 towards her caste claim, from her total marks i.e. 58.83, her total marks would come to 48.83, necessarily less than the marks secured by the petitioner. The petitioner, therefore, ought to have been given an appointment for the post.

Learned counsel would further submit that the petitioner had not been served with any communication requiring to submit her caste certificate issued by competent authority within the extended time.

In short, the petitioner claims to have been meritorious candidate but only with a view to defeat her claim for the post, the authorities concerned arbitrarily granted respondent no.5 extension of time to submit her caste certificate and on accepting the same, she was granted 10 marks, showing her to have secured highest marks. Learned counsel for the petitioner would, therefore, urge for allowing the Writ Petition in terms of prayer clauses (D) and (E).

7. An affidavit-in-reply has been filed on behalf of respondent no.5, stating therein that the petitioner had produced caste certificate issued by the Gramsevak. The Gramsevak is not a competent authority to issue caste certificate. The petitioner was, therefore, not eligible to secure the marks under the said category. In the

proclamation/advertisement, it was made clear that the candidates should produce caste certificate issued by the competent authority. Respondent no.5 had also filed caste certificate issued by the Gramsevak. The Zilla Parishad, however, extended the time for submission of the caste certificate issued by the competent authority. All the candidates were communicated said decision and were required to submit caste certificate on or before 05.11.2008. Respondent no.5 submitted the caste certificate issued by the Tahsildar – competent authority. The petitioner, however, could not submit her caste certificate within the extended time frame. She, therefore, could not be selected.

8. The petitioner secured 52.17 marks as against 58.83 marks secured by respondent no.5. Both the petitioner and respondent no.5 belong to O.B.C. category. Ten marks were reserved for caste claim. If both of them had submitted respective caste certificate issued by the competent authority, both of them could have been granted 10 marks each. The petitioner and respondent no.5 had initially submitted their

caste certificate issued by the Gramsevak. The Gramsevak is not a competent authority to issue caste certificate. The Chief Executive Officer, Zilla Parishad – respondent no.1 took a decision to extend the time for submitting caste certificate. The time was extended upto 05.11.2008. There are no averments in the petition that the petitioner had not been issued a communication informing her about extension of time to submit caste certificate. It is only during the arguments, learned counsel for the petitioner came with such a stand. It appears that the same argument had also not been advanced before the Divisional Commissioner.

9. The candidates were required to submit their caste certificate issued by either Tahsildar or Sub Divisional Officer. It is respondent no.5, who could submit her caste certificate within the extended time. The petitioner, however, could not submit her caste certificate, issued by the competent authority, on or before the extended date. The petitioner could secure her caste certificate issued by the District Resettlement Officer, Latur, on 05.01.2009 i.e. beyond the extended period for

submission of the caste certificate. Since respondent no.5 could submit her caste certificate within the extended time frame, she has been given 10 marks for her caste claim. Total marks secured by her are, thus, more than the marks secured by the petitioner. Respondent no.5, accordingly, came to be selected for the post and given the appointment. She is serving on the post of Anganwadi Karyakarti since 2009 till date. As such, the petitioner could not make out her case, as has been averred in the petition. The petitioner is, therefore, not entitled for the reliefs claimed.

10. The Writ Petition, thus, fails and the same is, therefore, dismissed.

[R.G. AVACHAT, J.]

KBP