

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

PUBLIC INTEREST LITIGATION NO. 108 OF 2021

Shri Tilak Gopinath Bhos,
and another

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Mr. Aniruddha A. Nimbalkar, Advocate for the Petitioners.
Mr. A. R. Kale, AGP for Respondents-State.

**CORAM : S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATED : 11th MARCH 2022.

PER COURT:-

. The petitioners are challenging the report/opinion submitted by the State Examiner of Documents, C.I.D., Maharashtra State, Mumbai along with its covering letter. So also seek directions to set aside the report submitted by the enquiry squad.

2. Mr. Nimbalkar, learned counsel for the petitioners submits that this Court under judgment and order dated 05.04.2019 in Writ Petition No. 8811 of 2018 had partly set aside the decision of the Divisional Joint Registrar, Co-operative Societies, Nashik Region, Nashik cancelling the select list viz. recruitment conducted for employing the employees in respondent No. 4 – Bank. This Court under the said

order directed enquiry to be conducted. Pursuant to the same, enquiry was conducted and the report is submitted. The learned counsel further submits that the said enquiry report suffers from large scale illegalities. The said enquiry is conducted in slipshod manner without adhering to the basic principles. The illegalities are perpetuated instead of rectifying. The present public interest litigation is filed to bring on record the illegalities in the enquiry report. The enquiry is conducted in a manner to secure the appointments of candidates, whose selections were earlier cancelled and protect the concerned officers.

3. It was wrong on the part of respondent No. 2 to have suggested the names of the agencies to respondent No. 3. The same appears to have been suggested as per the will of the respondent-authorities. The investigation is not conducted by the respondents with the aid of Forensic Scientific Laboratory. The enquiry squad ought to have taken assistance of Forensic Scientific Laboratory for conducting investigation. The same is not done. The handwriting related investigation is conducted by the Crime Investigation Department. There are further large scale illegalities, which requires consideration by this Court. Only because this Court had framed time stipulation that does not give liberty to the respondents to do away with basic

investigation.

4. The learned counsel submits that earlier four member committee had come to the conclusion that carbon copies of answer-sheets had been tampered with, however carbon copies of the answer-sheets are examined by Mr. Aher. In view of the large scale illegalities committed, this Court can interfere. The irregularities and illegalities are in public employment and this Court can certainly entertain the public interest litigation. The learned counsel relies on the judgment of the Jharkhand High Court in a case of *Budh Deo Oraon Vs. State of Jharkhand & Ors.* reported in *2012 SCC online Jhar 652*.

5. The learned A.G.P. submits that the public interest litigation would not be tenable in service matters. There is a criminal case filed against the petitioner. The same also requires to be considered. The public interest litigation is not bonafide one. The same cannot be entertained. Reliance is placed by the learned A.G.P. on the judgment of the Apex Court in a case of *Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors. dated 14.12.2004 in Special Leave Petition No. 26269 of 2004* and the judgment of the Apex Court in a case of *Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors. dated 30.08.2010 in Civil Appeal No. 7165 of 2010*.

6. The recruitment process for selecting the employees of various posts was undertaken by the respondent No. 4. After the selection process was over the same was cancelled on the ground that large scale illegalities have been committed. The order of cancelling the selection process is assailed before this Court by filing Writ Petition No. 8811 of 2018 and other connected writ petitions. The writ petition was filed by the respondent No. 4 and other selected candidates. This Court considered the petition on merits and pass the following order.

ORDER

- “(i) Writ Petition No. 8811/2018 is partly allowed.*
- (ii) The impugned decision dated 28.02.2018, canceling 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 scrutinize 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 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.”

7. Under the said judgment, the cancellation of select list to the extent of 36 candidates selected for the post of Junior Officers, mentioned at page No. 289 of the enquiry report - Part I was upheld. It was further directed that the respondent No. 3 therein shall again scrutinize the entire record of these candidates and take a final decision about their selection within a period of six (06) months and the cancellation of their selection was set aside.

8. Pursuant to the order of this Court, the enquiry committee was constituted. The enquiry was conducted and fresh decision was taken. Thereafter appointments of some of the candidates were upheld and selection of some of the candidates is cancelled. It is the said enquiry report under challenge.

9. This Court would not sit in an appeal over the enquiry report. This Court would be concerned with the decision making process, rather than the decision itself.

10. The enquiry has been conducted by the committee. The said

enquiry report, it appears, is accepted by the authority and thereafter the appointments are issued to those persons whom the enquiry committee found to be eligible.

11. It is not the case of the petitioners that those persons selected and appointed do not possess basic qualification or experience as per the advertisement. The grievance of the petitioners appears to be about disparity in the answer sheets, relations of the selected candidates with the Director and other aspects. The enquiry committee has gone through the same. It would be inappropriate to exercise the jurisdiction under Article 226 of the Constitution of India to sit in an appeal over the said enquiry report and reconsider the entire enquiry report as an appellate authority.

12. On the aforesaid premise, we are not inclined to entertain the present public interest litigation.

13. As we are not inclined to entertain the public interest litigation for the aforesaid reasons, we have not entered into rigmarole as to the maintainability of the public interest litigation.

14. In the light of the above, public interest litigation is disposed of.
No costs.

15. We have not entertained the public interest litigation on merits. In view of the above, an amount of Rs. 1,00,000/- (Rs. One Lakh only) deposited by the petitioners is allowed to be withdrawn by the petitioners.

(S. G. DIGE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.