

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

WRIT PETITION NO. 7147 OF 2023

VARSHA BHAGWAN RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. ^{...}Vijaykumar C Patil (Ashtekar)
AGP for Respondent/s – State : Mr. A.S. Shinde
Advocate for Respondent Nos. 2 & 5

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATED : 28 JUNE 2023

PER COURT :

1. Heard both the sides finally at the stage of admission.
2. The respondent no. 2 published an advertisement on 23 August 2022, for filling up the vacant post *inter alia* of Mini Anganwadi Sevika in Taluka Loha, District Nanded. The applications were invited. The petitioner applied for Mini anganwadi sevika for Samaiktana Anganwadi, Taluka Loha, District Nanded. Examination was conducted and marks were given. It is the case of the petitioner that a select list was prepared containing two names, one of them was disqualified and being the only surviving candidate, she ought to have been appointed pursuant to the Government Resolution dated 02 February 2023.

3. Learned Advocate for the petitioner submits that since the petitioner's name figured in the list of eligible candidates and petitioner being the sole candidate who was eligible, by default she ought to have been given appointment. Clause 5 of the Government Resolution dated 13 August 2014, only contemplates a situation where there is only one candidate applying for the post, whereupon, another recruitment process is expected to be undertaken by publishing a fresh advertisement. He would further submit that eligibility or otherwise of the candidates is immaterial. There were two candidates. She alone being a valid candidate ought to have been given appointment.

4. Learned Advocate Mr. Pulkundwar, would advert to the same clause 5 of the Government Resolution dated 13 August 2014, and would submit that the wording is unambiguous and admits of a contingency where there is only one eligible candidate responding to the first advertisement. He would submit that the other person who had applied in the process in which the petitioner had applied was found to be ineligible. Consequently, pursuant to these directions / guidelines, it was imperative to issue a fresh advertisement and undertake a fresh process. He would further submit that a subsequent Government Resolution dated 02 February 2023, has been issued, and in clause no. 4, a further contingency is contemplated wherein, in the second

process also if there is only one eligible candidate, providing for a third advertisement.

5. Learned Advocate for the petitioner would submit that second advertisement published by the respondents is behind the petitioner's back. She was neither informed as to what had happened about the first process, nor was she called upon to apply afresh. She has not been intimated if her earlier candidature would be considered, even for the second recruitment process.

6. It is indeed a sorry state of affairs. Respondents are undertaking the recruitment process. The Government Resolution provides for a situation where there is only one eligible candidate requiring another recruitment process. Now by the latest Government Resolution even a third recruitment process has been contemplated if there is only one eligible candidate who applies in the first and the second process. These Government Resolutions are absolutely silent as to what would happen to the sole candidate who was eligible and had applied in the previous process, whether his candidature would be valid even for the fresh recruitment process or whether he would be required to apply again. It is indeed a gray area which the authorities ought to address.

7. However, admittedly, the second recruitment process is on and the last date for submission of applications is 04 July 2023, and the petitioner if she so intends can apply again instead of running any risk.

8. As far as merits are concerned, the whole purpose of providing Clause 4 for undertaking the second recruitment process if there is only one valid / eligible candidate, to our mind appeals to reason. Since it is a matter of recruitment, obviously, it is expected that there should be some competition. In case, there is only one eligible candidate then, an opportunity is required to be given to the employer to select a proper candidate to put an end to selection process. It is in all probability to face such eventuality that this clause provides successive recruitment where in the previous recruitment, there is only one eligible candidate. Since it is a matter of recruitment in a public employment, a sole candidate who has been found eligible like the petitioner in the first round cannot as of right claim any appointment.

9. If the respondents have decided to undertake a fresh recruitment process pursuant to the clause no. 4 of Government Resolution dated 02 February 2023, their decision cannot be faulted with. The G.R. could have been comprehensive so as to include the

candidate who had applied in the first process and was found to be eligible. The authorities may address the gray area and seal the hole. However, that does not render the petitioner entitled to claim appointment as of right.

10. The petition is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

SPChauhan