

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

928 WRIT PETITION NO. 9243 OF 2015

Shilpa Sunil Khillare,

...PETITIONER

VERSUS

1. The State of Maharashtra, ...RESPONDENTS
Through Secretary in the Department,
of Women and Child Welfare, Mantralaya
Fort, Mumbai-32
2. The Divisional Commissioner,
Aurangabad Division at Aurangabad
3. The Chief Executive Officer,
Zilla Parishad, Hingoli
4. The Child Development Officer,
Integrated Child Development
Project Officer at Akhada Balapur
Akhada Balapur, Tq. Kalamnuri
Dist. Hingoli
5. Smt. Vandana Dhondiba Narwade

Mr. Amit A. Mukhedkar, Advocate for the petitioner
Mr. B. A. Shinde, Advocate for the respondent No. 3 and 4
Mr. S. B. Pulkundwar, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 24th JULY, 2023

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1. Heard the parties for sometime.
2. The petitioner is aggrieved by the order passed by the learned Chief Executive Officer, Zilla Parishad, Hingoli dated 24-04-2015 and the order passed by the learned Divisional Commissioner, Aurangabad dated 24-07-2015 by which the order dated 24-04-2015 passed by the learned Chief Executive Officer is confirmed.
3. There is a short history behind this matter. The petitioner came to be appointed as Anganwadi Sevika. In the selection process the petitioner secured 58.25 marks. Three marks were added to her as she produced certificate showing that she belongs to Scheduled Caste. Respondent No. 5 had also taken part in selection process. She secured 56 marks plus additional two marks as she happens to be a widow. Since the additional marks were given to the petitioner, she got more marks than respondent No. 5 and petitioner was appointed on

the post of Anganwadi Sevika. Respondent No. 5 lodged the complaint with the authorities stating that the petitioner does not belong to scheduled castes and the certificate produced by her was forged. In view of the complaint hearing was given and enquiry was conducted. The learned Chief Executive Officer rejected the complaint of respondent No. 5 by order dated 28-06-2021. Respondent No. 5 therefore carried the matter to the learned Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad by order dated 22-03-2023 partly allowed the appeal and the learned Chief Executive Officer, Hingoli was directed to verify as to whether respondent No.5 is widow and then to allot the additional two marks. The learned Chief Executive Officer, Hingoli held an enquiry and held that even after allotting two additional marks to respondent No. 5 her marks come to 58 and petitioners marks would be 58.25 and informed that appointment of respondent No. 5 cannot be made. This was informed by letter dated 25-03-2014.

4. Respondent No. 5 thereafter approached this court

by filing writ petition No.3988/2014. This court disposed off the writ petition. In the judgment this court observed specifically that certificate dated 25-02-2009 bearing outward no. 2009/Caste/S.C./CR/7888/2310 was not genuine one and said certificate was never issued in favour of the petitioner. This court, further directed the learned Chief Executive Officer, Hingoli to decide the matter afresh to the extent of caste certificate produced by the petitioner and as to whether it was necessary to produce the said certificate at the time of appointment itself and as to whether that was mandatory. Para 10 of the said judgment is as below:-

“10. As such, it will be appropriate to remand the matter to the respondent No. 4-Chief Executive Officer, Zilla Parishad, Hingoli, who is directed to decide the challenge by the present petitioner afresh qua the caste certificate produced by respondent No. 6 at the time of her selection and appointment, in the light of the observations made hereinabove. The said authority shall also apply its mind to the fact as to whether produce of caste certificate was mandatory or not.”

5. Thus, after remand, the Chief Executive Officer, Zilla Parishad passed fresh order after conducting an enquiry and it is conclusively held that certificate dated 25-02-2009 was forged.

It is also further held that certificate is necessary to be produced at the time of selection itself. The learned Chief Executive Officer by order dated 24-04-2015 cancelled appointment of petitioner and appointed respondent No.5 who was in waiting list to the post of Anganwadi Sevika on careful scrutiny of the matter.

6. The petitioner challenged the order before the Divisional Commissioner, Aurangabad who confirmed the order dated 24-04-2015 passed by the learned Chief Executive Officer, Hingoli and rejected the appeal of the petitioner. It is thus, the petitioner is before this court.

7. It is the main submission of the petitioner that the learned Chief Executive Officer, Hingoli is not the authority to decide the caste status of a person. It is only for caste scrutiny committee to verify the caste papers of the persons who claims to belong to a particular caste or tribe. He relies upon the judgment passed by this court in the case of Vilas Rambhau

Majrikar Vs State of Maharashtra reported in 2016 (1) MHLJ (Cri) 136. He thus, submits that it was found that when certificate was found to be bogus he had submitted another certificate in 2011 in absence of rules or in absence of such clause in the advertisement. It cannot be said that it was necessary for the petitioner to produce a caste certificate at the time of appointment itself. Another submission is that the petitioner thereafter had produced certificate in 2011 and that should have been considered by the authorities. Ultimately it is the submission that the impugned order be set aside and petitioner be given appointment.

8. Learned advocate for respondent No. 5 vehemently opposed the petition. He submits that it is stated in the GR dated 05-08-20210 in clause 3 that it is necessary to verify the documents within 10 days after preparing the list of eligible candidates and display on the noticeboard. In clause 7 also it is necessary to make a complaint of suspicious documents to the higher authorities. He further drawn attention that if certificate

produced itself was found to be forged, there was no question of verification of such certificate. If three marks are reduced from the marks of the petitioner then she had secured more marks. In the enquiry she has produced certificate showing that she lost her husband in the year 2001 and i.e. rightly considered by the authorities. After remand the learned Chief Executive Officer, Hingoli has rightly considered the aspect and held that it was necessary at the time of appointment to verify caste certificate.

9. Learned advocate for respondent Nos. 3 and 4 submits that the authorities have rightly considered the matter after remand and no illegality is found. He also points out that criminal case is also lodged against the petitioner on the basis of order passed by the learned Chief Executive Officer, Hingoli dated 24-04-2015 for producing forged caste certificate. The petitioner had approached this court by filing criminal application No.3998/2015 for quashing of the said complaint. This court however, rejected that application also. He further submits that no interference is called for.

10. Learned AGP supports the order passed by both the authorities.

11. This court has considered the main submission of the petitioner that the authorities does not have power to decide the caste status of the petitioner in view of the judgment in the case of Vilas Rambhau Majrikar (supra). This court finds that there is no dispute about said proposition. Question in this case was as to at which stage the certificate is required to be produced. This court while remanding the matter had also directed the authorities specifically that as to what is appropriate stage for submitting the documents. This court finds that authorities have rightly considered the issue and have answered the same correctly. It is necessary while allotting the additional marks to have a tangible proof of caste status of the person. Once certificate issued and itself is found to be bogus there cannot be any question considering the certificate for allotting the marks. Second submission of the petitioner that in 2011 she had

produced another certificate and that certificate should have been considered does not have any substance. It is the authorities who need to consider the certificate which is already produced on record or submitted alongwith application. The petitioner cannot adopt two stands that either earlier certificate was correct or subsequent certificate was correct. His submission that in the advertisement there was nothing to specify as to when certificate is to be produced. It is the authority to decide as to when the certificate is to be produced. This court finds that submission of the petitioner therefore does not deserve any consideration. So far as the submission of respondent No. 5 are concerned, this court finds merit in the submission that once documents filed by the petitioner itself was found to be forged, then there was no question of considering the caste status for granting additional marks. Respondent No. 3 has rightly held that if additional marks are reduced from the marks of the petitioner, then it is respondent No.5 who secured more marks than the petitioner and therefore, her appointment is rightly made.

12. Considering the other submissions of the learned Advocate Mr. Shinde and learned AGP, no interference is called for in the impugned orders. The petition, therefore stands dismissed.

13. No order as to costs.

[KISHORE C. SANT, J.]

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