

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

913 WRIT PETITION NO.10055 OF 2022

**YOGESH SUPPADSING BAMHNAVAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

AND

914 WRIT PETITION NO.10139 OF 2022

**BHARATSING RAMSING DEHANGAL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

AND

915 WRIT PETITION NO.10150 OF 2022

**SHUBHAM NARAYAN RAJPUT
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

AND

916 WRIT PETITION NO.10155 OF 2022

**AKASH TRYIMBAK NAGLOD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

AND

917 WRIT PETITION NO.10159 OF 2022

**SANDIP DEVCHAND GHUSINGE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

AND
918 WRIT PETITION NO.10169 OF 2022

KAILASH JAYSINGH GHUNAWAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

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Mr. S. S. Thombre, Advocate for Petitioners
Mr. P. S. Patil, Mr. V. M. Kagne, AGPs for Respondent No.1
Mr. A. B. Kadethankar, Advocate for Respondent No.2

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CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 07.11.2023

PER COURT :-

1. All these Petitioners are identically placed, since they had appeared for the examination held as a part of the selection process for filling in the post of Civil Engineering Assistant and Junior Clerk-cum-Typist. It is undisputed that all these Petitioners are in the merit list. It is also undisputed that the appointments to the said posts have already commenced.

2. The ground raised by the Maharashtra Housing and Area Development Authority (MHADA) is that, these Petitioners have indulged in unfair examination practices and F.I.R. has been

registered against all of them. The learned Advocate for the Petitioners submits that no offence can be made out considering the contents of the F.I.R.

3. Shri Kadethankar, the learned Advocate representing the MHADA has placed before us a ready reference chart pertaining to the Writ Petition numbers, the names of the Petitioners and the offences that they are charged with. We are reproducing the said chart, verbatim, here under:-

W.P. No.	Petitioner	Offence charged
10528 of 2022	Dayanand Bondar (Jr. Clerk/Typist)	Engaged dummy candidate (THIS WP IS ALREADY DISMISSED)
10155 of 2022	Akash Naglod (Civil Engg.Asst.)	Log details suspicious. Solved 43 questions during first hour and 256 in later hour
10150 of 2022	Shubham Rajput (Civil Engg. Asst.)	Log details suspicious. Solved '0' questions in 1 st hour, and 171 questions in later. Visited restroom prior to examination and also during the examination. (THIS WP IS ALSO DISMISSED)
10156 of 2022	Ravikant Jadhavar (Civil Engg. Asst.)	Engaged dummy candidate (THIS WP IS ALSO DISMISSED)
10169 of 2022	Kailas Ghunawat (Civil Engg. Asst.)	Log details suspicious. Solved '0' questions in 1 st hour, and 171 questions in later. Visited restroom prior to examination. Noticed in CCTV to have deposited something in the pocket

10159 of 2022	Sandip Ghusinge (Civil Engg. Asst.)	Log details suspicious. Solved 30 questions in 1 st hour and 103 questions in later. Visited restroom prior to examination.
10139 of 2022	Bharatsing Dehangal (Jr. Clerk/Typist)	Log details suspicious. Solved 55 questions in 1 st hour, and 153 questions in later. Visited restroom prior to examination.
10055 of 2022	Yogesh Suppadsing Bhamnavat (Jr. Clerk/Typist)	Log details suspicious. Solved 02 questions in 1 st hour, and 147 questions in later. Visited restroom prior to examination.

4. Insofar as the two candidates, namely Dayanand Bondar (Writ Petition No.10528 of 2022) and Ravikant Jadhavar (Writ Petition No.10156 of 2022), we have already dismissed their Petitions, since the FIR contains a serious allegation that a proxy candidate (dummy candidate) had appeared for the said exam in place of these two candidates.

5. The MHADA has preferred an affidavit-in-reply through Mandar Shrikant Vaidya, Chief Officer, Aurangabad Housing and Area Development Board, dated 03.08.2023, wherein, he has stated in paragraph Nos. 11 and 12 as under:-

“11. In the instant case also it is submitted that since the present petitioner and other petitioners are undergoing police investigation (supra), their performance shall be considered for selection as per their individual merit and subject to the fulfillment of other requisite criterion if they are found not

guilty in the investigation.

12. Any candidate who is undergoing police investigation if found not guilty, shall be considered 'only if his/her performance is found above the last merit candidate presently selected in respective category/cadre' and 'if such candidate is not otherwise disqualified/ineligible or doesn't comply other requisite criterion for the purpose of appointment on the respective post'."

6. Shri Kadethankar, reiterates on instructions, that if these candidates are found to be innocent and are acquitted, MHADA would create posts for them in order to recruit them on the respective posts with regards to which they have passed their exams.

7. He places reliance upon a judgment delivered by the Hon'ble Supreme Court in ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya – (2021) 10 SCC 136***, most specifically paragraph No.12, which reads as under:-

"12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false

declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

8. It is quite obvious from the reproduced paragraph as above, that the case before the Hon'ble Supreme Court was with regard to a candidate having made a false declaration and had not disclosed that he was involved in a criminal case. It was, therefore, ruled that if the facts are brought before the Court, the prospective employer could consider whether such a candidate deserves to be inducted in service and in such circumstances, an employer cannot be forced to continue such an employee. These facts are quite different from the facts before us.

9. Shri Kadethankar has then cited the judgment delivered by the Hon'ble Supreme Court in the matter of ***Commissioner of Police and another Vs. Umesh Kumar – (2020) 10 SCC 448***. He draws our attention to paragraph 14, which reads as under:-

*“14. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In **Punjab SEB vs. Malkiat Singh- (2005) 9 SCC 22**, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:*

*“4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in **Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95]** which reads: (SCC pp. 50-51)*

“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. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”
(emphasis supplied)”

10. Even while considering the facts in **Umesh Kumar** (supra), what has been ruled by the Hon'ble Supreme Court is, that selection does not give a right to appointment to any candidate. In the case before us, the issue is that these Petitioners, though are in the merit list and are eligible to be appointed as per the affidavit filed by MHADA, they are not being considered for certain reasons which are reproduced in the chart herein above.

11. As such, the Petitioners pray to this Court to consider the grounds on which they are not being considered for appointment. The same are as under:-

(a) In the case of Akash Trymbak Naglod, the allegation is that he solved 43 questions in the first hour and 256 questions in the next hour. It is conceded that he did not leave the examination hall any time. We wonder whether this can be an allegation in relation to an examination malpractice.

(b) In the case of Shubham Narayan Rajput, MHADA contends that he did not solve any question in the first hour and he solved 171 questions in the second hour. It is conceded that he visited the wash room, prior to the examination and also during the examination. It is, therefore, contended that after he visited the wash room and returned back to the examination hall, he could attempt 171 questions. Considering this allegation, we would not be considering this case (Shubham Rajput) and **the Writ Petition no.10150 of 2022**, does not deserve consideration

(c) In the case of Kailash Jaysingh Ghunawat, MHADA contends that he did not solve a single question in the first hour and attempted 171 questions in the next hour. The CCTV footage indicates that he had put something in his pocket and had visited the wash room before coming to the examination hall. It is conceded that no objectionable material was noticed or recovered from him.

(d) In the case of Sandip Devchand Ghusinge, he had visited to wash room prior to the commencement of the examination. He attempted 30 questions in the first hour and 103 questions in the second hour.

(e) In the case of Bharatsing Ramsing Dehangal, he had visited the wash room before commencement of the exam, had attempted 55 questions in the first hour and 153 questions in the second hour.

(f) In the case of Yogesh Suppadsing Bamhnavat, he had visited the wash room prior to the examination, had attempted 02 questions in the first hour and 147 questions in the second

hour.

12. In view of the above, it is quite clear that none amongst Akash Trymbak Naglod, Kailash Jaysingh Ghunawat, Sandip Devchand Ghusinge, Bharatsing Ramsing Dehangal, and Yogesh Suppadsing Bamhnavat, had visited the washroom any time during the examination. Neither of them had left the examination hall even once during the entire two hours examination period. Admittedly, none were found carrying any objectionable material in their pockets or on their body. None were found carrying any electronic gadgets with them inside the examination hall.

13. We wonder, what offence can be made out against these persons.

14. The learned Advocate Shri Kadethankar had urged us to bear in mind only one aspect that the F.I.R. has been registered by MHADA. He concedes that the above recorded facts are set out in the F.I.R.. The complaint in the FIR is that they had visited the wash room before entering the examination hall. The learned Advocate for the Petitioners is right in questioning as to whether it could be any offence for a student to go to the wash room before entering the

examination hall. It is not that any of these candidates left the examination hall during the examination, after reading the question paper and after commencing the answering the said question paper.

15. We cannot ignore the fact that all these Petitioners are young candidates who are trying to make a future for themselves. They have sincerely attempted the examination. Not being able to solve many questions in the first hour and solving more questions in the second hour without leaving the examination hall for a single minute and without there being any allegation of carrying any objectionable material on their body or any electronic gadgets, terming such candidates as having indulged in unfair examination practices, is a far fetched contention by the MHADA.

16. The MHADA has filed an affidavit saying, if these candidates are acquitted from the charge levelled upon them, they will be accommodated on the available seats. This would take years. Their career would be destroyed until then. The rigours of litigation would demoralise them. We cannot be insensitive to such circumstances.

17. The learned Advocate for the Petitioner submits that this

would not not only take years, but would also place these Petitioners in the age bar category, Having not committed any offence, MHADA has registered an F.I.R. against them.

18. Considering the above, we find that the case of MHADA against these Petitioners that because they had gone to the wash room before entering the examination hall and because they took varied times for answering questions in the first hour and the second hour, though they had never left the examination hall, does not characterise unfair examination practice. We are unable to be convinced by such contentions of MHADA. If such contentions are accepted, the students will lose faith in such examinations. Going to the wash room before entering the examination hall/premises can never be an offence. A candidate solving 50 questions in one hour and 100 questions in the second hour when all the questions were Multiple Choice Questions (MCQ), through an online process, cannot be said to be an unfair examination practice.

19. In view of the above, **the Writ Petitions** filed by Akash Trymbak Naglod (**W.P./10155/2022**), Kailash Jaysingh Ghunawat (**W.P./10169/2022**), Sandip Devchand Ghusinge (**W.P./10159/2022**), Bharatsing Ramsing Dehangal (**W.P./10139/2022**), and Yogesh

Suppadsing Bamhnavat (W.P./10055/2022), **are partly allowed.**

20. We direct Respondent No.2 MHADA, to consider the candidature of these petitioners in their recruitment process and based on their rank in the order of merit and availability of posts, they may be considered by following the due procedure applicable in the said recruitment process, in the event there is no other legal impediment in the path of these candidates.

21. The learned Advocate for the Petitioner Shubham Narayan Rajput, submits that, he desires to withdraw this Petition in the light of the affidavit filed by MHADA and he would take recourse to available remedies as may be permissible in law. As such, the Writ Petition of Petitioner Shubham Narayan Rajput (W.P./10150/2022), **is disposed off as withdrawn.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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