

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13993 OF 2018

Ganesh Balaji Wavdhane & Ors.

....Petitioners

Versus

The Hon'ble High Court of Judicature
at Bombay, Through its Registrar
General (Administration) & Ors.

....Respondents

Appearances :

Mr. Taher Ali Quadri, i/b. Ansari Sahed Ali Inayat Ali for Petitioner in WP/13993/2018.

Mr. Rahul Nerlekar, for Respondent No.1, 3 & 4.

Mr. P. P. Kakade, GP a/w. Mr. N. K. Rajpurohit, AGP for State.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 20 JULY 2023.

ORDER : (*Per – Sandeep V. Marne, J.*) :

This petition is filed by 3 aspirants to the post of Stenographer (Lower Grade) in Nanded District Court. They are aggrieved by their non-selection for appointment to the post of Stenographer (L.G.). They are also aggrieved by selection and appointment of Respondent Nos.5 to 8 on that post.

2. Facts of the case are that an advertisement was published by the Bombay High Court on March 28, 2018, inviting applications for filling up 1921 posts of Stenographer (L.G.), Senior Clerks and Peons / Hamal on establishments of City Civil Court-Mumbai, Chief Metropolitan Magistrate-Mumbai, Small Causes Court-Mumbai and various District Courts. The advertisement included 26 posts of Stenographer (L.G.), selection to which is the subject matter of challenge in the present Petition. Selection for appointment to the post of Stenographer (L.G.) comprised of three stages of (i) shorthand dictation test (ii) typing tests in English and Marathi and (iii) interviews.

3. Petitioners and Respondent Nos. 5 to 8 applied in pursuance of advertisement for appointment to the post of Stenographer (L.G.) in Nanded District Court. It appears that 33 candidates were shortlisted amongst the applicants for the post of Stenographer (L.G.). On July 28, 2018, English dictation test of shortlisted candidates was conducted. The local language dictation test was held on July 29, 2018. The result of the English dictation test and local language dictation test was declared on the website on August 1, 2018, under which 22 candidates including Petitioners and Respondent Nos. 5 to 8 was declared successful. They were called upon to appear in Marathi Typing Test which was scheduled to be held on August 05, 2018. Candidates who passed the Marathi Typing Test was immediately subjected for English Typing Test held on the same day i.e. August 05, 2018. The result of the English Typing Test was declared on August 08, 2018. The Petitioners passed both Marathi as well as English Typing Test. The Petitioners were subjected to interview held on August 12, 2018.

4. Petitioners allege that only 17 candidates were available for being subjected to interview as against 26 posts of Stenographer (L.G.). They allege that Respondent Nos.5 to 8 had failed in the Marathi and English Typing Test and were therefore not eligible to be called for interview. However, they were illegally subjected to interviews. That in the select list prepared, names of Petitioners were missing whereas names of Respondent Nos.5 to 8 figured in the same. Petitioners are accordingly aggrieved by their non selection for appointment on the post of Stenographer (L.G.). They also aggrieved by selection and appointment of Respondent Nos.5 to 8 as Stenographer (L.G.).

5. Appearing for the Petitioners, Mr. Taher Ali Quadri the learned counsel would submit that entire selection process is vitiated on account of changing the rules of the game during currency of selection. He would submit that though Respondent Nos.5 to 8 had failed in English and Marathi Typing Test, the passing standard for them was relaxed thereby facilitating their entry in interview process. That being failed in the Marathi and English Typing Tests, Respondent Nos.5 to 8 were not eligible to be considered in the further selection process. That though Petitioners cleared all other stages of selection, they were shown unsuccessful in the interview process for the purpose of denying appointment to them. As against this, despite their failure in the earlier process of selection, Respondent Nos.5 to 8 were erroneously called for interview, and shown to have cleared the same. That therefore entire process of selection is required to be set aside. In support of his contention, he would rely upon the judgment of the Apex Court in **Rejkumar and Ors. Vs. Shakti Raj**, AIR 1997, SC 2110 and **Krishna Yadav and Ors. Vs. State of Hariyana**, 1994 Supreme Court 2166.

6. Mr. Nerlekar, the learned counsel appearing for High Court Administration would oppose the petition. He would submit that the entire selection process has been conducted in a transparent manner. That due to non-availability of sufficient candidates, the shortlisting criteria was relaxed. That Petitioners have failed in the interview by securing only 1, 2 and 4 marks respectively out of 20 marks and that therefore they have no right to challenge the selection process. That though Respondent Nos.5, 7 and 8 had qualified benchmark set up by the High Court for Marathi Typing Test, but they failed to clear the benchmark set up by Recruitment Committee, Nanded (30% of marks). Therefore they were not called for English Typing Test. Respondent No.6 failed to secure 30% marks in Marathi Typing Test however she had qualified the benchmark set up by the Bombay High Court. However the cases of Respondent No.5 to 8 were referred to High Court and the High Court given directions for permitting Respondent No.5 to 8 to participate in the interview process. Since Respondent Nos.5 to 8 secured qualifying marks in the interview, they came to be selected and appointed on the post of Stenographer (L.G.).

7. Mr. Nerlekar would further submit that Petitioners have no locus to question selection of Respondent Nos.5 to 8. That the issue of selection of Respondent Nos.5 to 8 is academic in view of Petitioner's failure to clear interview. That therefore even if names of Respondent Nos.5 to 8 were to be deleted from the select list, the same would not facilitate entry of Petitioners therein. He would therefore pray for dismissal of the petition.

8. Having considered the submissions canvassed by both the sides, the two issues that arise for our consideration are whether non-selection of Petitioners is valid and whether the entire selection process is vitiated on account of participation by Respondent Nos. 5 to 8 in interviews despite their alleged failure in typing tests.

9. The present petition is concerns filling up of 26 posts of Stenographer (L.G.) in Nanded District Court. As against 26 posts of Stenographer (L.G.) advertised, only 12 posts have actually been filled up as requisite numbers of eligible candidates could not clear the selection process.

10. We proceed to examine first issue of Petitioners' non-selection. The High Court Administration in its Affidavit-in-Reply has pleaded that out of 20 marks allotted for interviews, Petitioners have secured only 1, 2 and 4 marks respectively and that none of them had secured 30% passing marks. Since they failed in the interview, their names are not entered in the select list. Petitioners have not disputed this fact. No case is set up that they were entitled to score more marks than the ones awarded by the interview committee. Petitioner have not raised allegations of *malafides* against members of the interview committee. It is not that the selection process comprised only of interview. In that view of the matter, names of the Petitioners have rightly not been included in the select list on account of their failure to clear interview. We therefore do not find any error in non-selection of Petitioners.

11. Being conscious of the position that they have failed in interviews leading to their non-selection, Petitioners have resorted to the other ground of attacking the entire selection process contending that permitting failed

candidates (Respondent Nos. 5 to 8) to participate in interviews has vitiated the entire selection process.

12. Turning to the second issue selection of Respondent Nos.5 to 8, we find that Petitioners cannot be permitted to raise said issue. As observed above, out of 26 advertised posts, only 12 posts have ultimately filled up leaving 14 posts of Stenographer (L.G.) vacant. Thus, it is not a case where entry of Respondent Nos.5 to 8 in the select list has resulted in denial of appointments to Petitioners. There were sufficient vacancies left to secure Petitioners' appointments, if they were to pass entire selection process. Though Petitioners cleared Shorthand Dictation Test as well as Marathi Typing Test and English Typing Test, they were required to independently secure passing marks (30%) in the interview as well. As stated by the High Court Administration in its affidavit, they secured only 1, 2 and 4 marks respectively in the interviews. Since Petitioners have not cleared interviews, they cannot be appointed on the post of Stenographer (L.G.). Therefore, the challenge set up by them to selection of Respondent Nos.5 to 8 becomes apparently academic. In our view, therefore validity of selection and appointment of Respondent Nos.5 to 8 cannot be determined in the petition filed by Petitioners.

13. Even if we were to ignore the objection of Petitioners' failure in the oral interview while testing validity of appointments of Respondent Nos.5 to 8, we do not otherwise find any error in permitting Respondent Nos.5 to 8 in the interview process. The High Court Administration, in its affidavit, has pointed out that Respondent Nos.5 to 8 had qualified the benchmark set up by the High Court. It appears that the Recruitment Committee, Nanded had

set up its own criteria of cut of marks for clearing English Typing Test and Marathi Typing Test. Since the Respondent Nos.5 to 8 qualified the benchmark set up by the High Court, they have been permitted to appear in the interview. We therefore do not find any error in the action of the High Court Administration in permitting Petitioners to participate in the interview process.

14. The learned counsel for the Petitioners has placed reliance on the judgment of the Apex Court in **Raj Kumar** (supra), in paragraph No.16 whereof it is held as under:-

“16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal v. State of J and K*, (1955) 3 SCC 486 : (1955 AIR SCW 1109) and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

15. In *Raj Kumar*, the issue before the Apex Court was about the permissibility to challenge the selection process by candidates after participation in the same. The Apex Court held that since there were glaring illegalities in the selection process, the candidates could challenge the same even after participation therein. However, the issue involved in the present petition is altogether different than the issue in *Raj Kumar*. Therefore the judgment in *Raj Kumar* has no application to the present petition.

16. The learned counsel appearing for the Petitioners has also relied upon judgment of the Apex Court in **Krishna Yadav** (Supra), paragraph 18 to 21 whereof reads thus -

“18. It may not be too much to draw an interference that all was motivated by extraneous considerations. Otherwise, how does one account for selection without interview, fake and ghost interview, tampering with the final records, fabricating documents, forgery? Each of this would attract the penal provisions of Indian Penal Code. They have been done with impunity.

19. The story does not end here. From out of the “selection list” secret communications have been sent to the candidates. Selections were made without medical test or verification of antecedents.

20. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trust. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of the destruction of records it was helpless. It should have helped itself. Law is not that powerless.

21. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as “Fraud unravels everything”. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors.”

17. The judgment in *Krishna Yadav* is thus relied upon in support of the contention that if the entire selection is vitiated, the same is required to be set aside. In *Krishna Yadav* the facts were entirely different. The select list was prepared without conducting medical test or verification of antecedents. The selection process proved to be a farcical show and therefore the Apex Court arrived at a conclusion that the entire selection process warranted cancellation. In the present case, except challenging opportunity granted to Respondent Nos.5 to 8 to participate in interview process, Petitioners have not been able to set up any case of gross error in the entire selection process. We have already observed that opportunity of participation in the interview granted to Respondent Nos.5 to 8 is valid, therefore this is not a case where there is any glaring illegality vitiating entire selection process. Assuming that there was indeed any error in permitting Respondent Nos.5 to 8 in participating interviews, we fail to comprehend as to how other selected candidates can be made to suffer. Therefore this not a case where the entire selection process can be said to be vitiated.

18. Learned counsel for Petitioners has strenuously submitted before us that permitting Respondent No.5 to 8 to participate in interview process

after their failure in Marathi and English Typing Test amounts to change of goal posts after the game had begun. We are unable to agree. The decision to permit Respondent Nos.5 to 8 to participate in the interview was taken essentially on account of the fact that they had secured the benchmark set up by the High Court. Entry of Respondent Nos.5 to 8 in the select list did not affect entry of Petitioners therein. Therefore, even if Respondent Nos.5 to 8 were to be removed from select list, the same would not facilitate Petitioners' entry therein. Therefore, it cannot be said that the rules of selection were in any manner changed during pendency of selection process.

19. Resultantly we find present petition to be devoid of merit. Writ Petition is dismissed with no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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