



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.415/2019

1. Bal-Vikas Prkalpa Adhikari Ekatmik  
Bal Vikas Seva Yojna, Chamorshi.
2. Chief Executive Officer,  
Zilla Parishad, Gadchiroli, Tq. & Dist.,  
Gadchiroli. ... Petitioners

- Versus -

1. Sau. Savita Laxman Atram,  
aged about 36 Yrs., Occ. Nil,  
R/o Konshari, Tq. Chamorshi,  
Dist. Gadchiroli.
  2. Sau. Sanchita Sanyshi Uekey,  
aged about 32 Yrs., Occ. Service,  
R/o Konshari, Tq. Chamorshi,  
Dist. Gadchiroli.
- 2-A.Divisional Commissioner,  
Nagpur Division, Nagpur. ... Respondents

-----  
Ms. M.P. Munshi, Counsel for the Petitioners.  
Mr. Vinay Dahat, Counsel for respondent No.2.  
Mr. N.R. Rode, A.G.P. for respondent No.2(A).  
-----

CORAM: MRS. VRUSHALI V. JOSHI, JJ.

DATE : 19.10.2023

## JUDGMENT

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner No.1 prays for quashing and setting aside the judgment dated 10.7.2018 passed in Revision ULPA No.6/2018 and the Revision Application No.6/2018 needs to be allowed by setting aside the judgment dated 7.2.2018 passed by the Judge of Labour Court, Chandrapur in Complaint ULPA No.104/2018.

3. The respondent No.1 Savita had filed ULPA No.104/2014 before the Labour Court challenging her termination. The complainant was appointed by the petitioner No.2 vide order dated 9.4.2013 as Aanganwadi Madatnis at Aanganwadi Centre Konsari, Tq. Chamorshi, District Chandrapur by undergoing the selection process. The complainant joined the services on 10.4.2013.

Thereafter the respondent No.2 Sanchita Sanyashi Ukey who was not selected in the interview as she had got lesser marks, complained to the Chief Executive Officer, Zilla Parishad, Gadchiroli and on her complaint without giving hearing respondent No.1 came to be terminated vide order dated 5.10.2013 with retrospective effect. The complainant has stated that she has received more marks than the respondent No.2 and, therefore, she was not selected and the said termination was illegal as she was terminated on false ground and without following the due procedure and, therefore, the order dated 5.10.2013 needs to be set aside.

4. The petitioners herein filed reply cum written statement and by said reply the petitioners pointed out that the Child Development Project Officer (C.D.P.O.), Chamorshi had asked both the respondents to submit certificate regarding experience. However, both the respondents failed to submit experience certificate. As a result of which the marks allotted on account of experience were deducted. The newly prepared result sheet after deduction of marks

allotted on account of experience that the respondent No.2 had scored 12 marks after deducting 4 marks out of the 16 marks she was given. Similarly, the respondent No.1 Savita Atram was given 12 marks towards experience wrongly and, therefore, after deducting 12 marks from 36 marks there remained only 24 marks. However, the score sheet shows that Sanchita Ukey had obtained total marks 72.83 marks whereas Savita Atram has scored 71 marks. As Sachita Uikey the respondent No.2 being the topper, she was given the appointment as Aanganwadi Helper and the respondent No.1 Savita Atram could not be appointed. Hence the appointment of respondent No.2 was just and proper and as the complainant did not lodge any complaint regarding the nature of interview, the complaint was liable to be dismissed with costs.

5. Being aggrieved by the said judgment dated 7.2.2018 passed in Complaint ULPA No.104/2014, Revision (ULP) No.6/2018 came to be filed by the petitioners under Section 44 of the MRTU and PULP Act.

6. Simultaneously the respondent No.2 Sanchita Ukey also filed a Revision Application ULP No.4/2018 challenging the judgment dated 7.2.2018. In the Revision Application No.6/2018 filed by the petitioner No.1 the petitioners had in the grounds stated that the judgment passed by Labour Court dated 7.2.2018 is bad in law and that the Labour Court erred in holding that the complainant needs to be continued in service with full back wages and it was also further mentioned that the petitioners had not considered that the respondent No.1 / original complainant got more marks than the respondent No.2. On a complaint the Child Development Project Officer in the enquiry found that the respondent Nos.1 and 2 were given marks wrongly towards experience and after deducting marks of both the respondents' the respondent No.2 was found to be more eligible for appointment. The lower Court has disbelieved the evidence of the petitioners and upheld the evidence of respondent No.1. The lower Court had not considered the documents filed by the petitioner Nos.1 and 2 and further stated that the observation of

the lower Court holding that there was miscalculation of marks and the documents were not properly appreciated. There was discrimination on the part of the petitioners which was not justified and hence prayed to set aside the order passed by the lower Court.

7. The Industrial Court dismissed both the revisions by observing that while deducting the marks of experience the petitioners were examined by Smt. Sumati Deshpande to show either how initially the marks on account of experience were allotted or that how the total marks were deducted from their earlier marks. There is no document about their experience. It is also argued that there is discrimination in allotting marks for caste. Both of them are from “Gond” caste but 10 marks given to respondent No.2 and zero to respondent No.1. As per document Exh.14 caste of complainant as well as respondent No.2 is same and both belong to one and the same caste “Gond” and there is nothing to show why complainant was granted zero marks and the respondent No.2 was granted 10 marks. Thus, the learned Labour Court has rightly observed that

there is discrimination regarding marks given on account of caste and if the marks on account of caste are ignored as per document Exhs.14 and 17 then the complainant i.e. respondent No.1 has scored more marks than respondent No.2 and came to the conclusion that the termination was illegal. The respondent No.1 has nowhere contended that she had submitted her experience certificate. Hence the deduction of marks on account of her experience is fully justified. Hence prayed to set aside the order passed by the Industrial Court.

8. During the pendency of the petition direction was given by this Court to add the Divisional Commissioner, Nagpur Division, Nagpur as party respondent No.2-A and direction was given to submit the report. The respondent No.2-A has filed the report on record. On perusal of report it appears that the Divisional Commissioner has accepted the decision taken by the Chief Executive Officer rejecting the appointment of the complainant. After going through the documents submitted on record and the explanation given by the petitioners it is proved that both

respondents 1 and 2 have not filed their experience certificate, therefore, the marks of both of them were deducted and accordingly the respondent No.2 has got more marks and, therefore, the appointment is rightly set aside. The another question is about not giving marks of the caste. Though both of them are from Gond community the marks are given to respondent No.2 and not given to respondent No.1. The affidavit is given by the petitioners that the respondent No.1 has not filed her caste certificate and, therefore, the marks of caste certificate are not given to respondent No.1. Considering the marks given to both of them the marks of respondent No.2 are more and, therefore, the appointment of respondent No.2 is correct. The petition is, therefore, allowed in terms of prayer clause (a). Rule is made absolute in the above terms. There shall be no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)