

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

<u>WRIT PETITION NO.1970/2019</u>	
<u>PETITIONER</u>	Sau. Rupali W/o Samadhan Deshmukh Aged about 36 years, Occupation : Anganwadi Sevika (presently removed), Resident of Naya Akola, Taluka and District Amravati -444801.
<u>...Versus...</u>	
<u>RESPONDENTS</u>	1. The Divisional Commissioner, Amravati Division, Amravati. 2. The Chief Executive Officer, Zilla Parishad Amravati, Taluka and District Amravati. (Original Respondent No.1) 3. The Project Officer, Integrated Child Development Project Amravati (Rural), Near Panchayat Samiti, Amravati, Taluka and District Amravati. (Original Respondent No.2) 4. Sau. Kumudini Kishor Lunge, Aged about 40 years, Occupation : presently appointed as Anganwadi Sevika in place of Petitioner, Resident of Naya Akola, Taluka and District Amravati.
Mr. N.S. Khubalkar, Advocate for petitioner Mr. N.R. Patil, AGP for respondent nos.1 and 3 Mr. D.M. Kale, Advocate for respondent no.2 Ms Payal Kaware h/f Mr. S.S. Dhengale, Advocate for respondent no.4	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 01/08/2023

Date of pronouncing the judgment : 11/08/2023

1. Heard Mr. N.S. Khubalkar, learned Counsel for the petitioner; Mr. N. R. Patil, learned Assistant Government Pleader for the respondent nos.1 and 3; Mr. D. M. Kale, learned Counsel for the respondent no.2 and Mr. S.S. Dhengale, learned Counsel for the respondent no.4. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the rival parties.

2. The petition challenges the order dated 10/01/2018 passed by the respondent No.2/Chief Executive Officer (CEO) canceling the selection of the petitioner and declaring respondent no.4 as being duly selected for the post of Anganwadi Sevika of village Naya Akola and so also the order dated 17/12/2018 passed by the respondent No.1/Divisional Commissioner rejecting the appeal by the petitioner.

3. Mr. Khubalkar, learned Counsel for the petitioner raises two grounds: (1) that consequent to the fresh merit list published on 04/04/2013 (pg.70), in which the petitioner as well as the respondent no. 4 both had secured 67 marks, there was a foot-note, which stated that any objections to the list were to be raised by

10/04/2013 and the interviews were to be held on 15/04/2013. Since no objection was raised to this merit list by the respondent no.4 or anyone whomsoever and the petitioner had secured more number of marks in the interview than the respondent no. 4, her appointment as an Anganwadi Sevika by the order dated 18/07/2013 could not be faulted with. (2) by relying upon ***Secretary, A.P.D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (2011) 13 SCC 99*** (para 26), it is contended that in this case by way of Government Resolution, dated 05/08/2010, Clause-5 thereof, an adjudicatory mechanism was created by permitting the CEO to decide the complaint filed regarding the selection of the candidate and such decision by the CEO was made subject to appeal before the Commissioner, which according to him, was not permissible and therefore, in case the challenge to the impugned order on merits failed, he contends that both the CEO as well as the Commissioner on account of what has been held in ***Shivaji More*** (supra) would not be clothed with the jurisdiction to decide any complaint or appeal. He, therefore, contends that the petition needs to be allowed.

4. Mr. S.S. Dhengale, learned counsel for the respondent no.4 submits that any correction in the list as per the requirements

of the Government Resolution dated 05/08/2010 (pg.45), was required to be initialed by three candidates and was to be done by red ink and since the merit list dated 26/07/2012 (pg.62), does not comply with this requirement, the same cannot be said to be a genuine merit list. It is further contended that the merit list dated 04/04/2013 (pg.69) also suffers from this infirmity, inasmuch as, it is not signed by three candidates and the above infirmity is equally applicable to the same, considering which, the same also cannot be said to be a genuine merit list (pg.45). He therefore contends that the list at page 73 would be the only genuine list, which would govern the parties. It is submitted that since the list at page 70 was not a genuine list, failure to raise any objection within time stipulated therein, would not be of any consequence. It is further contended that the objection was raised on 16/07/2013 for which page 75 is being pointed out, was beyond the time stipulated. He therefore submits that the impugned orders, are correct and proper and need no interference.

5. The appointments to the post of Anganwadi Sevika ("AWS" for short hereinafter) are done under the Government Resolution dated 05/08/2010, as it stands clarified by the communication dated 05/08/2011 (pg.144), Clause-2 thereof

indicates that since an objection is to be raised within 15 days of the publication of the merit list, before the concerned Child Development Project Officer in writing, the documents submitted on the date of the interview would not be considered for the purpose of grant of marks.

6. In the instant case, the petitioner has passed B.A. examination and was studying in M.A. Part-II on 01/08/2011, when the application was made by her for the post of AWS. Along with her application, the transfer certificate of B.A. and the mark-sheet of M.A. Part-I was placed on record. Mr. Dhengale, learned Counsel for the respondent no.4, is unable to point out the qualification of the respondent no.4 except stating that she was a graduate on the relevant date.

7. On 30/06/2012 the merit list was published in which the petitioner secured 62 marks and the respondent no.4 secured 67 marks. An objection was raised on 16/07/2012 by the petitioner to the marks given to her, as the last date to raise objection which was 15/07/2012 was a Sunday. The objection raised was to the effect that the marks allottable for possessing graduate qualification were not allotted to the petitioner. Considering this objection 5 marks were added to the marks allotted to the petitioner, which is reflected

from the merit list published on 26/07/2012 (pg.62). To this merit list, at page 62 no objection was raised by the respondent no.4. On 12/12/2012, interviews were conducted, in which the petitioner secured 76.33 marks, as against which the respondent no.4 secured 73.33 marks. The select list was published on 14/12/2012, in which the petitioner was shown to have been selected.

8. This selection of the petitioner was challenged by the respondent no.4 before the CEO who by the order dated 05/03/2013 canceled the entire selection process. Thereafter a fresh merit list was published on 04/04/2013 (pg.69) which indicated that any objection thereto was to be lodged by 10/04/2013 and the interviews were to be held on 15/04/2013. To this also there was no objection raised from any quarter including the respondent no.4. On 15/04/2013 interviews were held in which again the petitioner was selected. This selection was challenged again by the respondent no.4 before the CEO, who, by his order dated 16/07/2013 rejected the challenge, as a result of which, on 18/07/2013 an appointment order was issued to the petitioner in pursuance to which she joined on the same day.

9. The order dated 16/07/2013 by the CEO rejecting the challenge to the selection of the petitioner was challenged in appeal

by the respondent no.4 before the Commissioner on 29/07/2013. The Commissioner, by his order, dated 17/06/2017, set aside the order dated 16/07/2013 of the CEO and remanded the matter back to the CEO.

10. The CEO by his order dated 10/01/2018 allowed the objections of the respondent no.4 and canceled the appointment of the petitioner, as a result of which, on 12/01/2018 the petitioner was terminated. The petitioner carried an appeal to the Commissioner against the order dated 10/01/2018 of the CEO, which appeal came to be dismissed by the Commissioner by the order dated 27/03/2018 (pg.110), as a result of which, the stay to the termination dated 12/01/2018 of the petitioner stood removed and by the order of the CEO dated 17/04/2018 the respondent no. 4 was appointed.

11. This order of the CEO dated 10/01/2018 and that of the Commissioner dated 27/03/2018 were challenged by the petitioner in Writ Petition No.2682/2018 which was allowed by this Court by the order dated 07/08/2018 remanding the matter back to the Commissioner, keeping all questions open.

12. Consequent to the remand, by an order dated 17/12/2018 the Commissioner dismissed the appeal of the

petitioner on the ground that the mark-sheet of B.A. final year was submitted belatedly by the petitioner, resulting in the present petition.

13. The entire question revolves around the requirement of documents to be submitted along with the application, as the qualifications possessed by a candidate based upon the documents are germane for the purpose of awarding marks, based upon which the merit list is to be issued. The relevant clause in this regard is Clause-2 of the Government Resolution dated 05/08/2010 (pg.43). The basis educational requirement for appointment as an AWS as spelt out from Clause-2 (A) of the said Government Resolution is of having passed 10th standard (pg. 43). In case a candidate has higher qualification, Schedule-A Part-I (pg. 46) delineates the methodology by which additional marks are to be given for higher qualification. It is for this purpose that the requirement for submitting the documents indicating the educational qualification by a candidate are necessarily required to be annexed along with the application so that the Child Development Project Officer, for preparing the list while awarding the marks to each of the candidates/applicants does that on the basis of the documents available as to their educational qualifications.

14. The Schedule-A Part-I in this regard depicts that in case a candidate possesses a graduation degree, flat 60 marks are to be given to such candidate and 10 additional marks are required to be given depending upon the percentage of marks secured by such applicant/candidate, as per the chart given thereunder, the relevant portion of which, for the sake of ready reference, is reproduced as under :

	Total marks	Anganwadi and Anganwadi (minimum qualification Standard pass)	Sevika Mini Sevika 10 th	
		Educational qualifications		For all projects
	Upto 70	1. Graduate		60
		71% and more		+ 10
		70% to 65 %		+ 9
		64 % to 60 %		+ 8
		59 % to 55 %		+ 7
		54 % to 50 %		+ 6
		49 % to 45 %		+ 5
		44 % to 40 %		+ 4
		39 % to 35 %		+ 3

15. In the instant case, it is not disputed that respondent no.4 was graduate and therefore, was granted 60 marks on that count. The mark-sheet for the B.A. final submitted by the petitioner on 17/07/2012 indicated that she had passed B.A. with 46.78% of marks, on account of which, as per Schedule-A Part-I of the Government Resolution she became entitled to 5 additional marks and 2 marks, on account of her belonging to the OBC category making the total marks secured by her as 67. There is no dispute regarding the marks secured by the respondent no. 4 which are also 67. Since this was done on account of an objection raised by the petitioner on 16/07/2012, to the merit list published on 30/06/2012, the objection was clearly within 15 days from the date of publication of the merit list which date was to be deleted for the purpose of calculating time on account of the provisions of Section 10 of General Clauses Act, 1897, 15/07/2012 being a Sunday, which principle would generally be applicable everywhere. It would therefore, be apparent that the correction in the marks was on account of what is contemplated by Clause-3 of the Government Resolution dated 05/08/2010 (pg. 44). It is also material to note, that the correction is indicated by the merit list of the candidates as

published on 26/07/2012, in which the petitioner as well as the respondent no.4 both are shown to have secured 67 marks, the entry vis-a-vis the petitioner being corrected from 62 to 67. Thereafter, interviews were held in which the petitioner had secured total 76.33 marks including those granted earlier as against the respondent no.4 securing 73.33 marks.

16. It is not in dispute that the interviews thereafter were canceled by the CEO by his order dated 05/03/2013 which position is not disputed by Mr. Kale, learned Counsel for the respondent no.2. Fresh merit list was thereafter published on 04/04/2013 (pg. 70) to which there is no objection from any quarter, including the respondent no.4. It is also material to note that the fresh merit list was published on 04/04/2013 indicating that objections, if any, were to be submitted by 10/04/2013 and objections received thereafter would not be considered. The interviews thereafter were held on 15/04/2013, in which after considering the marks allotted to the petitioner as well as the respondent no.4 by the Child Development Officer on the basis of their educational qualifications and caste and in the interview it was found that the petitioner had secured 75 marks and the respondent no.4 had secured 74 marks, on account of which, the petitioner came to be appointed. It is, thus, apparent that

the correction in the marks secured by the petitioner was done in accordance with the procedure provided for by the Government Resolution dated 05/08/2010, which change has never been objected to by the respondent no.4. On a query made to Mr. Kale, learned Counsel for the respondent no.2 as to whether the procedure contemplated by the Government Resolution dated 05/08/2010 for correction of the merit list was followed, he answers in the affirmative. The only requirement in regard to the correction of the marks in the merit list as spelt out from Clause-3 of the Government Resolution dated 05/08/2010 is that an entry in regard to the change has to be taken in red ink in the merit list. That appears to be the only requirement as regards change in the marks in the merit list. In this regard it is material to note that on both occasions when the merit list was published, i.e., on 26/07/2012 (pg.62) and 04/04/2013 (pg. 69) the same also figured the name of the respondent no.4 and the marks secured by her. Thus, if at all any objection was to be taken, it ought to have been taken by the respondent no.4 within the time-frame stipulated therefor. This, however, was not done. Rather on the contrary based upon the merit lists, the respondent no.4 participated in the interviews, both time

and was declared unsuccessful. Thus, the respondent no.4 is now estopped from raising any grievance regarding both these merit lists. Though Clause-3 of the Government Resolution dated 05/08/2010 indicates that for the original merit list published the same should be displayed on the notice board of the concerned Panchayat Samiti, Child Development Project Office, Grampanchyat and District Office, this does not appear to have been carried forward when Clause-3 speaks about the list being corrected (pg.45). It is, therefore, apparent that after following the due procedure as contemplated by Clause-3 of the Government Resolution dated 05/8/2010, the corrected merit list (pg. 70), stood published which was without any objection from any quarter whatsoever.

17. It is true that the merit list as per Clause-3 of the Government Resolution dated 05/08/2010, has to be published on the basis of marks secured by a candidate in the Graduate/12th/10th Examination. This is a preliminary merit list as indicated by the language of Clause-3 of the Government Resolution dated 05/08/2010 (pg.45) and any objection thereto as to the certificates and marks allotted has to be raised within 15 days of such publication, which, as indicated above, was so raised by the

petitioner, considering which, her marks were increased, and after considering the objections, the corrected merit list is to be published, which was so done, to which no objection was taken by anyone, including the respondent no.4.

18. Had the matter ended there, perhaps the situation would have been different. As indicated above, the interviews were held consequent to this merit list published and the selection made thereafter, was canceled by the CEO by his order dated 05/03/2013 and the matter stood remanded back to the stage of again publishing a fresh merit list, which was so published on 04/04/2013. It was open at that stage for the respondent no.4 to have taken an objection to the number of marks awarded to the petitioner, that however was not done. The respondent no.4, accepted the merit list as published on 04/04/2013 and went ahead with the interview, for the second time, in which also the petitioner was selected having secured more number of marks than the respondent no.4. The respondent no.4, thus having accepted the merit list dated 04/04/2013, by having not raised any objection to the same in consonance with the procedure as laid down in Clause-3 of the Government Resolution dated 05/08/2010 and also having

participated in the interviews consequent thereto, without any demur, cannot now be permitted to adopt a policy of approbate and reprobate.

19. The entire purpose of the policy as framed by the Government Resolution dated 05/08/2010 and the methodology of awarding marks as indicated therein is for more meritorious persons to have a preference/advantage for being placed higher in the merit list and to say that this advantage should be defeated merely on the basis of failure to submit the mark-sheet, in spite of actually having a higher educational qualification, would be to defeat the very purpose for which the policy was framed.

20. This is also indicated by the clarification issued on 05/08/2011 (pg.144) to the Government Resolution dated 05/08/2010, which stated that as there was provision in the Government Resolution dated 05/08/2010, for getting the marks corrected by lodging objections within 15 days of the publication of the preliminary merit list [Clause-3/pg.45], documents submitted on the date of the interview would not be considered for awarding marks, which would indicate that it was permissible to file the documents before that.

21. In the instant matter, it is not in dispute that the petitioner is a Graduate, and it is on that basis she has been awarded 60 marks. This is also apparent from the filing of the mark-sheet of M.A. Part-I filed by her alongwith her application for the post of AWS, in respect of which, also there is no dispute. Thus, when the educational qualifications of the petitioner were never disputed, the only question which remained was of awarding her additional marks for the percentage of marks scored by her in B.A. examination as per Schedule-A Part-I (pg.46). This could very well be said to be a defect which was curable, which was accordingly cured when the petitioner filed objections to the marks awarded to her in the merit list, considering which objections, the additional marks due to her on account of the percentage of marks scored by her in the B.A. examinations, were awarded and the merit list corrected and the corrected merit list was published on 26/07/2012 (pg.62). It is, thus, apparent that this is not a case where the graduate qualifications of the petitioner were never disclosed or were not considered, rather on the contrary, they were very well disclosed and also considered for awarding her 60 marks on account of her being a Graduate.

22. This position is clearly distinguishable from a case in which the candidate, in spite of being a Graduate or fulfilling any other requirement, which entitles her to be awarded marks, which would place her higher in the merit list, does not disclose at all, the fact of her possessing such educational qualifications or essentials, at the time of filling the form/application for a particular post, in this case AWS and goes ahead with the process, for in such cases the principle of waiver would clearly be attracted, on account of the active non-disclosure of such educational qualifications or essentials at the initial stage itself.

23. In *Harsha Amol Sonone Vs. Divisional Commissioner and others (Writ Petition No.1560/2021)* decided by me on 22/02/2023, what was under consideration was the Government Resolution dated 13/08/2014, in relation to appointment of AWS and there was no disclosure at the time of filling the form/application of the petitioner therein having a higher educational qualification of having passed 12th standard. Neither was any objection raised under Clause-3 within 10 days of the publication of the provisional merit list to the number of marks allotted to the petitioner, rather in the form/application the

petitioner had stated that she was 10th standard pass only. The petitioner and the respondent no.4, therein both secured the same number of marks i.e. 70.2. The petitioner was selected on account of her having higher educational qualification of 12th standard pass, though the same was not disclosed by her at any point of time earlier. On an objection being raised to the selection of the petitioner therein, the appointment of the petitioner was canceled by the CEO, which was upheld by the Commissioner in appeal, in which background it was held that the plea of having a higher educational qualification having been raised for the first time after the interviews, the same could not be accepted as there was a significance in requiring the educational qualifications to be disclosed at the time of filing of the form/application itself, so as to enable the Child Development Officer to award proper marks for the preparation of the merit list. Thus, ***Harsha Amol Sonone*** (supra) was a case of total non-disclosure, whereas in the present matter it is not in dispute that at the time of filling the form/application, itself the petitioner had disclosed that she was a Graduate. ***Harsha Amol Sonone*** (supra) therefore is of no assistance to the case advanced by Mr. Dhengale, learned Counsel for the respondent no.4.

24. Both the impugned orders, proceed on the basis that the mark-sheet of B.A. was not submitted by the petitioner alongwith her application/form, and therefore set aside her selection and appointment, unmindful of the fact that the petitioner had not only disclosed in her application/form that she was not only a Graduate but had also cleared M.A. Part-I, too, on the basis of which she was awarded 60 marks. Had there been no disclosure of this position, the position then would have been different. That however is not the case. The disclosure having been already made the acceptance of her mark sheet of B.A. upon objection being raised by her to the marks allotted to her and awarding of additional marks on the basis of percentage of marks scored by her, publication of the final merit list and its acceptance by the respondent no.4, without any demur are all facts which have been ignored by the Authorities below, which clearly vitiates the impugned orders.

25. Thus, in view of the discussion above I, am of the considered opinion that the impugned orders cannot be sustained and are hereby quashed and set aside and it is held that the petitioner was rightly selected and appointed to the post of AWS and is entitled to be so appointed in place of the respondent no.4, whose

appointment as a consequence to what has been held above is hereby quashed and set aside.

26. In light of what has been held above, I do not deem it necessary to decide the second ground raised by Mr. Khubalkar, learned counsel for the petitioner.

27. The writ petition is, therefore, allowed. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar