

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

WRIT PETITION NO. 1560 OF 2021

Harsha Amol Sonone __ Vs. __ Divisonal Commissioner and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.A.Gawande, Advocate for petitioner
Mrs. M.A.Barabde, AGP for respondent Nos. 1 & 3
Mr. S.A.Mohta, Advocate for Respondent No.2
Mr. Dahake, Advocate for Respondent NO.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/02/2023

1] Heard Mr. Gawande, learned counsel for the petitioner, Mr. Mohta, learned counsel for Respondent no.2. Learned AGP for Respondent nos. 1 to 3 and Mr. Dahake, learned counsel for respondent no.4.

2] The petition challenges the order dated 2.1.2020, which rejects the appeal filed by the petitioner against the order dated 23.6.2017 passed by the Chief Executive Officer, holding that the Respondent no.4 is entitled to be appointed as Anganwadi Helper (Madatnis) as against the petitioner.

3] Mr. Gawande, learned counsel for the petitioner submits that having regard to the requirement of the Government Resolution dated

13.08.2014 (pg.17) and specifically clause (3) (pg.21), since the petitioner has higher educational qualification having passed 12th standard, as against the respondent no.4, who has passed 10th standard, it was the petitioner who ought to have been given the preference on account of the fact that both have secured the same number of marks. He therefore submits that merely because there was delay in submitting the 12th standard mark-sheet, that cannot deprive the petitioner of her right and entitlement to get appointed.

4] Mr. Dahake, learned counsel for respondent no.4 supports the impugned orders and submits that there was an obligation on the part of the petitioner to submit the 12th standard mark-sheet along with her application for employment and the said requirement cannot be cured subsequent in point of time. The impugned orders are supported by Mr. Mohta, learned counsel for respondent No.2 and learned AGP for respondent Nos. 1 & 3.

5] The GR dated 13.08.2014 prescribes the procedure for selection of candidate for the post of anganwadi madatnis. Clause (3) of the said GR indicates that in case two candidates receive the same number of marks, then the candidate having

the higher qualification shall be entitled to be selected. In case the educational qualifications are also same, then the person who was born earlier would be selected. This would categorically indicate that the application to be submitted for appointment, necessarily has to be accompanied by all the qualifications which a candidate possesses for, on failure of such qualification being annexed, the Committee would not be in a position to determine the eligibility in the contingency contemplated by clause (3) of the aforesaid GR. In fact there is a clarification to the GR dated 13.8.2014 (pg.70) which vide clause (5) necessarily requires the highest qualification to be annexed with the application.

6] In the instant case, the petitioner and the respondent no.4 had both applied for the post of Anganwadi Madatnis, in which both of them have secured the same number of marks i.e. 70.2. Both the persons had stated in the application that they are 10th standard passed, documents ascertaining which were placed on record. The petitioner was selected, to which the respondent no.4 objected, as a result of which by the order dated 23.6.2017 passed by the CEO, the appointment of the petitioner was

cancelled and the respondent No.4 was appointed (pg. 15). Appeal thereagainst has been rejected by the Divisional Commissioner by his judgment dated 2.1.2020 (pg.41). The purpose of submitting the educational qualification of the candidate along with the application cannot be over stated, as that is something which is required by virtue of clause (3) of the G.R. dated 13.8.2014 and its clarification, so that the requirement of the said clause can be worked out. While considering this position, in **Priyatama Sakharam Wakle vrs. Divisional Commissioner, 2016(4) Mh.L.J. 455**, it has been specifically held that the requirement of annexing the relevant document along with the application had a significance, which could not be ignored.

7] That being the position, since the relevant document, which indicated that the petitioner had passed 12th standard was not annexed with the application as per the requirement of the GR dated 13.8.2014, I do not see any reason to interfere in the impugned order. The petition is therefore dismissed. No costs.

JUDGE