



REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4549 OF 2024

Shaikh Soheb Abdul Quddus

VERSUS

The State Of Maharashtra Through
Its Secretary And Others

...

Mr. S. S. Shaikh, Advocate for the Petitioner

Mr. A. B. Girase, GP for Respondents/State

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MAY 02, 2024

ORAL ORDER (PER RAVINDRA V. GHUGE, J)

1. The Petitioner has put-forth prayer clause 'B' to 'G', as under:

B. By issuing appropriate Writ, Order or Directions in the like nature, the Impugned Selection and Waiting List dated 11.03.2024 issued by the Respondent Nos. 4 and 6 and also the Impugned Letter dated 21.03.2024 bearing outward No. जा. कं. जिपबी/पसंवि/आस्था-2/540/2024 Issued by the Respondent No.6, thereby refusing the Appointment of the Petitioner in service as the Livestock Supervisor, may kindly quashed and set aside.

C. By issuing appropriate Writ, Order or Directions in the like nature, this Hon'ble Court may kindly issue directions to the Respondent Nos. 4 to 6 for appointment of

the Petitioner in service as Livestock Supervisor, forthwith.

D. This Hon'ble Court may kindly direct the Respondent Nos. 1 to 3 or any other Higher Officials to conduct necessary inquiry, under the supervision of this Hon'ble Court, and also take necessary legal actions in the Illegal selection / appointments of the Respondent Nos. 7 and 8, though they have secured less marks than the Petitioner.

E. Pending hearing and final disposal of this Writ Petition, the effect, implementation and execution of the Impugned Selection and Waiting List dated 11.03.2024 issued by the Respondent Nos. 4 and 6 and also the Impugned Letter dated 21.03.2024 bearing outward No. जा.क. ज़िपवी/पसंवि/आस्था-2/540/2024 issued by the Respondent No.6, thereby refusing the Appointment of the Petitioner in service as the Livestock Supervisor, may kindly stayed.

F. Pending hearing and final disposal of this Writ Petition, the Respondent Nos. 4 to 6 may kindly be directed not to appoint the any other candidate, in place of the Petitioner.

G. Pending hearing and final disposal of this Writ Petition, the Respondent Nos. 4 to 6 may kindly be directed to give appointment in service to the Petitioner on the post of Livestock Supervisor.

2. Heard the learned advocates for the respective

sides, at length.

3. The Petitioner belongs to the Other Backward Class Category (OBC) and claims to have a caste validity certificate. He passed his SSC examination and claims to have passed the Livestock Management and Dairy Production Diploma Course. It is undisputed that the final Diploma Result of the diploma course of 2 years, was declared by the Maharashtra Animal and Fishery Sciences University, Nagpur on 01.11.2023.

4. The Petitioner passed the first year 2020-2021 examination on 25.11.2021. He did not pass all the subjects of the 2nd year 2021-2022 in the examination April 2022. The result of the second year examination after passing the remaining exams, was declared on 02.06.2023. The two years diploma course commenced from the academic year June, 2020 and the Petitioner acquired the final year (Second Year) vide the marks memo dated 02.06.2023. The result of the Diploma Course, which leads to issuance of the Diploma Certificate by the University, requires the total result of all the subjects to be taken into account.

The first year result was considered by the University along with the second year semi-result and the second year final result and the cumulative final result of the Diploma course was declared, on 01.11.2023. This was the authentic result of the Petitioner.

5. The Zilla Parishad, Beed published an Advertisement bearing no. 01/2023. Pursuant to the said advertisement, the Petitioner applied for the post of Livestock Supervisor, when he had not even appeared for the second year exam (his remaining subjects which he cleared in the third year). The link was provided vide the advertisement to all the candidates who desired to file their applications. It is undisputed that the qualifying requisite (educational qualification) was that a candidate should hold a **Diploma Course Certificate** (2 years) in Livestock Management and Dairy Production. The cut off date for payment of the online fees was upto 23.59 hours of 25.08.2023. This is set out in Clause 3.3 of the Advertisement. It is also undisputed that the last date for registration of the online application was upto 00.01 am on 05.08.2023. The last date for filling in the application form was

25.08.2023. Clause 3.6 mandates that the date on the final result declaration of the University, would be considered for the purposes of considering the eligibility of a candidate and such date should be on or prior to the cut off date, 25.08.2023.

6. It is undisputed that the Petitioner has tendered the online application prior to the cut off date and deposited the fees along with the online application. He is held to be ineligible by the Competent Authority on the ground that prior to the cut off date, his "Diploma Transcript" was not available. The contention of the Petitioner is that the date, as mentioned on the two independent marks memo, should be considered, meaning thereby, that the first year marks memo carries the date 25.11.2021 and the second year marks memo carries a date 02.06.2023.

7. We need to record that the Petitioner has conspicuously not placed on the record his 'first' second year marks memo when he failed in the second year and had to complete the second year in the third year. There are no pleadings in the memo and this is

clearly an act of suppression of material factors. It is only after we noticed it from his documents and found a discrepancy that the Petitioner had to divulge this factual aspect.

8. There is no dispute that the Diploma Course, which is of 2 years, was passed by the Petitioner in three years. His first year exam result dated 25.11.2021 indicates that he passed all the subjects. The second year exam result (the first attempt of the second year) is not placed before us. The second attempt of the Petitioner for the second year led to the marks memo dated 02.06.2023 wherein he has appeared for one subject with relation to the '*theory*' in which he is a repeater and '*practical*'. This was just a marks memo with regard to the keeping of terms by the Petitioner in relation to one subject i.e., '*Milk Handling and Sale*'. The total cumulative result of the Petitioner for the entire Diploma course, meaning the first year and the second year, after considering his entire performance in the course, was declared by the University on 01.11.2023.

9. The Petitioner has relied upon the judgment delivered by this Court at the Nagpur Bench in *Sushil Chokhaji Bambole and Another vs. The State of Maharashtra and Others, 2024 SCC OnLine Bom 618,* to support his contentions that the marks memo dated 02.06.2023 alone be considered by the Authorities while dealing with his application for the post of Life Stock Supervisor.

10. We find from the facts of Sushil Bambole (supra), that Sushil Bambole, Petitioner was an in service candidate. There was a mandate that he should have appeared for the Departmental Examination and should have passed the said examination within a particular timeline while being in service. Both the Petitioners had appeared for their exams. Petitioner No. 1 appeared for the exam in December, 2007 within the approved period of four years from the date of appointment. He passed the said exam vide the result published in November, 2008. Similarly, Petitioner No. 2 appeared for the exam in December, 2007 within four years of the appointment. Her result was declared in October, 2008.

11. It is in this backdrop that it was concluded that it was not within the means of the Petitioner as regards the declaration of the examination results. It was held that since both the Petitioners had appeared for the examination, the employer had to await their results to assess whether they have passed the exam or failed. If by the declaration of the result, it would have been revealed that neither of them had passed, the consequences would have followed. After the results were declared, both the Petitioners were found to have passed and, therefore, this Court concluded that the employer ought to have waited for the declaration of the results since both had appeared within the prescribed limit of four years from the date of joining employment.

12. The facts before us are completely different. The Petitioner is not an in service candidate who had to appear for a particular departmental examination or had to acquire a particular qualification within a particular period. Had that been so, if the Petitioner would have appeared for the examination within the

timeline prescribed, the employer was duty bound to await the result since he had already appeared for the exam within the timeline.

13. Before us is a case wherein the Petitioner aspires to seek employment as a Livestock Supervisor with the Zilla Parishad. The advertisement is crystal clear that the entire Diploma result is to be considered and the date on the Diploma result would be relevant and significant while scrutinizing the form of every Applicant. As such, this mandate of the advertisement being intact as having not been challenged, leaves us with the issue of considering whether on the cut off date, the University had declared the Petitioner as having acquired the Diploma Certificate. On 25.08.2023, there was no declaration by the University. It is not the outlook of the Zilla Parishad to find out as to how many subjects the Petitioner had passed in the second year course and whether he had failed in any subject. The Zilla Parishad only required that the total result of the Diploma course should have been declared before the cut-off date.

14. In view of the above, since the scrutiny of the forms mandated that the Petitioner should have been declared by the University as having acquired the Diploma qualification by virtue of date on the cumulative transcript of both the years of the course, the date is 01.11.2023, became significant and relevant.

15. Considering the above factors, we do not find that the Zilla Parishad was wrong in entertaining applications of those candidates whose documents were clear and in tune with the requirement set out in the advertisement. We would have issued a Writ of Mandamus to declare the Petitioner as being eligible, if he had secured the Diploma "गुणपत्रक /Transcript" indicating the final result of the course by taking into account his total performance of the entire diploma course, as is the mandate of the University. So also, the suppression of facts is fatal to the Petitioner in view of the law laid down by the Hon'ble Supreme Court in **Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC**

398 and Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society, AIR 2013 SC 523.

16. This Writ Petition, being devoid of merits, stands dismissed.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)