



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO. 10474 OF 2022

DIPAK PRATAPSING JANGHALE

VERSUS

THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

Mr.R.N. Chavan h/f. Mr. S.P. Rathod, Advocate for the Petitioner.

Mr.R.K. Ingole, AGP for Respondent No.1/State.

Mr.A.B. Kadethankar, Advocate for Respondent No.2.

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

DATED : 19.03.2024

PC :-

01. This is yet another case, wherein the Examination Authorities believe that the Petitioner has indulged in unfair practices in examination. The Petitioner had appeared for an exam, which was conducted in relation to the selection process for filling in the post of Junior Clerk cum Typist through the VJ(A) Reserved Category. The appointments to the said posts has already commenced.

02. The ground raised by the Maharashtra Housing and Area Development Authority (MHADA) is that, this Petitioner has indulged in unfair

examination practices and an F.I.R. has been registered against him. The learned Advocate for the Petitioner submits that no offence can be made out considering the contents of the F.I.R.

03. The learned Advocate Mr. Kadethankar relies on the affidavit-in-reply filed by Mr. Mandar Shrikant Vaidya, Chief Officer, Aurangabad Housing and Area Development Board, dated 03.08.2023, on behalf of MHADA, in Writ Petition No.10055 of 2022. Paragraph Nos. 11 and 12 of the said affidavit-in-reply read as under :-

“11. In the instant case also it is submitted that since the present petitioner and other petitioners are undergoing police investigation (supra), their performance shall be considered for selection as per their individual merit and subject to the fulfillment of other requisite criterion if they are found not guilty in the investigation.

12. Any candidate who is undergoing police investigation if found not guilty, shall be considered ‘only if his/her performance is found above the last merit candidate presently selected in respective category/cadre’ and ‘if such candidate is not otherwise disqualified/ineligible or doesn’t comply other requisite criterion for the purpose of appointment on the respective post’.”

04. Mr. Kadethankar, reiterates on instructions, that if the candidate is found to be innocent and is acquitted, MHADA would create a post for him in order to recruit him on the respective post with regards to which he has passed his exam.

05. He places reliance upon a judgment delivered by the Hon'ble Supreme Court in Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya – (2021) 10 SCC 136, most specifically paragraph No.12, which reads as under:-

“12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

06. It is quite obvious from the reproduced paragraph as above, that the case before the Hon'ble Supreme Court was with regard to a candidate having made a false declaration and had not disclosed that he was involved in a criminal case. It was, therefore, ruled that if the facts are brought before the Court, the prospective employer could consider whether such a candidate deserves to be inducted in service and in such circumstances, an employer cannot be forced to continue such an employee. These facts are quite

different from the facts before us.

07. Mr. Kadethankar has then cited the judgment delivered by the Hon'ble Supreme Court in the matter of **Commissioner of Police and another Vs. Umesh Kumar – (2020) 10 SCC 448**. He draws our attention to paragraph 14, which reads as under:-

“14. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In **Punjab SEB vs. Malkiat Singh- (2005) 9 SCC 22**, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:

“4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] which reads: (SCC pp. 50-51)

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], *Neelima Shangla v. State of*

Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] .”
(emphasis supplied)”

08. Even while considering the facts in Umesh Kumar (supra), what has been ruled by the Hon'ble Supreme Court is, that selection does not give a right to appointment to any candidate. In the case before us, the issue is that this Petitioner, though is in the merit list and is eligible to be appointed as per the affidavit filed by MHADA, he is not being considered for certain reasons.

09. As such, the record reveals as under :-

- a) The Petitioner attempted only one question in the first 60 minutes and attempted 153 questions in the next 60 minutes.
- b) The duration of the examination was 120 minutes in which each student had to attempt 200 questions.
- c) It is undisputed that the Petitioner did not leave the examination hall even once, after he entered the hall at the time of the commencement of the examination.
- d) The Petitioner did not vacate his chair for the entire

duration of 120 minutes and remained in the examination hall.

- e) The Petitioner had visited the rest room, prior to his entry in the examination hall.
- f) The CCTV footage indicates that the Petitioner was touching one ear while answering the questions.
- g) An FIR has been registered against the Petitioner.

10. It is, thus, obvious that while the Petitioner attempted the questions during the examination, he neither left the examination hall even once, nor was he found carrying any objectionable material or an electronic gadget on his body in the examination hall.

11. We are circumspect as to whether this could be a ground for refusing to consider the Petitioner's candidature for appointment when he is in the merit list.

12. The learned Advocate Mr. Kadethankar had urged us to bear in mind only one aspect that the F.I.R. has been registered by MHADA. He

concedes that the above recorded facts are set out in the F.I.R.. The complaint in the FIR is that he had visited the wash room before entering the examination hall. The learned Advocate for the Petitioner is right in questioning as to whether it could be any offence for a student to go to the wash room before entering the examination hall.

13. We cannot ignore the fact that the Petitioner is a young candidate who is trying to make a future for himself. He has sincerely attempted the examination. Not being able to solve many questions in the first hour and solving more questions in the second hour without leaving the examination hall for a single minute and without there being any allegation of carrying any objectionable material on his body or any electronic gadget, terming such candidate as having indulged in unfair examination practices, is a far fetched contention by the MHADA.

14. The MHADA has filed an affidavit saying, if this candidate is acquitted from the charge levelled upon him, he will be accommodated on the available seat. The learned Advocate for the Petitioner submits that this would take years. His career would be destroyed until then. The rigours of litigation would demoralise him. We cannot be insensitive to such circumstances.

15. Considering the above, we find that the case of MHADA against the Petitioner, does not characterize unfair examination practice. We are not convinced by the contentions of MHADA. If such contentions are accepted, the students will lose faith in such examinations. Going to the wash room before entering the examination hall/premises, can never be an offence. A candidate solving 50 questions in one hour and 100 questions in the second hour when all the questions were Multiple Choice Questions (MCQ), through an online process, cannot be said to be an unfair examination practice.

16. In view of the above, **this Writ Petition is partly allowed.** We direct Respondent No.2 MHADA, to consider the candidature of the petitioner in the recruitment process and based on his rank in the order of merit and availability of posts, he may be considered by following the due procedure applicable in the said recruitment process, in the event there is no other legal impediment in the path of the candidate.

17. Needless to state, in the event the Petitioner is convicted in view of the allegations set out in the FIR, the employer would be at liberty to resort

to an appropriate proceeding as is permissible in law.

18. Needless to State, the observations in this order are restricted to the grievance raised before us in this Petition and would not influence the Criminal Investigation Agency.

[R.M. JOSHI,J.]

[RAVINDRA V. GHUGE,J.]