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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9719 OF 2024

Union of India, through the
Secretary of Ministry of Defence,
Department of Defence Production,
New Delhi & 2 Ors. ... Petitioners

V/s.
Yojana Nitin Urankar ... Respondent

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Mr. R.R. Shetty for the petitioners – Union of India.

Ms. Annie Nadar for the respondent.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.

DATED : JULY 12, 2024

P.C.:

1. Rule. Rule is made returnable forthwith. With the consent of learned counsel for the parties, the writ petition has been taken up for final disposal.

2. Under challenge in this petition filed under Article 226 of the Constitution of India is the judgment and order dated 24 March 2023 whereby Original Application No.518 of 2019 filed by the respondent has been allowed, and the order impugned therein, namely, order dated 23 July 2019 has been set aside.

3. At this juncture itself we may note that by means of

order dated 23 July 2019 representation made by the respondent against the notice terminating her services was rejected.

4. The facts necessary for adjudication of the controversy involved in this writ petition are narrated thus:

A selection pursuant to an advertisement issued in the year 2003 for 14 vacancies against the post of Lower Division Clerk (LDC) in the Ordinance Factory at Dehu Road, Pune took place. Out of 14 vacancies advertised, two vacancies were reserved for the candidates belonging to Scheduled Caste; three vacancies were reserved for the candidates belonging to Other Backward Classes; one vacancy was reserved for Ex-servicemen, and one vacancy was reserved for physically handicapped persons. Accordingly, there were seven open category / unreserved category vacancies.

5. On the basis of the selection held pursuant to the advertisement, result was declared on 30 January 2006. The respondent secured 92 marks, whereas the last person in the select list of the candidates for open category vacancies had secured 93 marks. One candidate, Sanjeev Ambastha, who was placed at Serial No.1 in the merit list, though joined; however, he could not secure police verification. Accordingly, he quit after joining, as a result of which this vacancy also could not be filled. Other two candidates borne on the select list for open category, namely, Binod Kumar and Lalitha Nagrajan did not join, as a result of which the respondent was offered appointment on 15 February 2007. Pursuant to the

offer of appointment dated 15 February 2007, respondent submitted her joining on 21 February 2007. It is also noted that prior to her appointment and joining as LDC in the Ordinance Factory concerned, she was working in a State Government Institution, namely, Indira Group of Institutions.

6. On successful completion of probation period, the respondent was confirmed on the post of LDC on 21 September 2009 and thereafter was even promoted to the next higher post on 18 July 2012.

7. After completing more than 12 years of service with the Ordinance Factory, a show-cause notice was issued to her on 29 June 2019 requiring her to show-cause as to why her appointment as LDC may not be cancelled and why her services should not be terminated. The respondent, submitted her reply/representation to the said show-cause notice on 11 July 2019, and simultaneously challenged the said show-cause notice by instituting proceedings of Original Application No.492 of 2019 before the Central Administrative Tribunal (Tribunal). Said original application was finally disposed of with a direction to the authority concerned to consider and dispose of the representation made by the respondent, dated 11 July 2019 by passing a speaking and reasoned order. The authorities, by the said order dated 18 July 2019, were also directed not to give effect to the order, if any, which may be passed against the respondent pursuant to the show-cause notice dated 29 June 2019 for a period of one week of communicating such order, so that in case she had still any grievance, she could approach the appropriate forum.

8. In compliance of the order dated 18 July 2019 passed by the Tribunal, the representation/reply submitted by the respondent against the show-cause notice dated 29 June 2019 was considered and rejected by means of order dated 23 July 2019 by the General Manager of the Ordinance Factory.

9. Challenging the aforesaid order dated 23 July 2019, the respondent again invoked jurisdiction of the Tribunal by instituting Original Application No.518 of 2019 which has been allowed by the Tribunal vide impugned judgment and order dated 24 March 2023.

10. Having regard to the circumstances of the present case, specially keeping in mind the fact that the show-cause notice was issued to the respondent after completing 12 long years of confirmed services with the Ordinance Factory, the first and foremost question which we may consider to decide is as to whether in such circumstances this Court should exercise discretionary jurisdiction under Article 226 of the Constitution of India.

11. As per order dated 23 July 2019 passed by the General Manager of the Ordinance Factory whereby the representation of the respondent was rejected, her appointment has been treated to be irregular and not illegal. The fact that the appointment of the respondent was treated to be irregular and not illegal is further strengthened by the contents of the show-cause notice dated 29 June 2019 wherein as well, appointment of the respondent has been treated to be irregular and not illegal.

12. The order dated 23 July 2019 which was challenged by the respondent before the Tribunal only states that the name of the respondent did not figure in the select/wait list of the candidates and that her appointment was made ignoring merit position of two other candidates, namely, Sanjay Bedekar and Milind Gajbhiye who had secured 93 marks, whereas the respondent has secured 92 marks. The order further reveals that both these candidates belonged to Scheduled Caste category and were given appointment against the vacancies reserved for the candidates belonging to Scheduled Caste. The sum and substance of the reason indicated in the order terminating services of the respondent is that two scheduled caste candidates, though higher in merit, ought to have been included in the merit list prepared for filling up the vacancies meant for open category candidates; however, they were given appointment against the vacancies reserved for scheduled caste candidates and accordingly offer of appointment made to the respondent on 15 February 2007 was not proper. No other reason has been assigned in the order dated 23 July 2019.

13. It is also noteworthy at this juncture itself that admittedly there is no allegation of any misrepresentation or furnishing of any wrong information or fraud against the respondent. The only ground indicated in the order dated 23 July 2019 rejecting the claim of the respondent is that she could not have been given appointment for the reason that two candidates belonging to the reserved category of scheduled caste ought to have been adjusted against the vacancies meant for open category and not against reserved

vacancies meant for scheduled caste category candidates. It is also the submission of the learned counsel for the petitioner that had these two candidates belonging to reserved category been offered appointment against the vacancies meant for open category, no vacancy would have arisen, and accordingly the respondent could not have been appointed.

14. All the aforesaid reasons, in our considered opinion, nowhere depict that the respondent was not subjected to any selection and that her appointment was not made as per the Recruitment Rules. As a matter of fact, pursuant to the duly published advertisement in the year 2003, the respondent had submitted her application and after having participated in the selection was declared having secured 92 marks. Admittedly, the last candidate belonging to the open category who was selected, had secured 93 marks; however, out of seven such candidates, two did not join and one after joining had quit the service, as a result of which three clear vacancies were available. It is only in these circumstances that the respondent was offered appointment which was accepted and she served for more than 12 years and to her surprise received show-cause notice on 29 June 2019.

15. In view of the fact that the petitioners themselves have treated the appointment of the respondent to be merely irregular and not illegal, and also having regard to the circumstances in which the appointment to the respondent was offered which she accepted, and further considering the fact that show-cause notice was issued after 12 long years of confirmed service without any blemish against the

respondent, we are not inclined to exercise our discretionary jurisdiction to entertain this writ petition.

16. Even otherwise, the respondent after her appointment since 15 February 2007 has been serving the department concerned with an impeccable service record and the fact that there is nothing against her persuades us not to exercise our discretionary jurisdiction.

17. The writ petition is, thus, dismissed.

18. Rule stands discharged. No costs.

19. All pending interlocutory application(s), if any, stand dismissed.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)