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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4445 OF 2024

Union of India & Ors.

.. Petitioners

Versus

Kavita Vijay Shelke & Ors.

.. Respondents

Mr. D. P. Singh i/by Dr. Nima Wangdi for petitioners.

Mr. K. H. Holambe Patil a/w K. K. Holambe Patil,
Visha Shirsat for respondents.

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**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
M. M. SATHAYE, J.**

DATE: 4th OCTOBER, 2024

P.C.:

1. Heard Mr. D. P. Singh, learned counsel representing the petitioners and Mr. K. H. Holambe Patil, learned counsel representing the respondents.

2. Under challenge in this petition filed under Article 226 of the Constitution of India is the judgment and order dated 25th September, 2023 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as "the Tribunal"), whereby the Original Applications preferred by the respondents have been allowed and the decision, as contained in the notice dated 6th March, 2020, issued by the Director of petitioner no.3-Institute has been set aside and the petitioners have been directed to resume the selection

process from the stage it was abandoned and to complete the same.

3. We may note, at this juncture, that by the decision contained in the notice dated 6th March, 2020, the recruitment process held for selection to different Group "C" posts was cancelled.

4. An advertisement was issued by the petitioner no.3-Institute on 23rd December, 2017 for selection to different Group "C" posts. The respondents applied pursuant to the said advertisement and in the process of screening they succeeded. The documents/certificates/testimonials of the respondents were also verified by the selection committee, which were found to be genuine and fulfilling the criteria for the posts of Stretcher Bearer, Hamal, Work Shop Attendant etc.

5. However, before the list of candidates selected in screening could be published, an anonymous complaint was received by the petitioner no.3-Institute regarding alleged malpractices adopted in the selection process. The allegation in the said anonymous complaint was that the candidates only from Maharashtra and children of employees of petitioner no.3-Institute were selected for the subject posts. On receipt of the said anonymous complaint, the petitioner no.3-Institute initiated investigation of the said complaint which was referred to the Director General, Health Services (DGHS), New Delhi. The Vigilance Officer was consulted in the matter and after going through the facts in detail as also the averments in the anonymous complaint, he opined that the details as mentioned in the complaint could not be verified

and recommended that no further action was required on such an anonymous complaint.

6. However, the opinion of the Vigilance Officer was communicated to the DGHS for seeking his opinion as to whether any further action was required before resuming the selection process. It is in this process that the decision at the level of the DGHS was taken and accordingly same was communicated to the candidates by means of notice dated 6th March, 2020, whereby the candidates who had appeared for screening test for selection to different Group "C" posts were informed that as per the directions from DGHS, New Delhi, the recruitment process has been cancelled.

7. Challenging the said notice dated 6th March, 2020, the respondents preferred original applications before the Tribunal which have been decided by the impugned judgment and order dated 25th September, 2023.

8. It has been contended by the learned counsel for the petitioners that the impugned judgment and order passed by the Tribunal is not sustainable for the reason that decision to cancel the selection process was taken on due consideration of the relevant facts. It has also argued that mere enlistment of a candidate after screening test does not vest any right in such a candidate to seek appointment and further that the appointing authority or the department concerned has every right to cancel a selection process before it is completed.

9. Mr. Singh, learned counsel representing the petitioners has also argued that in case any irregularity or malpractice is found in the selection process it is always competent for the

authority concerned to abandon or cancel the same. He has, thus, submitted that in the instant case it has been found that the respondents who were cleared in the screening test are the relatives of some of the employees working with the petitioner no.3-Institute, as such their inclusion after screening the test, casts a doubt and accordingly in the fitness of things the decision by DGHS to cancel the selection process was taken.

10. The learned counsel for the respondents, however, opposed the prayers made in the writ petition and has submitted that the Tribunal has considered the entire matter in detail and has come to the conclusion that merely because some of the candidates who were declared successful in the screening test were found to be relatives of the employees of petitioner no.3-Institute, the entire selection process could not be cancelled, unless some specific irregularity or malpractice was found in such a process. He, thus, submitted that the writ petition deserves to be dismissed at its threshold.

11. We have considered the submissions made by the learned counsel for the petitioners and have also perused the records available before us on this writ petition.

12. It is true that any candidate does not acquire any right to be selected in a selection held for any post in public employment merely because he has been cleared in the screening test and further that the employer has every right either to abandon or cancel the selection process at any stage. However, for cancellation of selection process there has to be some justifiable reason and such a decision cannot be

based on arbitrariness or irrationality. Unless there are sufficient reasons to justify the cancellation of selection process based on some irregularities or malpractices, the decision of the authority concerned cancelling or abandoning the same cannot be justified.

13. We would now examine as to the reasons given by the petitioners for cancelling the selection process. It is not in dispute that on verification of the documents/testimonials/certificates, the respondents were found to be fully eligible for participating in the process. It is also not in dispute that the documents submitted by the respondents along with application for selection to the posts in question pursuant to the advertisement were found to be genuine. The only reason given by the petitioners for cancelling the selection process is that some of the candidates, who were declared successful after the screening test, were found to be relatives of the employees of the petitioner no.3-Institute.

14. We are of the opinion that unless and until in the screening process any malpractice or any irregularity or violation of any settled procedure or any other tangible lapse is found, merely because certain candidates who were declared successful after screening test, were found to be relatives of the employees working in petitioner no.3-Institute, this cannot be a reason or ground either to abandon such a selection process or to cancel the same.

15. Having recognized the settled law that mere success after the screening test does not confer any right on any candidate either to seek participation in further process of selection or to seek appointment, and further that it is always

open to the employer to cancel the selection process, we may also observe, at this juncture itself, that for cancelling the selection process or abandoning the same, there has to be certain tangible reasons such as irregularity or malpractice in the selection/screening process. In absence of any irregularity or malpractice so far as screening test in the instant case is concerned, we are of the considered opinion that the impugned decision as reflected in the notice dated 6th March, 2020 for cancelling the selection process cannot be justified.

16. The impugned judgment and order passed by the Tribunal does not warrant any interference in this writ petition.

17. For the reasons given above, the writ petition deserves to be dismissed.

18. Resultantly, the writ petition is hereby dismissed.

19. There shall be no order as to costs.

(M. M. SATHAYE, J.)

(CHIEF JUSTICE)