



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**REVIEW APPLICATION NO. 107 OF 2021 IN
WRIT PETITION NO. 9781 OF 2017**

Shashikala D/o Dhondiram Bandal,
Age – 51 years, Occu – Anganwadi Karyakarti,
R/o Pimparkhed1, Post-Hivara,
Taluka-Ashti, Dist-Beed

.. Review petitioner

Versus

- 1] The State of Maharashtra
Through its Secretary,
Women & Child Education,
Department, Mantralaya
Mumbai – 400 032
- 2] Member Secretary,
District Selection Committee -
cum-Dy. Chief Executive
Executive Officer, Zilla Parishad,
Beed
- 3] The District Collector-cum-
President District Selection
Committee, Zilla Parishad, Beed,
District – Beed
- 4] The Member,
District Selection Committee,
Chief Executive Officer,
Zilla Parishad, Beed, Dist - Beed
- 5] Smt. Kavita D/o Udhavrao Admuthe,
Age-42 years, Occu-Anganwadi
Supervisor, R/o Pachangri,
Tal-Patoda, District – Beed

.. Respondents

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Advocate for petitioner : Mr. Sujeet D. Joshi
AGP for the respondent no. 1 – State : Mr. S.R. Wakale
Advocate for the respondents 2 and 4 : Mr. U.S. Mote
Advocate for respondent no. 5 : Mr. S.A. Nagarsoge

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

**RESERVED ON : 17 JANUARY 2025
PRONOUNCED ON : 30 JANUARY 2025**

ORDER (MANGESH S. PATIL, J.) :

This is an application by the original petitioner seeking review of the judgment and order dated 05-10-2008, dismissing the writ petition. Delay in preferring the application has already been condoned.

2. We have heard both the sides.

3. By filing the writ petition, the applicant was questioning appointment of respondent no. 5, as Anganwadi Supervisor by order dated 29-06-2015. Challenge was primarily on the ground that she was not fulfilling the requisite requirement of experience of at least 10 years as Anganwadi Sevika + Balwadi Shikshika + Anganwadi Madatnis. It was her stand about having ascertained lack of experience in respondent no. 5 on the basis of information collected under the Right to Information Act, 2005.

4. It was the applicant's case that respondent no. 5 had produced experience certificate issued by the project officer dated 13-04-2015 of she having 8 years and 4 months experience as Anganwadi Sevika and further mentioning that the record regarding duration of her experience of working as Balwadi Shikshika was not available in the office.

5. Respondent no. 2 - Member Secretary of the district Selection Committee-cum-the Deputy Chief Executive Officer of the Zilla Parishad and respondent no. 5 filed affidavits in reply. It was their stand that the documents placed on record by the latter were verified by the former and had formed an opinion that she was having the requisite experience in aggregate of 10 years as Anganwadi Sevika and Balwadi Shikshika. They also opposed the petition on the ground of delay.

6. After hearing both the sides, by the order under review, the petition was dismissed. The division bench observed that respondent no. 2 had ascertained and verified work experience of respondent no. 5 on the basis of recommendation of Block Education Officer dated 20-04-2017, which in turn, mentioned that on enquiry into the matter, verification of monthly attendance certificate, respondent no. 5 was found to have worked as Balwadi Shikshika from 14-02-2004 to 31-10-2006. It was thus concluded that she was having experience of working as Anganwadi Sevika for 8 years and 4 months and as Balwadi Shikshika between the afore-mentioned period, which in aggregate was more than the minimum 10 years experience. It was observed that there was no contrary material to belie this fact and the petition was dismissed.

7. Mr. Joshi, learned advocate for the applicant submits that during pendency of the writ petition, she was unable to get the information in spite of strenuous efforts. After the matter was decided by the order under review, she could lay her hands on several documents. A three member committee of the Zilla Parishad had enquired into the issue and had submitted a report dated 3/4 July 2016 (**Exhibit A-4**) that respondent no. 5 was not eligible and was not entitled to the appointment. The opinion formed by respondent no. 2 - Deputy Chief Executive Officer on the basis of the report of the Block Development Officer dated 10-04-2017, was in-fact, a communication forwarded by a clerical staff from the office of the Block Education Officer. The applicant also could trace out a copy of the application dated 24-01-2006 of respondent no. 5 by which she had earlier applied to the post of Anganwadi Karyakarti. Any reference to her experience as Balwadi Shikshika, was conspicuously missing and she was not even awarded any marks under that head. All such documents collectively demonstrate and belie the stand of respondents no.2 and 5 about her experience and entitlement to the post.

8. Learned advocate Mr. Mote for respondents no. 2 and 4 and Mr. Nagarsoge for respondent no. 5 would oppose the application.

9. They would submit that there is no error apparent on the face of record or any other sufficient cause for undertaking the review.

Under the guise of seeking a review, the applicant again has put up a challenge, as if it is an appeal. This Court cannot substitute its views in place of the views of the division bench which decided the matter by resorting to re-appreciation of evidence. They would also refer to their respective affidavits in reply.

10. Mr. Mote, learned advocate for respondents no. 2 and 4 would additionally submit that the applicant had filed a complaint challenging appointment of respondent no. 5. A one member committee was constituted. Since she was not satisfied and had opposed the report, a three member committee was constituted. It submitted a report on 3/4 July 2016. Respondent no. 5 was called upon to submit her reply to the report. She responded by submitting her stand and filed documents. It was found that respondent no. 5 was not having the requisite experience. Respondent no. 2 considered the report.

11. Since the first report of one member committee and the report of three member committee were inconsistent, a five member committee was constituted which submitted a report on 15-07-2019. It was found that the documents submitted by respondent no. 5 were not genuine. She was called upon to explain. Her explanation was not found to be satisfactory and a notice to show cause was issued to her on 06-03-2020, as to why she shall not be terminated for the breach of

rule 3 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967 and rule 4(6) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 2019 (**Exhibit R-2**). Respondent no. 5 filed complaint ULP no. 13 of 2020 in the Labour Court. It was dismissed and she has preferred revision (ULP no. 17 of 2020) before the Industrial Court, Aurangabad. By the order dated 11-03-2022, the order of the Labour Court was stayed and the matter was posted for arguments on 09-01-2023.

12. Mr. Mote would lastly submit that irrespective of the aforementioned state-of-affairs, assuming that respondent no. 5 was not eligible and entitled to be appointed, the applicant was a wait listed candidate, life of which was only for a year and, therefore, she cannot seek appointment.

13. Learned advocate Mr. Nagarsoge for respondent no. 5 would admit the afore-mentioned state-of-affairs and would submit that since the issue is seized with the fact finding Courts, this Court may not exercise the power of review, having limited scope.

14. We have considered the rival submissions and perused the papers.

15. As can be appreciated, it is a peculiar state-of-affairs. In exercise of powers under Article 226 of the Constitution, the petition

was filed, questioning eligibility and entitlement of respondent no. 5 on the basis of whatever material that was available to the applicant at the relevant time. Conspicuously, respondents no. 2 to 4 who represent Zilla Parishad, could have but had not disclosed the report of the three member committee which was submitted on 03-07-2018 before passing the order under review on 05-10-2018. Be that as it may. Admittedly, the three member committee report as well as the five member committee report *prima facie* substantiate applicant's stand.

16. However, it is pertinent to note that respondents no. 2 to 4 have reached a conclusion about ineligibility of respondent no. 5 after the writ petition was decided and have even taken appropriate steps under the service regulations seeking to terminate the employment and the matter is sub judice.

17. In our considered view, when the eligibility of respondent no. 5 is being questioned and decided purely based on the factual scenario, as obtaining from various correspondence, the certificates and the fact finding enquiries, it would be appropriate in the peculiar circumstances, to leave the parties to the ultimate result in the judicial proceeding which is underway. The only precaution that can be taken so that no prejudice is caused to either side, would be to issue a clarification that the observations and the conclusions of this Court in the order under review, shall not influence the judicial forum. In the

light of the supervening events, as disclosed to the applicant after the judgment and order under review was passed, the changed stand of respondents no. 2 to 4 in the light of the aforementioned state-of-affairs, would be sufficient and legal basis for issuing such clarification.

18. So far as applicant's claim to occupy the post on the premise of being a candidate on the wait list, it would be appropriate that she is left with the remedy, as is available to her in law on the basis of the conclusion to be arrived at in the ongoing dispute on the judicial side in the matter of termination of respondent no. 5 from the employment.

19. Hence, review application is disposed of with a clarification that observations and the conclusions in the order under review shall not be binding in the dispute before the Labour and Industrial Court in the matter of termination of respondent no. 5 and those shall feel free to decide the issue independently on its on merit. It is further clarified that it would be open for the applicant to seek appointment at an appropriate stage which shall be considered and decided on its own merits.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/