
(2016) 01 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 2923 of 2015

Chhaya

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Citation : (2016) 1 ALLMR 888 : (2016) 4 BCR 313 : (2016) MCR 1038 : (2016) 2 MhLJ 303

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : Kausalye Santosh P., Advocate, for the Appellant; D.V. Tele, AGP, for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner is aggrieved by the judgment and order dated 07.01.2015 delivered by Respondent No. 2- Divisional Commissioner.

3. The Petitioner as well as Respondent No. 5 applied for appointment as "Anganwadi Sevika" pursuant to the proclamation issued by Respondent No. 4- Child Development Project Officer dated 09.12.2013. Their applications were in relation to the post of "Anganwadi Sevika" for village Mategaon, Taluka Purna, District Parbhani. Respondent No. 5 was subsequently selected in the interviews held on 27.01.2014 as she had secured 63.60 marks in the first round and 8.50 marks in the interviews, whereby, her total tally was 72.10. The Petitioner secured 65.33 in the first round and scored 4.50 in the interviews and her total was 69.83.

4. The Petitioner challenged the appointment of Respondent No. 5 within the limitation period and in the light of the provisions set out in the Government Resolution dated 15.09.2011. By order dated 02.08.2014 delivered by

Respondent No. 3- Chief Executive Officer, Zilla Parishad, it was concluded that Respondent No. 5 had not produced any experience certificate along with her application form and therefore, in the initial round the marks allotted to her for her experience in the light of the Government Resolutions dated 05.08.2010 and 15.09.2011 could not have been allotted to her. It was also concluded that the certificate dated 26.06.2012 produced by Respondent No. 5 by way of experience, namely, the certificate of passing the examination of K.G. and Montessori Teaching Course and which was issued by Bhartiya Mahila Vikash Shikshan Prasarak Mandal, could not be taken into account as it was a certificate issued by the private institution. The appointment of Respondent No. 5 was, therefore, quashed and set aside. The Petitioner was appointed in her place.

5. It is not in dispute that the Petitioner was given 01 mark out of 04 for experience and Respondent No. 5 was given 03 marks out of 04 for her experience.

6. Respondent No. 5 preferred an Appeal No. 21/2014 before Respondent No. 2- Divisional Commissioner, Aurangabad for challenging the judgment of Respondent No. 3-CEO dated 02.08.2014. By the judgment dated 07.01.2015, impugned in this petition, Respondent No. 2 has set aside the decision of Respondent No. 3-CEO on the ground that the Chief Executive Officer had no authority to interfere with the allotment of marks as the marks were allotted by the competent selection committee. As such, the appointment of Respondent No. 5 was confirmed.

7. The Petitioner submits that the Government Resolution dated 15.09.2011 provides for challenging any decision including the selection of any candidate as Anganwadi Sevika, Anganwadi Madatnis and Mini Anganwadi Sevika, before the Chief Executive Officer of the concerned Zilla Parishad after the Child Development Project Officer announces the results of the selection process. Such an appeal is to be preferred within 30 days from the date of the result. The learned Advocate for the Petitioner, therefore, submits that the conclusion of Respondent No. 2 is erroneous.

8. Further grievance of the Petitioner is that three marks were allotted to Respondent No. 5 on the basis of the experience certificate. One mark was allotted to the Petitioner for her experience. The difference between the two is, therefore, of only two marks as the Petitioner has scored 69.83 marks (rounding off to 70 marks) and Respondent No. 5 has scored 72.10 marks (rounding off to 72 marks). The contention is that if the marks allotted by way of experience to Respondent No. 5 are taken away, her tally would reduce by three marks bringing her down to 69 marks as against 70 marks scored by the Petitioner.

9. The Petitioner has referred to the Government Resolution dated 05.08.2010 and the proclamation dated 09.12.2013. The contention is that an experience certificate issued by a private entity is not acceptable. This has been lost sight of by Respondent No. 2 while delivering the impugned judgment. It is, therefore,

prayed that the decision of Respondent No. 3 dated 02.08.2014 be sustained and the impugned judgment of Respondent No. 2 dated 07.01.2015 be quashed and set aside.

10. The learned AGP appearing on behalf of Respondent Nos. 1, 2 and 4 supports the impugned judgment.

11. The learned Advocate appearing on behalf of Respondent No. 3 submits that the Chief Executive Officer, Zilla Parishad has rightly exercised his powers as they flow from Clause 5 of the Government Resolution dated 15.09.2011.

12. The learned Advocate for Respondent No. 5 has strenuously supported the impugned judgment. He submits that Respondent No. 5 is more meritorious than the Petitioner. She has acquired experience by passing an examination of K.G. and Montessori Teaching Course (three months) in the first grade for Marathi subject. The said certificate is indicative of the said fact.

13. He further submits that the selection process has been conducted by a competent selection committee. The Chief Executive Officer has no authority to interfere with the marks allotted by the selection committee. Respondent No. 2 has rightly concluded that Respondent No. 3 has no such jurisdiction.

14. He further submits that Respondent No. 2 has independently considered the facts of the case and was convinced that the allotment of marks has been properly done and no interference is called for. The learned Advocate has also relied upon the affidavit in reply filed by Respondent No. 5 in support of her contentions. It is, therefore, prayed that the petition be dismissed with costs as the Petitioner has unnecessarily engaged Respondent No. 5 in litigation.

15. I have considered the submissions of the learned Advocates as have been recorded herein above.

16. Primarily it needs to be considered whether, Respondent No. 3-CEO had authority to entertain an appeal preferred by the Petitioner. Clause 5 of the Government Resolution dated 15.09.2011 is titled as filing of a complaint or an appeal against the selection process. The provision is that any person aggrieved by the result of the selection process for appointment as Anganwadi Sevika/ Madatnis/Mini Anganwadi Sevika, can challenge the decision of the Child Development Project Officer before the Chief Executive Officer of the concerned Zilla Parishad within a period of 30 days from the date of the result. The Chief Executive Officer is empowered to consider the grievance put forth and deliver an order in tune with the Government Resolution. In the light of this fact, I cannot agree with the conclusion of Respondent No. 2 that the Chief Executive Officer has no authority to consider the grievance of the Petitioner.

17. Respondent No. 2 has also concluded that because the competent selection committee has allotted the marks, the Chief Executive Officer should not have interfered with the said allotment. I am unable to agree with this conclusion as well for the reason that the issue before the Chief Executive Officer was only with

regard to the allotment of marks, and not with regard to merits of the qualifications and performance of the candidates.

18. The only issue was with regard to whether, the experience certificate was annexed to the application form by Respondent No. 5 and as to whether, the marks allotted in column 4 reserved for experience were rightly allotted. The Chief Executive Officer was, therefore, not required to look into this matter subjectively, but was only required to scrutinize whether, any such experience certificate was placed on record and if yes, whether, it was in tune with the Government Resolution dated 05.08.2010 and the proclamation published. On this count, the Chief Executive Officer rightly could scrutinize the grievance of the Petitioner.

19. In the light of the above, the experience certificate placed on record by Respondent No. 5 needs to be scrutinized. The Government Resolution dated 05.08.2010 clearly indicates in clause 2(f) that any certificate issued by a private institution or entity shall not be accepted and shall not be considered. So also, the said clause indicates that the experience is with regard to a teacher or as is provided in tune with the said Government Resolution.

20. Clause 10 of the proclamation dated 09.12.2013 clearly informs the candidates that the experience certificate, for allotment of marks reserved for the said category (four marks), would be entertained only if the same is issued by the Education Officer, Social Welfare Department, Social Welfare Board or any Government Balwadi or Anganwadi. The experience certificate issued by a private institute shall not be considered.

21. In the light of the above, when called upon to explain the certificate produced on record by Respondent No. 5, the learned Advocate on the basis of the affidavit could not indicate that the said certificate was issued by an institution which would be covered by the Government Resolution and Clause 10 of the proclamation.

22. Respondent No. 3-CEO has arrived at the conclusion based on the material before him that Respondent No. 5 had not attached a copy of the experience certificate along with the application form. There is nothing on record to prove the contrary.

23. As such, for the reasons recorded above, three marks allotted to Respondent No. 5 on account of her experience certificate could not have been awarded to her. The Petitioner has been awarded one mark. Consequentially, the marks scored by Respondent No. 5 would be 69 as against the marks scored by the Petitioner which are 69.83. In the light of the above, I find that Respondent No. 2- Divisional Commissioner has failed to consider the above aspects while dealing with the appeal filed by Respondent No. 5.

24. As such, the Writ Petition is allowed. The impugned judgment dated 07.01.2015 being perverse and erroneous, is quashed and set aside. The

selection of Respondent No. 5 is, therefore, set aside. The decision of Respondent No. 3-CEO dated 02.08.2014 is sustained and the Petitioner shall, therefore, be appointed as Anganwadi Sevika for village Mategaon, Taluka Purna, District Parbhani.

25. Rule is made absolute in the above terms.