

(2015) 08 BOM CK 0217
In the Bombay High Court
Case No : Writ Petition No. 1831 of 2014

Munnabai

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0217

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

Bench : Single Bench

Advocate : H.T. Gaikwad, for the Appellant; S.D. Shelke, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

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

2. The undisputed factors considering the submissions of the learned Advocates and the record available are as under :-

- a. Respondent No. 3 initiated the selection process for appointment of "Anganwadi Sevika".
- b. The interviews were held on 17/06/2011.
- c. The petitioner was appointed as an "Anganwadi Sevika" on 24/06/2011 being first in the order of merit.
- d. The petitioner joined as an "Anganwadi Sevika" on 28/06/2011.
- e. Respondent No. 5, who had also competed with the petitioner, challenged the selection and appointment of the petitioner in the light of the circular dated 25/05/2011 and raised a dispute as regards allotment of marks to the petitioner.
- f. The petitioner was allotted 9.50 marks in the interviews with 2 members of the

Interviewing panel having allocated 10 marks each in her favour.

g. Respondent No. 5 scored 3.25 marks in the light of 2 members of the Interviewing Panel having allotted less than 4 marks.

h. Respondent No. 3, while considering the objections/complaint of respondent No. 5, followed the circular dated 25/05/2011 and moderated the marks of the petitioner as well as respondent No. 5 by which the petitioner was reduced to 9 from 9.50 and respondent No. 5 was granted 4.25 marks in place of 3.25.

i. Consequentially, the appointment of the petitioner was cancelled and respondent No. 5 was directed to be appointed.

j. The petitioner preferred an appeal before respondent No. 2 Appellate Authority, which dismissed the appeal considering the ambit of the circular dated 25/05/2011.

3. In the above backdrop, Mr. Gaikwad, learned Advocate for the petitioner strenuously submits that respondent No. 3 / Chief Executive Officer could not have acted as an Examiner much less as a Moderator. He could not have modified the marks allotted by Subject Experts to the candidates. Respondent No. 3 has exercised the power not vested in it by Law.

4. He further submits that respondent No. 5 had participated in the entire selection process and thereafter has challenged the appointment of the petitioner. He further submits that either the competent authority should have ordered a denovo interview or should have accepted the verdict of the Subject Experts and should not have modified the marks. The C.E.O. could not have relied upon the circular dated 25/05/2011 since the GR dated 05/08/2010 does not create an embargo on allotting less than 4 and more than 9 marks in the interviews to the candidates. He, therefore, prays that the impugned orders be quashed and set aside.

5. Mr. Mukhedkar, learned Advocate appearing on behalf of respondent No. 5 submits that though the GR dated 05/08/2010 does not prescribe the minimum and maximum marks to be allotted by the Interviewing Panel, the State, in its wisdom, introduced the circular dated 25/05/2011 so as to ensure that there is no partiality in the selection process. He further submits that the Interviewing Panel is to consider the performance of the candidates and there is a possibility that the marks could be allotted as per their preferences or based on their fancies.

6. He further submits that this Court will have to conclude that the circular dated 25/05/2011 is arbitrary and unsustainable, without which no interference can be caused. He further submits that the circular dated 25/05/2011 has not been challenged by the petitioner and as such this Court would not be in a position to decide the legality and validity of the said circular. He, therefore, submits that both the authorities below have rightly followed the guidelines flowing through the circular and consequently the said guidelines find place in a GR dated

15/09/2011. He, therefore, prays for the dismissal of this petition.

7. I have considered the submissions of the learned Advocates and have gone through the record available before the Court.

8. This Court has dealt with a somewhat similar situation in the matter of Shilpa Dhanraj Kale Vs. Divisional Commissioner and others, Writ Petition No. 4358/2014, decided by judgment dated 03/08/2015. It would be apposite to reproduce paragraph Nos. 3 to 9 of the said judgment as under :-

"3. In the process for recruitment that was held for appointing an Anganwadi Sevika, steps were taken as per Government Resolution dated 05.08.2010. On the basis of qualifications of the respective candidates, the petitioner was awarded 77 marks out of 90 while respondent No. 4 was awarded 76 marks out of 90. In the interviews that were held subsequently the petitioner was awarded an average of 7.75 out of 10 while the respondent no. 4 was awarded 4.25 marks out of 10. The total marks out of 100 were then taken into consideration and it was found that petitioner had scored 84.75 marks while the respondent no. 4 had secured 80.25 marks. The respondent no. 2 thereafter approved the selection of the petitioner. Being aggrieved the respondent no. 4 filed an appeal before the Divisional Commissioner alleging that she was entitled for preference being a widow as stipulated in Government Resolution dated 05.08.2010. The Divisional Commissioner found that in the interviews that were held the petitioner had been granted full marks by two members and as same was contrary to certain directions issued by the Government, the selection of the petitioner was set aside with a direction to conduct a fresh process by holding interviews afresh.

4. Shri K.P. Mahalle, learned counsel appearing for the petitioner submitted that there was no bar to grant full marks when the interviews were held for making selection of Anganwadi Sevika. He submitted that though two members had granted full marks to the petitioner the other two members had not done so and therefore it could not be said that the petitioner had been favoured by the interview committee which had conducted the interviews. He submitted that after the petitioner's selection on 16.05.2011, directions came to be issued on 25.05.2011 against awarding full marks in interviews. Subsequently, Resolution dated 15.09.2011 came into effect and the Divisional Commissioner by considering directions and the Government Resolution issued subsequent to her selection have set aside the selection of the petitioner. It was, therefore, submitted that the directions relied upon by the Divisional Commissioner could not be given retrospective effect to hold that the petitioner's selection was bad in law.

5. Shri V. Dahat, learned counsel appearing for respondent no. 4 supported the impugned order by submitting that the relevant directions and Government Resolution dated 15.09.2011 were taken into consideration by the respondent no. 1 and, therefore, the impugned order to conduct the interviews afresh did

not call for any interference. It was submitted that in the interviews that were held two members had granted full marks to the petitioner and the same was contrary to the communication dated 25.05.2011. As the appeal was pending when Government Resolution dated 15.09.2011 came into force, same should have been taken into consideration.

Smt. B.P. Maldhure, learned Assistant Government Pleader supported the impugned order by relying upon the Government Resolution dated 15.09.2011. Shri R. Joshi, learned counsel appearing for respondent no. 2 pointed out that the directions dated 16.05.2011 relied upon are subsequent to the selection of the petitioner.

6. I have considered the respective submissions and I have gone through the documents filed on record. The selection process to appoint Anganwadi Sevika was conducted as per Government Resolution dated 05.08.2010. After the interviews were held the respondent no. 2 on 16.05.2011 upheld the selection of the petitioner on the ground that she had scored higher marks than respondent no. 4. Perusal of the memorandum of appeal preferred by respondent no. 4 indicates that a grievance was made that in terms of Clause E of the Government Resolution dated 05.08.2010, though the respondent no. 4 was entitled for preference being a widow the same was not granted. There were no allegations that the members of the Committee had either favoured the petitioner or granted her full marks in the interview. In the impugned order a reference has been made to certain directions issued by the State Government while holding the process of selection to be defective.

7. It is necessary to note that the respondent no. 2 approved the selection of the petitioner on 16.05.2011 by considering the provisions of Government Resolution No. 5-8-2010. Thereafter on 25.05.2011 directions came to be issued by the Ministry of Women and Child Development to the Chief Executive Officer that of the total of 10 marks, maximum marks of 9 and minimum marks of 4 should be awarded in the interviews. Thereafter on 15.09.2011 a Government Resolution was issued in which it was stated that no candidate should be granted less than 4 marks or more than 9 marks in the interviews. It is on the basis of the directions dated 25.05.2011 and the Government Resolution dated 15.09.2011 that the selection of the petitioner has been held to be invalid.

8. The directions dated 25.05.2011 and the Government Resolution dated 15.09.2011 could not have been interpreted in a retrospective manner so as to govern the interviews that were already held. The petitioner having been selected on 16.05.2011, the marks awarded in the interviews by two members could not be held to be illegal as being contrary to directions dated 25.05.2011 and Government Resolution dated 15.09.2011 that came into effect subsequent to the petitioner's selection. The position as prevailing on the date when the interviews were held would govern the situation. Reference in that regard can be usefully made to the decision of the Supreme Court in Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, AIR 2008 SC 1657 : (2008) 2 CLT

370 : (2008) 119 FLR 1 : (2008) 3 JT 304 : (2008) 2 SCALE 740 : (2008) 3 SCC 724 : (2008) 1 SCC(L&S) 885 : (2008) AIRSCW 1850 : (2008) AIRSCW 3296 and the observations in para 11 as under:

"We have heard learned counsel for the parties and perused the record. Mr. M.R. Calla, learned Senior counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria were changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30.12.1996 whereby it was provided that higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement has been issued on the basis of the circular obtaining at the particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently."

9. It is also to be noted that there was no such stipulation in Government Resolution dated 05.08.2010 of giving maximum marks of 9 and minimum marks of 4. The selection process therefore having been held as per Government Resolution dated 05.08.2010 same could not have been faulted. Even otherwise it is to be noted that respondent no. 4 in her appeal had not raised a grievance of being unfairly treated by the members of the interview committee. Reliance is being placed on Government Resolution dated 15.09.2011 that is issued subsequent to selection of the petitioner."

9. In the light of the above, the effect of the circular dated 25/05/2011 has been considered by this Court. It is held that the said circular would be applicable prospectively and not retrospectively. The said circular would have an effect from the date of its issuance till 14/09/2011 since the State has introduced a GR dated 15/09/2011 by which the minimum and maximum marks to be allotted in future in the interviews for the appointment of Anganwadi Sevika / Madatnis is now in place. Intent of the Government naturally appears to be to eliminate partiality and nepotism.

10. In the instant case, the interviews were held on 17/06/2011 and the petitioner was appointed on 24/06/2011, both events occurring after the introduction of the circular dated 25/05/2011.

11. In the light of the above, I do not find that the impugned judgments could be termed as being perverse or erroneous.

12. This petition, being devoid of merit, is, therefore, dismissed.

13. Rule is discharged. No costs.