
(2011) 04 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 11079 of 2010

Ravindra Ghule

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 04 BOM CK 0062

Hon'ble Judges : S.S. Shinde, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Balbhim R. Kedar, for the Appellant; S.K. Kadam, A.G.P. for Respondent Nos. 1 to 3 and S.S. Jadhavar, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—By order dated 08122010 this Court issued notice in this matter wherein it is mentioned that the matter will be finally disposed of on the returnable date. In view of the same, now, formal order of Rule is passed and same is made returnable today. The learned A.G.P. waives for Respondent Nos. 1 to 3 and the learned Counsel waives for Respondent No. 4. Though Respondent No. 5 is served, she has chosen not to appear before the Court. Accordingly, now this matter is taken for final hearing today.

2. By way of this petition, the Petitioner has challenged the selection process held for the post of Pharmacist under the National Rural Health Mission in Kaij Taluka. On the basis of public advertisement, the Petitioner applied for the post of Pharmacist along with Respondent No. 5 and other candidates. Respondent No. 5 was found more meritorious and was accordingly selected for the said post, for which the tenure was of 11 months.

3. The learned Counsel for the Petitioner has challenged the selection of Respondent No. 5 on the ground that in oral interview undertaken by the Department, the brother of Respondent No. 5 who has been joined as Respondent No. 4, participated in the selection process and in view of the same,

whole selection process has been vitiated.

4. On behalf of Respondent Nos. 1 to 4, affidavit in reply has been filed by Dr. Ashok Sampatrao Thorat, Medical Superintendent, Rural Hospital, Kallam, District Osmanabad. It is stated that the Selection Committee has fixed the criteria on the basis of marks under different heads and on the basis of the said criteria, Respondent No. 5 was found more meritorious and accordingly, she was selected. In Para 6 of reply, it is stated that it is true that Respondent No. 5 is related with Respondent No. 4 who was one of the member i.e. Member Secretary of the Selection Committee as constituted, however, it is denied that Respondent No. 4 favoured his sister i.e. selected candidate Respondent No. 5. It is pointed out that he is real brother of selected candidate i.e. Respondent No. 5. The learned Counsel for Respondent No. 4 submits that it is true that he was member of the Selection Committee, but according to him, his sister i.e. Respondent No. 5 was found more meritorious on the basis of academic qualification and marks obtained by her in various examinations. He submits that his decision was impartial and was not influenced in any manner by the fact that his sister appeared before him during selection process. However, it is required to be noted that the criteria regarding allotment of certain marks was fixed by the Committee, to which Respondent No. 4, was a Member.

5. In our view, once the sister of Respondent No. 4 appeared before the Interviewing Committee, it was expected from Respondent No. 4 to rescue himself from the selection process with a view to see that nobody can make allegations about the transparency in the selection process. It may be possible to hold that Respondent No. 5 might be more meritorious as compared to the Petitioner. But, when Respondent No. 4 was a member of the Interviewing Committee and his sister was one of the candidates, who was to appear before the same Committee, it was expected from him not to take further part in the selection process.

6. The learned Counsel for Respondent No. 4, however, submitted that in fact, in the oral interview, the Petitioner was assigned more marks by the Interviewing Committee, to which, he was a member. In our view, since the criteria was already fixed in advance for selecting candidates by the Interviewing Committee, to which Respondent No. 4 was a member, it would be just and proper to ask the State Government to undertake fresh selection process for the post in question. If any relative of the member of the Selection Committee has to appear before such Committee, such member shall rescue himself/herself from participating in the further selection process. Even if the selection of Respondent No. 5 is justified on merits, only on the aforesaid point that Respondent No. 4 had taken part in the selection process when his sister had appeared and for transparency to be maintained, we set aside the said order. We make it clear that we are not setting aside the order on the allegation that Respondent No. 5 was not meritorious candidate nor her selection on merits could have been made. Only on the aforesaid limited point as stated earlier, we set aside the said order.

7. It is clarified that as the work of Department should not hamper, it will be open to the Government to make an alternate arrangement till the post is filled in by way of fresh selection. This aspect is left open to the Department. If the Government is willing to fill up the said post, fresh selection process may commence immediately and complete the same within one month from today. It will be open to Respondent No. 5 to apply again for the said post along with other eligible candidates, if any.

8. The petition is allowed. The appointment of Respondent No. 5 is set aside. Rule made absolute on the above terms.