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Court : Mumbai Aurangabad

Decided On : Apr-30-2015

Judge : S.S. Shinde & P.R. Bora

Appeal No. : Writ Petition No. 2768 of 2013

Appellant : Shyamal

Respondent : State of Maharashtra Through The Secretary Women and Child Development Department and Others

Judgement :

S.S. Shinde, J.

1. This Writ Petition is filed seeking directions to the Respondents to appoint the petitioner as Anganwadi Karyakarti (Sevika), as she is already working as Anganwadi Madatnis in the light of the Government Resolution dated 5th August, 2015. There is a further prayer seeking direction to Respondent Nos. 2 and 3 to decide the representations dated 13th March, 2013 and 7th March, 2013. It is further prayed that, the respondents be restrained from filling in the post of Anganwadi Karyakarti (Sevika) in Anganwadi No.79 at Pethsangvi, Tq. Omerga, Dist. Osmanabad. By way of amendment on 10th April, 2013, further petitioner has prayed for quashing the selection process initiated by Respondent No.3 for

appointment of Anganwadi Sevika (Karyakarti) in Anganwadi No. 79 at Pethsangvi, Tq. Omerga, Dist. Osmanabad, and by way of further amendment on 17th March, 2015, further relief is claimed to quash and set aside the selection process/recruitment process initiated by Respondent No.3 in terms of Government Resolution dated 16th November, 2013.

2. It is the case of the petitioner that, she was appointed as Anganwadi Madatnis in the year 2011 in Anganwadi No. 79. She passed preliminary exam of Yeshwantrao Chavan Open University. Accordingly she was allowed to appear for B.A. Ist year examination. She successfully passed the said examination by securing 73% marks. Since the post of Anganwadi Karyakarti (Sevika) is vacant at Petsangavi, the petitioner was given additional charge of the said post. According to the petitioner, passing of 1st year examination of B.A. from Open University is equivalent to passing of 10th and 12th standard and same entitles the candidate for the purposes of direct appointment as Anganwadi Karyakarti (Sevika). The Government Resolution dated 5th August, 2010 enables the appointment of the Anganwadi Madatnis as Anganwadi Karyakarti. Anganwadi Madatnis working in the same center (Anganwadi), who fulfilling the criteria is eligible for direct appointment as Anganwadi Karyakarti (Sevika) by virtue of Government Resolution dated 5th August, 2010. According to the petitioner, the authorities are trying to fill up the post of Anganwadi Karyakarti (Sevika), where the petitioner is working, by their own choice and without following due procedure. Respondent No.3 is not processing the proposal of the petitioner for direct appointment as Anganwadi Karyakarti (Sevika) in view of the Government Resolution dated 5th August, 2010.

3. It appears that, this Court granted leave to the petitioner to amend the Petition and by way of amendment, the petitioner has inserted para 9-A and prayers in the Petition seeking quashment of selection process initiated by Respondent No.3.

4. The learned counsel appearing for the petitioner invited our attention to the pleadings in the Petition, grounds taken in the Petition, amended portion of the Petition and also rejoinder affidavit and submits that, the petitioner, who is fully qualified and working at Anganwadi No.79 as Madatnis and by way of additional

charge on the post of Anganwadi Sevika, is entitled for direct appointment on the post of Anganwadi Sevika. However, her rightful claim has been denied by the Respondents. The learned counsel also invited our attention to the relevant Government Resolutions and submits that, the Petition deserves to be allowed.

5. On the other hand, the learned counsel appearing for Respondent Nos. 2 and 3 invited our attention to the affidavit in reply filed on behalf of Respondent Nos. 2 and 3 and submits that, he has preliminary objection regarding maintainability of present Writ Petition, since it raises several disputed questions of facts. The petitioner is trying to get the benefit by enlarging the scope of Government Resolutions dated 05.08.2010 and 20.05.2011, though the petitioner is not eligible and entitled. The petitioner has alternate, efficacious remedy for redressal of her grievance and the Writ Petition in the present form is not maintainable. The petitioner has not approached this Court with clean hands and representations of the petitioner have already been considered and turned down. It is further submitted that, in the year 2011, two posts of Anganwadi Sevika were vacant at Patsangvi, Tq. Omerga, Dist. Osmanabad, therefore, respondent had published proclamation dated 14th January, 2011, thereby calling the applications. The respondent has accordingly drawn panchanama of said proclamation. It is further submitted that, in pursuant of the said proclamation, total 07 applications were received, out of which 04 applications have been accepted. Aggrieved by the said decision, one Rahibai Kamble preferred Writ Petition before this Court. In view of the order of this Court, this Respondent kept vacant 01 post of Anganwadi Sevika and filled in another post on 30th June, 2011. Subsequently the said Writ Petition has been dismissed by this Court, therefore, this respondent started the selection process for one post, which was stalled due to pendency of the Writ Petition. It is further submitted that, answering respondents issued call letters to three candidates and held interviews on 5th April, 2013 and prepared the select list of 03 candidates. However, due to interim order passed by the High Court, they could not issue appointment orders. It is submitted that, the petitioner joined services on 26th June, 2011 with the answering respondent as Anganwadi Madatnis. It is denied that, the petitioner has worked as Anganwadi Sevika. It is submitted that, the answering respondents have never instructed the petitioner to work on the post of Anganwadi Sevika. It is submitted that, the representation dated 7th March,

2013 filed by the petitioner has been immediately attended, and since the petitioner at the relevant time did not complete two years service, which is required in view of the Government Resolution dated 5th August, 2010 for direct appointment, the said representation was rejected. It is submitted that, the petitioner joined services on 26th June, 2011 as Anganwadi Madatnis since January, 2011. However, the said process was stopped because of the order dated 5th April, 2013 passed by this Court. It is submitted that, the petitioner has not completed two years service as Anganwadi Madatnis at the relevant time, and therefore, her claim for Anganwadi Sevika cannot be considered. It is submitted that, the Petition is wholly misconceived and same may be dismissed. On the basis of averments in the additional affidavit in reply, it is submitted that, on 14th January, 2011, the proclamation was published, applications were invited for the post of Anganwadi Madatnis and Anganwadi Karyakarti. The said proclamation was affixed on the notice board of Gram panchayat and accordingly panchanama has been drawn in presence of panchas. It is submitted that, the specific cut of date was mentioned in the said proclamation for accepting the forms i.e. 15th January, 2011 to 15th February, 2011. In view of the proclamation dated 14th January, 2011, five applications have been received, out of which four applications were found to be eligible for the said post. The Chief Executive Officer and Deputy Chief Executive Officer directed the answering respondent, by written communication dated 06th April, 2011 that, the bunch of petitions have been preferred by the candidates and in view of the order dated 28th March, 2011, it is directed to complete the selection process of the villages excluding where the Anganwadi Madatnis has passed 8th standard and has been completed 2 years service. Accordingly, on 10th June, 2011 call letters were issued to the eligible candidates and they were directed to remain present on 17th June, 2011. The petitioner had also applied for the post of Anganwadi Madatnis and she was found to be entitled for the post of Anganwadi Madatnis and accordingly, she was appointed as Anganwadi Madatnis.

6. It is submitted that, one Meenakshi Anand Mali was found eligible for the post of Anganwadi Madatnis, as she has completed two years service and she was resident of the said village. Therefore, on 24th June, 2011 this answering respondent issued appointment letter for the post of Anganwadi Karyakarti. It is

submitted that, the petitioner also found eligible for the post of Anganwadi Madatnis, therefore, appointment letter was issued on 24th June, 2011. Accordingly, the petitioner resumed duty on 27th June, 2011. It is submitted that, the Government Resolution dated 5th August, 2010 was challenged by some of the candidates before the High Court and the High Court on 26th July, 2011 disposed of the Petitions, thereby directing that, the case of the petitioners therein, be considered afresh within a period of 12 weeks from the date of receipt of order. It is submitted that, on the directions issued by the superior officers, the selection was suspended for some period. On 21st February, 2013, the Desk Officer, Government of Maharashtra issued instructions to complete the selection process in view of the Government Resolution dated 5th August, 2010. Accordingly, the selection process was started from the stage when it was stalled/stopped. Accordingly, answering respondent decided to hold interview on 5th April, 2013 and accordingly, the selection process was completed in terms of the Government Resolution dated 5th August, 2010. It is submitted that, as per the proclamation, the cut of date for accepting the forms for the post of Anganwadi Madatnis and Anganwadi Karyakarti was between 15th January, 2011 to 15th February, 2011 and as per the Government Resolution dated 5th August, 2010, the candidate who has completed two years service for the post of Anganwadi Karyakarti was entitled for the consideration for the post of Anganwadi Karyakarti. At the relevant point of time, the petitioner was not eligible and entitled for the said post.

7. The learned counsel appearing for Respondent Nos. 2 and 3 invited our attention to the various documents placed on record along with the affidavit in reply and also reported/unreported judgments of the Bombay High Court, wherein it is held that, it is not open to challenge the selection process by a candidate, who participated in the selection process. It is submitted that, the petitioner herself was selected as Anganwadi Sevika and at that time, she has not challenged the said selection process, and it is not open for her to challenge the said selection process, as held by the Bombay High Court in the case of **Dilip S/o Punjaji Kharat V/s State of Maharashtra and others** (2011(1)MhL.J.888). Relying upon the exposition of the Hon'ble Apex Court in the case of **Ashok Kumar Sharma V/s chander Shekhar** (1997(4)SCC 18), the learned counsel appearing for Respondent Nos. 2 and 3 submits that, where the applications were called

prescribing a last date for filing the application, the eligibility of the candidates would be judged with reference to that date only. Therefore, a person who acquires necessary qualifications subsequent to such date, will not be entitled to be considered and advertisement or notification issued/published calling for applications constitute a representation to the public and the authority issuing it is bound by such representation. Therefore, the learned counsel appearing for Respondent Nos. 2 and 3 submits that, the Petition may be dismissed.

8. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for respondent Nos. 2 and 3 and the learned Additional Government Pleader appearing for Respondent No.1. With their able assistance, we have carefully considered the pleadings in the Petition, annexures thereto, reply and additional reply filed by Respondent Nos. 2 and 3, rejoinder affidavit filed by the petitioner and all other documents placed on record along with the reply and the judgments cited across bar by the learned counsel appearing for the parties and we are of the opinion that, the Petition deserves no consideration, for the reasons set out hereinbelow.

9. Admittedly, the petitioner did participate in the selection process in the year 2011 and was appointed as Anganwadi Madatnis on 24th June, 2011. This Writ Petition is filed on 21st March, 2013. Even on the date of filing of the present Petition, the petitioner did not possess two years experience working as Anganwadi Madatnis, as provided under Government Resolution 5th August, 2010 issued by the Government of Maharashtra. As rightly contended by the learned counsel appearing for Respondent Nos. 2 and 3, the selection process was initiated way back in the month of January, 2011. All the steps were already taken and at the relevant time, the petitioner did not possess the requisite experience of two years. On careful perusal of the material placed on record, it is abundantly clear that, the petitioner is appointed as Anganwadi Madatnis on 24th June, 2011. The said appointment was accepted by the petitioner and she has joined the said post. We find considerable force in the arguments of the learned counsel appearing for Respondent Nos. 2 and 3 that, one candidate namely Meenakshi Anand Mali did possess experience of two years working as Anganwadi Madatnis

at the relevant time, and therefore, her case was considered for the appointment on the post of Anganwadi Sevika. We are also not impressed with the arguments of the learned counsel appearing for the petitioner that, since the Government of Maharashtra, vide Government Resolution dated 16th November, 2013 has taken decision to cancel the earlier selection process and initiate the denovo process of selection as per Government Resolution dated 16th November, 2013, in the present case also earlier selection process should be cancelled.

10. Upon considering the factual situation, in the present case the entire selection process for the post of Anganwadi Sevika has been completed and it was at the stage of issuance of appointment letter in favour of the successful candidates. This Court by order dated 4th April, 2013 directed Respondent Nos. 2 and 3 not to issue orders of appointment in the meanwhile to the successful candidates. Therefore, having been set in motion selection process way back for the year 2011 and all stages were completed and issuance of appointment orders was remained because of the interim order passed by this Court on 4th April, 2013. Therefore, the case in hand would be governed by the earlier selection process and the relevant Government Resolution dated 5th August, 2010 and subsequent Government Resolution has no bearing on the selection process, which was carried out in the year 2011 and completed way back in the year 2011 except issuing appointment orders to the successful candidates.

11. In our opinion, the petitioner at the relevant time was not eligible to be considered for the post of Anganwadi Karyakarti, in as much as, she was not possessing the requisite experience of two years. Not only this, at the time of filing of Writ Petition, the petitioner was short of 2 years experience, and therefore, the petitioner has rightly mentioned in the Petition that, the petitioner has completed the service near about two years.

12. It is not in dispute that, the petitioner did participate in the selection process and was appointed as Anganwadi Madatnis. The legitimate claim of other candidates, who are on the relevant date fulfill all criteria laid down in Government Resolution dated 5th August, 2010 and also requisite qualifications were entitled for the said appointment. Therefore, in our opinion, the Petition deserves no

consideration. In the present case, the selection process is almost over except issuing appointment orders, therefore, the said selection process is governed by the earlier Government Resolution and in particular, Government Resolution dated 5th August, 2010.

13. In the light of discussion in the foregoing paragraphs, the inevitable conclusion is that, the Petition lacks merits, hence rejected.

14. Rule discharged accordingly.

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