

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6445 OF 2020

RUKMINI SURYABHAN BELE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.J.Solanke, Advocate for the petitioner.
Mr.S.R.Yadav-Lonikar, AGP for respondent No.1.
Mr.S.M.Ganachari, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : JULY 6, 2021

PER COURT :

1. Final disposal notices are served on the respondents.
2. By this petition, the petitioner has put forth prayer clauses "B" and "C" as under :-

"B. By issuing appropriate writ, order or directions the letter/ order dated 20.08.2020 issued by respondent No.1 i.e. the Chairman, District Integrated Health and Family Welfare Society and the Chief Executive Officer, Zilla Parishad, Aurangabad, District Aurangabad may kindly be quashed and set aside.

C. By issuing appropriate Writ, order or directions the respondent No.1. i.e. the Chairman, District Integrated Health and Family Welfare Society and the Chief Executive

Officer, Zilla Parishad, Aurangabad, District Aurangabad may kindly be directed to issue appointment order on the post of Taluka Samuh Sanghatak in favour of the petitioner.”

3. The petitioner belongs to a Scheduled Tribe. An advertisement was published by respondent No.2/Chairman, District Integrated Health and Family Welfare Society and the Chief Executive Officer, Zilla Parishad, Aurangabad, District Aurangabad on 03.11.2019 declaring the selection process for filling in various posts, including the post of a “Taluka Samuh Sanghatak” (Taluka Group Co-ordinator) under the National Health Mission in Zilla Parishad, Aurangabad purely on contract basis for 11 months. Only one post was available for the Taluka Group Co-ordinator, which is at issue in this petition.

4. The petitioner has based this petition on the select list for the post of Taluka Group Co-ordinator dated 13/07/2020 which was published by respondent No.2 showing the petitioner at Sr.No.1 on the strength of her aggregate marks being 70.45. This score included 70% of the final year graduation course marks, which rule was universally made applicable to all the candidates while computing their scores.

5. On 21/07/2020, the petitioner appeared before the competent

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committee with necessary documents, which was a condition to be fulfilled for verification of all relevant documents before an appointment order could be issued. By the impugned communication dated 20/08/2020, respondent No.2 intimated the petitioner that her final year graduation marks are actually 58.22% as per the marks memo and not 86.36%, which was erroneously recorded while calculating her aggregate score in the selection process. Apparently, on account of the correction made by respondent No.2 in the erroneously calculated aggregate score, the petitioner did not retain serial number 1 in the select list.

6. Contention of the petitioner is that she was not aware about the manner of calculating the aggregate score before preparation of the select list. As she was not aware of the criteria for calculating such aggregate score, her rank at Sr.No.1 in the select list, though based on an incorrect noting of her final year marks as 86.36%, must be retained. It is however conceded that the petitioner had not scored 86.36% in her final year graduation and has passed in second class scoring 58.22%.

7. The learned Advocate representing respondent No.2 relies upon the affidavit in reply filed by the said authority. Paragraph No.3 is

pointed out from the said affidavit to indicate that the final year graduation marks of the petitioner, while making the data entry, were erroneously recorded as 86.36%. The manner of considering the graduation score was to draw 70% of the Final Year marks scored by a candidate. For example, if a candidate scored 60% marks, 70% of the said marks would be 42%, to be added to her score in the interviews. This was based on a circular dated 20/04/2020. The said rule was made applicable to all the candidates without an exception.

8. He further submits that there is no dispute that the petitioner had never scored 86.36% marks in her final year of graduation and if respondent No.2 has committed a mistake of making a wrong data entry of the said marks, when she had actually scored 58.22%, the said mistake was cured/rectified by respondent No.2 before it became too late. The mistake was corrected and immediately communicated to the petitioner vide the impugned communication dated 20/08/2020. She was not issued with an appointment order by then as the verification of the documents was performed on 21/07/2020 and respondent No.2 realized it's mistake in good time.

9. In our view, there is no dispute in so far as the crystallized position of Law that mere selection does not give a right to

appointment and no infeasible right is created merely because a candidate is in the select list. Notwithstanding the said position, the petitioner can not dispute that she had scored 58.22% marks in her final year of graduation. Record reveals that her aggregate score, while placing her at Sr.No.1 in the select list for "Taluka Group Co-ordinator", was on an erroneous calculation by taking into account her final year graduation score to be 86.36%.

10. We do not find that respondent No.2 has unilaterally introduced a new rule only to cause prejudice to the petitioner or a different set of selection criteria was made applicable only to the petitioner by way of an exception. The selection criteria that was followed by respondent No.2 was universally made applicable to all the applicants. There is no allegation of nepotism or bias or prejudice or personal animosity between respondent No.2 and the petitioner.

11. In view of the above, we do not find any merit in this petition and the same is, therefore, dismissed.

(S.G. MEHARE,J.)

(RAVINDRA V. GHUGE, J.)