



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4622 OF 2011

Pravin Shivaji Patil and others ... Petitioners

**Versus**

The State of Maharashtra and others ... Respondents

WITH

WRIT PETITION NO. 4875 OF 2012

Pramod Harishchandra Mahamuni and others ... Petitioners

**Versus**

The State of Maharashtra and others ... Respondents

...

Ms. Pradnya S. Talekar h/f Mr. S.B. Talekar, Advocate for the Petitioners.  
Mr. S. J. Salgare, AGP for Respondent No.1 & 2.  
Mr. S. B. Ghute, Advocate for the Respondent No.3.  
Mr. S. N. Patne, Advocate for the Respondent No.12.  
Mr. S. B. Bhosale, Advocate for the Respondent Nos. 6 to 9, 11, 13, 14,  
17 to 19, 21 to 23, 25, 27 to 29, 31 to 33.  
Mrs. Nita S. Joshi, Advocate for the Respondent No.16.

**CORAM** : KISHORE C. SANT &  
SUSHIL M. GHODESWAR, JJ.

**RESERVED ON** : 10<sup>th</sup> APRIL 2026.

**PRONOUNCED ON** : 12<sup>th</sup> JUNE 2026.

**JUDGMENT :- [ PER- KISHORE C. SANT, J.]**

1. Heard the parties.
2. The petitioners in both these writ petitions have approached this Court in second round. Initially, both the writ petitions bearing WP/1641/2009 and WP/6502/2008 came to be dismissed by common judgment and order dated 02.02.2010. The petitioner approached the Hon'ble Apex Court. However, in the meantime, the termination orders were issued. In the Hon'ble Apex Court, the Special Leave Petitions (SLP) therefore, came to be withdrawn with leave to challenge the termination orders issued against the petitioners.
3. The respondent No. 1 is the State of Maharashtra through Secretary, Rural Development and Water Conservation Department. Respondent No.2 is the Divisional Commissioner, Aurangabad Division. Respondent No.3 is the Chief Executive Officer, Zilla Parishad Osmanabad. Respondent No.4 is the Chairman, District Selection Commission, Zilla Parishad Osmanabad and Respondent No.6 to 33 who are added subsequently are the persons who are now appointed as

attendants in the Zilla Parishad Osmanabad and selected through same selected process.

4. The short facts are that the petitioners appeared in the selection process for class-IV attendants in Zilla Parishad Osmanabad. The petitioners appeared in written examination and thereafter they were interviewed. They came to be appointed on 14.08.2008 alongwith many other candidates. In the recruitment process, the written examination was conducted through Respondent No.5 i.e. Maharashtra Knowledge Corporation Limited (hereinafter referred as "MKCL").

5. On conducting the written examination by Respondent No.5-MKCL, certain complaints were made about the merit-list prepared by it. On verification, it was found that the petitioners were wrongly given more marks than other candidates. There was a mistake in conducting the evaluation which was done through software developed by MKCL. It is on that basis, the petitioners were given notice as to why their services should not be terminated as stated above. The petitioners alongwith other candidates approached this Court by filing various writ

petitions which came to be dismissed. The SLP also stood withdrawn as already stated.

6. At the outset, the learned AGP and learned Advocate Mr. Ghute, appearing for Zilla Parishad raised the preliminary objection as to maintainability of the writ petitions. It is contended that there is an alternative and efficacious remedy available of filing an appeals before the learned Divisional Commissioner under Section 211 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. This will be dealt with in the discussion.

7. Learned Advocate Ms. Talekar vehemently argued the petition. She submits that the process of conducting examination was out-sourced by the Zilla Parishad by appointing Respondent No.5-MKCL. The examinations were conducted, and thereafter, interviews were held. The petitioners were found to be eligible and as they stood in order of merit. They were rightly given an appointment orders. Merely on some complaints, the inquiry was started. The said inquiry went on without giving any opportunity to the petitioners. After completion of the inquiry,

the Zilla Parishad sought to terminate the services of the petitioners. This Court protected their services by way of interim order dated 01.11.2008 and since then they were continued in service and worked for three and half years. Thereafter, they were terminated from services on 29.06.2010. The petitioners had approached before the Hon'ble Apex Court challenging the judgment passed by the High Court. In view of their termination, they withdrew the writ petitions with liberty to challenge the termination and thus the petitioners are before this Court. The alternative remedy would not be barred as the termination is not pursuant to any departmental inquiry and are issued even without issuing any notice. Their services were terminated without following principles of natural justice and under such circumstances, petition needs to be entertained. She submits that thereafter fresh advertisement came to be issued and Respondent No.6 to 33 are now appointed pursuant to fresh process. She further submits that the Respondent Nos. 6 to 33 could not have been appointed as the petitioners were before this Court raising their grievances. The Respondents could not have placed reliance on the High Court judgment in the earlier round. There

is no finding that it is the petitioners who are responsible in variance the marks in the examination conducted by MKCL. She submits that even now there are 323 posts still vacant where the petitioners can be appointed. The petitioners are even ready to join the Zilla Parishad even if they are appointed and joined in the bottom of select-list. Lastly, she submits that fairness and equity require that the petitioner be reinstated in service by quashing the termination order.

8. In support of her submission, she relied upon the following judgments:

(i) *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. [(1998) 8 SCC 1];*

(ii) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. [(2013) 10 SCC 324];*

9. Learned Advocate Mr. Ghute, appearing for Respondent No.3, vehemently opposes the petition. At the outset, he submits that there is alternative remedy of filing appeal before the Divisional Commissioner. He submits that all the appointments were made on temporary basis.

The petitioners had not acquired any right to get permanency since the appointments were temporary. No inquiry is required to be conducted. On receiving the complaints about giving marks by committing mistake, the expert committee was formed. It is the expert committee who, on inquiry, found that the marks were wrongly given to the petitioners. When SLP was dismissed, there is no specific liberty granted by the Hon'ble Supreme Court. Earlier finding recorded by this Court in earlier round of litigation has thus attained finality. The findings are now accepted by the petitioners by withdrawing SLP. He submits that there are several disputed question of facts which need not be adjudicated by this Court. When the subsequent selection process was undertaken, the petitioners took part in the said process without any protest. It is pursuant to the second selection process, the respondent Nos. 6 to 33 are appointed. No right in the petition now exist based on the earlier selection process. The termination orders were issued after the judgment and order passed by this Court. The petitions were decided after hearing the petitioners. There is no stigma attached to the petitioners in the termination orders and for that reason also no principles of natural

justice are required to be followed. There is no question of legitimate expectations. He also relies upon the Maharashtra Zilla Parishads and Panchayat Samitis (Discipline and Appeals) Rules, 1964.

10. In support of his submission, he relied upon the following judgments:

- (i) *Jimmy Abraham Thomas and Ors. Vs. The State of Maharashtra and Ors. [2002 (1) ALL MR 1];*
- (ii) *State of U.P Vs. Neeraj Awasthi and Ors. [2006 AIR SCW 123];*
- (iii) *State of Haryana Vs. Satyender Singh Rathore. [AIR 2005 SC 4251];*
- (iv) *Mohd. Sartaj and Anr. Vs. State of U.P and Ors. [AIR 2006 SC 3492];*
- (v) *Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors. [2011 AIR SCW 1874] .*

11. Learned AGP adopted the argument of learned Advocate Mr. Ghute. In addition, he submits that now it is more than 16 years, the petitioners are out of service. No purpose would be served by allowing the petitions. The petitioners cannot perform the work of sweeper now. He also prays for rejection of the writ petitions. In support of his

submission, he relied upon the judgment in the case of *Union of India and Ors. Vs. Ilmo Devi and Anr. [(2021) 20 SCC 290]*.

12. Heard the parties. In the earlier round of litigation, this Court practically dealt with all the aspects except the termination. This Court has clearly recorded that there was no illegality in conducting the fresh inquiry in the matter of allotment of the marks etc. It is observed that the manual checking of the papers was done where the mistakes were detected. On the basis of that, the fresh selection list was drawn in which the names of the present petitioners did not found. This Court had already considered these aspects in another Writ Petition No.5535/2008 in identical set of facts. There also SLP is filed and the same was dismissed. It was observed that the re-checking of the answer-sheet was inevitable as failure to do so would have eliminated meritorious candidates. The petitioners were immediately given the appointment orders even prior to dropping up the corrected select list and thus of all these grounds, petition was dismissed. In the case of some of the candidates whose names appeared in the select list, the petitions were

allowed since even in the fresh selection list, their cases were dismissed.

13. This Court has gone through the judgment relied upon by the learned Advocate Mr. Ghute. In the case of *Jimmy Abraham Thomas and Ors. Vs. The State of Maharashtra and Ors. (supra)*, it was the case of admission of MBBS and BDC course. The merit list that was prepared was not based on uniform standard of assessment and in that view the said list was not accepted. The admissions were cancelled and revised merit list was prepared. The said was upheld by this Court.

14. In the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. (supra)*, the judgment is referred in support of the submission that the alternative remedy is no bar when there is violation of principles of natural justice. This Court finds that this Court at this stage need not go into the question of maintainability of the petitions, as the petitioners are prosecuting these petitions since 2011 and 2012, pending the petition various orders are also passed. It would not be proper now to dismiss the petition on the ground of alternative remedy.

This Court does not find it necessary to go into this aspect.

15. In the case of *State of U.P. Vs. Neeraj Awasthi and Ors.* (supra), it was in respect of UP Agricultural Produce Market Committee Service Regulation. It was held that the Government had power to issue direction even in the matter of appointment of employees and to cancel certain appointments. It was held that though it is not strictly legal but the Court found it not to be arbitrary and in that view, the petitions were allowed and the High Court order was set aside.

16. In the case of *State of Haryana Vs. Satyender Singh Rathore* (supra), the services on contractual basis were terminated. While terminating the misconduct of the candidate was referred to. It was challenged on that ground in the High Court. It was recorded that the candidate was on probation. His services can be terminated. The mention of the misconduct was not the cause of termination but it was merely referred in the order that itself is not make an order of punitive.

17. In the case of *Mohd. Sartaj and Anr. Vs. State of U.P. and Ors.* (supra), the appointments were cancelled. The persons appointed were not qualified to be appointed as Assistant Teachers as they were not possessing any of the certificates recognized by the Government at the time of their initial appointment. The appointments therefore were not continued and were cancelled. The High Court did not interfere with the orders of termination and the same was upheld by the Hon'ble Apex Court.

18. In the case of *Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors.* (supra), the appellants were working on probation as Munsif. Their services were terminated by simpliciter order and said action was upheld by the Hon'ble Apex Court.

19. In the case of *Union of India and Ors. Vs. Ilmo Devi and Anr* (supra), wherein the respondents were working on part-time basis and were not regularized by the Hon'ble Apex Court and granted relief in favour of respondents by modifying the judgment and order passed by

Central Administrative Tribunal and directed the Union of India to look into the whole issue. The respondents were directed to be continued in the employment till the said exercise is done. The Hon'ble Apex Court set aside the judgment of the High Court and held that the such part-time person cannot seek parity with regular employee on the principle of equal pay for equal work.

20. In the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.* (supra), the question was that the appellant was appointed as teacher in the school. The question was about liability to pay the back wages for the period under suspension. This Court finds that the judgment is not help to the petitioners.

21. So far as judgment in the case of *Jimmy Abraham Thomas and Ors. Vs. The State of Maharashtra and Ors.* (supra) is concerned, it is submitted by learned Advocate Ms. Talekar that the said judgment is not applicable as it was in the matter of appointment to the medical course where the seats are limited and presently there are various vacancies

lying with the Zilla Parishad. This Court finds that the said argument would not help the petitioners. The petitioners services were terminated on the basis of incorrect marks. Especially, when the said action was upheld by this Court in the earlier round of litigation, which has even attained finality in the SLP. Now, there is no propriety in again reopening the issue. Orders of termination in the present case are only consequential orders.

22. Considering all above, this Court finds that there is no merit in both these writ petitions. Writ petitions stand dismissed. No order as to costs.

23. Rule stands discharged.

[SUSHIL M. GHODESWAR, J.]

[KISHORE C. SANT, J.]