

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.4542 OF 2011**

Sangita Ulhas Gadilkar,  
Age : 27 years, Occupation : Service,  
R/o Majampur, Post Ralegan Therpal,  
Taluka Parner, District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.  
Through it's Secretary,  
Department of Women and Child  
Development, Mantralaya,  
Mumbai-32.
- 2 The Divisional Commissioner,  
Nashik Division, Nashik.
- 3 The Chief Executive Officer,  
Zilla Parishad, Ahmednagar.
- 4 The Child Development Project Officer,  
Integrated Child Development Scheme,  
Parner, Taluka Parner, District Ahmednagar.
- 5 Smt.Sunita Shahaji Adhav,  
Age : 31 years, Occupation : Household,  
R/o Majampur, Post Ralegan Therpal,  
Taluka Parner, District Ahmednagar.

...RESPONDENTS

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Shri Santosh S. Jadhavar, advocate for the petitioner.  
Shri S.B.Yawalkar, Additional Government Pleader, for respondent nos.1  
and 2.  
Shri S.T.Shelke, advocate for respondent nos.3 and 4.

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**CORAM : S.V.GANGAPURWALA,  
RAVINDRA V. GHUGE &  
ANIL S. KILOR, JJJ.**

**Reserved on 13th September, 2019  
Pronounced on 08th November, 2019**

**JUDGMENT (Per Ravindra V. Ghuge, J.):**

1 By the oral judgment dated 20.01.2012 delivered by the learned Single Judge in this writ petition, an issue was framed and was placed before the Honourable The Chief Justice of this Court for reference to a larger bench. It was on these premises that our Bench was formed for answering the issue framed.

2 The following issue was formulated by the learned Single Judge :-

*“Whether, the Commissioner under Section 267-A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 has jurisdiction to set aside the appointment of Anganwadi Sevika/ Madatnis made pursuant to the recommendation of the Selection Committee constituted under the Integrated Child Development Scheme?”*

3 We have heard the learned advocates for the respective sides at length and have considered the Government Resolutions cited before us.

4 The averments made by the petitioner in her petition indicate

that she was appointed as an Anganwadi Sevika pursuant to the applications invited by respondent no.4/Child Development Project Officer under the Integrated Child Development Scheme (ICD Scheme), Parner.

5 Respondent no.5, being aggrieved by the selection and appointment of the petitioner, raised a grievance before the Divisional Commissioner, Nashik on 19.09.2009 so as to challenge her appointment on the ground that respondent no.5 was working in a Balwadi in a village for about four years and she was eligible to be given a preference in appointment by virtue of the Government Resolution dated 12.03.2008. Another ground raised was that the petitioner did not belong to village Majampur, taluka Parner, District Ahmednagar and was not eligible to be appointed. Respondent no.2/ Divisional Commissioner, Nashik allowed the appeal and set aside the selection of the petitioner with a further direction to conduct a fresh selection process.

6 The petitioner had challenged the said decision dated 31.05.2010 in Writ Petition No.6272/2010. Interim relief was granted to the petitioner. By judgment dated 11.02.2011, the order passed by respondent no.2 dated 31.05.2010 was quashed and set aside and the matter was remitted for a rehearing before respondent no.2. The said authority was directed to decide whether, it had the power to entertain an appeal under Section 267-A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (herein after referred to as "the said Act").

By order dated 27.05.2011, respondent no.2 allowed the appeal holding that he had the power under Section 267-A of the said Act and such appeal was maintainable before him in view of clause 5 of the Government Resolution dated 05.08.2010.

7           The contention of the petitioner before the learned Single Judge was that clause 5 of the Government Resolution dated 05.08.2010 provides for the remedy to raise a grievance against the selection of an Anganwadi Sevika, before the Chief Executive Officer of the concerned Zilla Parishad and not before the Divisional Commissioner. The learned Single Judge has relied upon an order dated 31.07.2007 delivered by the learned Division Bench of this Court in Writ Petition No.1527/2007 (*Shalu Deepak Bachhav vs. State of Maharashtra and others*) and connected group of writ petitions. While concluding that respondent no.2 does not have the power to invoke Section 267-A, the learned Single Judge referred to the view taken by the learned Division Bench, in paragraph nos.8 to 13 of the judgment dated 20.01.2012 (vide which, the issue framed has been referred to the Larger Bench), as under :-

"8.    *The Division Bench of this Court in W.P. No. 1527 of 2007 vide its order dated 31/07/2007 while considering the bunch of Writ Petitions filed by the unsuccessful candidates against the persons who were selected for the post of Anganwadi Sevika in different villages, has after quoting the provision U/s 267-A of the Act of 1961, observed as under :-*

*"3.    On perusal of the record of each matter, we*

are of the considered view that proper remedy for the petitioners would be under the provisions of Section 267-A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as, 'the said Act'), whereby the Commissioner of the concerned district is empowered to suspend the execution of unlawful order or resolution of the Zilla Parishad or Panchayat Samiti, etc.

4. In one of the matter, learned counsel for the petitioner raised doubt whether the Commissioner would have power to terminate the appointment on the ground that it was unlawful. However, the provisions of Section 267-A (1) of the said Act read thus :

“267-A : Commissioner’s power of suspending execution of unlawful order of resolution of Zilla Parishad or Panchayat Samiti, etc.

(1) If the Commissioner is satisfied that it is necessary in the public interest so to do, he may be order in writing under his signature suspend the execution of any order or resolution, or prohibit the doing of any act, by a Zilla Parishad, or its Committee or Panchayat Samiti which, in his opinion, is unlawful; and it shall be the duty of the Zilla Parishad or its Committee or the Panchayat Samiti, as the case may be, to comply with such order ”.

Therefore, it is quite clear that the Commissioner has power not only to suspend the execution of any order or resolution, but has also power to prohibit the doing of any act by Zilla Parishad or its Committee or Panchayat Samiti, if in his opinion it is found to be unlawful.

5. Under the circumstances, the Commissioner, needless to mention, should go into the disputed facts involved in all the matters, so as to determine whether the orders passed in this regard against the petitioners and selected concerned respondents were lawful or unlawful, and if those are found to be unlawful, he certainly have right to remedied the wrong by issuing necessary directions. We further direct that the

commissioner, if the orders are found to be unlawful in these matters, would be at liberty to consider the claims of the petitioners if those are found to be legitimate. The petitioners are directed to make application in this regard to the Commissioner under the said provisions within two weeks from the date of this order. The Commissioner to determine the enquiries under the said provision within a period of eight weeks from the date of this order ”.

9. The appointment of Anganwadi Sevika is made by a Committee constituted under the Integrated Child Development Scheme [For short, 'said Scheme']. The said Committee is headed by local M.L.A.. The Child Development Project Officer is a Member Secretary. It is the said selection Committee, which invites applications from the eligible candidates to fill in the post of Anganwadi Sevika/ Madatnis and the selection is done by the said selection committee, which is independent of the Zilla Parishad and constituted solely under the said Scheme. It is as per the selection made by the said committee, the appointment order is issued by the Zilla Parishad. Section 267-A of the Act of 1961 has its operation in a limited sphere.
10. In the present case, the selection is done by a Committee which is constituted not by the Zilla Parishad but under the said Scheme promulgated by the Government. The said selection process would not be controlled by the Zilla Parishad. The appointment orders are to be made pursuant to the merit list of the candidates submitted by the Selection Committee. A candidate who gets the highest mark, is to be recommended for appointment by the Selection Committee and thereafter the appointment is made. The said process of selection would not be within the realm of Section 267-A of the Act of 1961.
11. The Division Bench of this Court while passing the order in W.P. No. 1527 of 2007 dated 31/07/2007 has not considered this aspect and has relied on Section 267-A of the Act of 1961 only and formed an opinion.



12. *Section 267-A of the Act of 1961 will have to be read vis-a-vis the selection process involved in the appointment of Anganwadi Sevika/Madadnis under the said Scheme.*
13. *Propriety requires that the issue arising in this petition should be heard by the Division Bench / Larger Bench of this Court. Even otherwise, it will be more advantageous if the said issue is resolved by the Division/Larger Bench of this Court."*

8                   Section 267-A of the said Act, in its entirety, reads as under :-

*"267-A: Commissioner's power of suspending execution of unlawful order or resolution of Zilla Parishad or Panchayat Samiti, etc.*

- (1) *If the Commissioner is satisfied that it is necessary in the public interest so to do, he may by order in writing under his signature suspend the execution of any order or resolution, or prohibit the doing of any act, by a Zilla Parishad, or its Committee or Panchayat Samiti which, in his opinion, is unlawful; and it shall be the duty of the Zilla Parishad or its Committee or the Panchayat Samiti, as the case may be, to comply with such order.*
- (2) *If, in the opinion of the Commissioner, the execution of any order or resolution of a Zilla Parishad or its Committee or Panchayat Samiti or the doing of anything by a Zilla Parishad or its Committee or Panchayat Samiti is inconsistent with the instructions or directions given or issued under subsection (1) of Section 261, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof and it shall be the duty of the Zilla Parishad or its Committee or Panchayat Samiti, as the case may be, to comply with the order of the Commissioner."*

9                   It is, thus, obvious that Section 267-A pertains to the

Commissioner's powers of suspending the execution of an unlawful order or resolution of the Zilla Parishad or the Panchayat Samiti. It is in public interest that the Commissioner can suspend the execution of any order or resolution or prohibit the doing of any act by the Zilla Parishad or its Committee or the Panchayat Samiti, only if he concludes that the same is unlawful or is inconsistent with the instructions or directions given or issued under Section 261(1) of the said Act, which reads as under :-

*"261. State Government's power to give direction regarding works and development schemes.*

*(1) The State Government may give to any Zilla Parishad general instructions as to matters of policy to be followed by the Zilla Parishad in respect of their duties or functions, and in particular it may issue directions in the interest of the National or State development plans in respect of the execution and maintenance of works and development schemes. Upon the issue of such instructions or directions it shall be the duty of the Zilla Parishad to give effect to such instructions or directions.*

*Explanation :- For the purpose of this sub-section, a Zilla Parishad includes a Panchayat Samiti or any Committee of the Parishad."*

10           The factual matrix in the writ petition gives rise to a challenge to the selection and appointment of the petitioner. Needless to state, the Commissioner could invoke Section 267-A if the selection and appointment of the petitioner would amount to an "order" or "resolution" passed by the Zilla Parishad. To consider this aspect of the matter, it will have to be seen as to whether, the selection and appointment of the



petitioner was an act by the Zilla Parishad or its Committee or by the Panchayat Samiti and, if yes, whether, the Commissioner was dealing with any order or resolution passed by any of the said authorities, which was inconsistent with the instructions or directions given or issued under Section 261(1).

11 We find it appropriate to refer to the Government Resolution dated 31.08.1999. It is mentioned in clause 4 that the Commissioner, Integrated Child Development Scheme and the Chief Executive Officer, Zilla Parishad were mandated to consider the eligible candidates from amongst the Balwadi Sevikas to be appointed as an Anganwadi Sevika, since the Balwadis were being discontinued. In clause 5 of the said Government Resolution, it is specifically mentioned that a candidate in between 18 years to 44 years would be eligible to be appointed as an Anganwadi Sevika. Insofar as the Balwadi Sevikas are concerned, owing to the abolition of Balwadis, they would be entitled to be appointed as an Anganwadi Sevika even if they were more than 44 years, but less than 55 years. The said Government Resolution clearly indicates that the Anganwadi Sevika and Madatnis would be part-time honorary positions and they would be entitled for the consolidated honorarium decided by the State Government from time to time. It is also mentioned that unlike the Government employees who retire at 58 years of age, these Anganwadi Sevikas/ Madatnis would continue to occupy the part-time

honorary positions till they are physically fit.

12 In a subsequent Government Resolution dated 11.11.1999, all Chief Executive Officers of the Zilla Parishads have been intimated that there would be one Anganwadi Sevika and one Madatnis in each Anganwadi. A selection committee consisting of the Government officials (five) and non-Government individuals (three) would be constituted as prescribed. Such committee would select the candidates and after obtaining the concurrence of the Chief Executive Officer, Zilla Parishad, the appointments would be made by the committee. The appointment order would be issued by the Child Development Project Officer. It is also mentioned that such Anganwadi Sevika and Madatnis would be considered as honorary positions and the honorarium prescribed by the Government from time to time, shall be payable to them.

13 This, therefore, indicates that neither the Commissioner, ICDS nor the Chief Executive Officer, Zilla Parishad is the appointing authority. There is no preivity of contract of employment and "Employer-Employee relationship" between such Anganwadi Seviks/ Madatnis and the Chief Executive Officer, Zilla Parishad. We are arriving at this conclusion because the decision of the Selection Committee comprising of eight members mandatorily requires the concurrence of the Chief Executive Officer, Zilla Parishad and thereafter, the Child Development Project Officer, who is the convener member, would issue the appointment order

on behalf of the committee. The local Member of Legislative Assembly (MLA) nominated by the Guardian Minister of the district is the Chairperson of such committee. Such Anganwadi Sevikas or Madatnis do not occupy any permanent vacant post available with the Zilla Parishad. Such appointments on honorary basis are exclusively under the Integrated Child Development Scheme and no resolution or order is to be issued by the Zilla Parishad. The Selection Committee, initially formed under the Government Resolution dated 31.08.1999 and then re-constituted under the Government Resolution dated 11.11.1999, is exclusively for the purpose of selection and appointment of Anganwadi Sevika and Madatnis under the Integrated Child Development Scheme. Such committee is not constituted for carrying out maintenance works or development schemes under Section 261(1) of the said Act.

14           According to us, now the situation has been simplified by the Government Resolution dated 13.08.2014 cited before us. Some of the earlier Government Resolutions (10) referred to in the said Government Resolution, have been superseded. However, the Government Resolutions dated 31.08.1999 and 11.11.1999, have been left untouched. This new Government Resolution provides for the direct appointment of Anganwadi Sevikas and Anganwadi Madatnis purely on honorarium basis. We do not find that the Selection Committee of eight members as prescribed under the Government Resolution dated 11.11.1999, has undergone any change.



After such committee clears the selection of a candidate, the merit list would be published by such means as are mentioned in clause 3 of the Government Resolution dated 13.08.2014. Any person aggrieved by the merit list can complain to the Child Development Project Officer within 10 days of the publication of the list. Once the merit list is confirmed, the selected candidate would be issued with an appointment order by the Child Development Project Officer.

15           The above stated Government Resolution specifically provides under clause 6(a) that any grievance against the selection and appointment of an Anganwadi Sevika/ Madatnis or mini Anganwadi Sevika, can be subjected to a challenge within 30 days. Appointments made for the rural and tribal areas can be challenged before the Chief Executive Officer, Zilla Parishad and those pertaining to the urban areas (Nagari Prkalp) can be challenged before the Divisional Deputy Commissioner, Women and Child Development Department. Such grievances can be voiced within 30 days of the declaration of the selection and no grievance can be entertained after 30 days. Any decision by the Chief Executive Officer or the Divisional Deputy Commissioner, in such matters, can be challenged before the Divisional Commissioner (Revenue) insofar as the rural and tribal matters are concerned and before the Commissioner, Women and Child Development, State of Maharashtra, Pune with reference to the matters pertaining to civil projects. Such a

proceeding can be initiated within 60 days from the date of the decision under challenge. In short, the decision of the Chief Executive Officer, Zilla Parishad can be challenged before the Divisional Commissioner (Revenue) and the decision of the Divisional Deputy Commissioner, Women and Child Development can be challenged before the Commissioner, Women and Child Development, State of Maharashtra, Pune.

16           The said Government Resolution once again clarifies in clause 7 that there would be no retirement age for such Anganwadi Sevika/ Madatnis akin to the retirement age of the Government officials, which is 58 years, except that, being an honorary position, the Anganwadi Sevika/ Madatnis would continue to work upto the age of 65 years or till they are physically fit, whichever is earlier.

17           The following aspects, therefore, become crystal clear, considering the object of the Integrated Child Development Scheme and the selection and appointment procedure that is to be followed, as prescribed in the Government Resolution :-

- (a) There is no appointment order issued by the Zilla Parishad to the Anganwadi Sevika/ Madatnis.
- (b) The eight members committee prescribed by the Government Resolution dated 11.11.1999, is the appointing authority of the Anganwadi Sevika/ Madatnis. Their appointments are not on any permanent vacant posts and are purely honorary.

- (c) The committee constituted for selecting such candidates, issues the order of appointment through the Child Development Officer, for and on behalf of the committee.
- (d) There is no question of the Zilla Parishad taking a decision to appoint or pass a resolution to appoint an Anganwadi Sevika/ Madatnis.
- (e) As there is no order issued or resolution passed by the Zilla Parishad, Section 267-A of the said Act, notwithstanding Section 261(1), would not be attracted.

18           Considering the above, we are of the view that the Divisional Commissioner cannot exercise the powers under Section 267-A of the said Act for suspending or interfering with any order of appointment of an Anganwadi Sevika or Madatnis issued by the selection committee through the Child Development Project Officer. The selection committee issuing such appointment order would not amount to a committee acting for and on behalf of the Zilla Parishad or the Panchayat Samiti or doing anything for and on behalf of such Zilla Parishad or the Panchayat Samiti so as to attract Section 267-A in view of Section 261(1).

19           We, therefore, answer the issue referred to us, by holding that the Divisional Commissioner, does not have the jurisdiction to set aside the appointment of an Anganwadi Sevika/ Madatnis, made pursuant to

the recommendation of the Selection Committee constituted under the Integrated Child Development Scheme, under Section 267-A of the said Act.

20 The Writ Petition be placed before the appropriate Bench for further decision.

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**S.V.GANGAPURWALA, J.**

**RAVINDRA V. GHUGE, J.**

**ANIL S. KILOR, J.**