

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5822 OF 2013

Surekha Vikas Gholap.	...	Petitioner.
V/s.		
State of Maharashtra and others.	...	Respondents.

S.S.Deshmukh for the petitioner.

M.L.Patil for respondent Nos.2 and 3.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

DATED : 10th March 2015.

PC.

Rule. Rule made returnable forthwith. Heard by consent of parties.

2. The petitioner was appointed by the respondent- Corporation in the clerical post in the year 1981. She was promoted as Senior Clerk in the year 1990 and thereafter as Deputy Chief Accounts Officer of Nashik Municipal Corporation. After retirement of one Mr.Gite, the petitioner held additional charge of the post of Chief Accounts Officer for a

considerable time. The petitioner applied for the post of Chief Accounts Officer. According to the resolution passed by the Corporation the post of Chief Accounts Officer was to be filled by way of promotion. On 27th November 2012, the Departmental Promotion Committee recommended the petitioner for promotion. The General Body of the Corporation by resolution No.571 adopted on 17th January 2013 sanctioned the recommendation under section 53 of the Maharashtra Municipal Corporations Act, 1949 ("said Act" for short). On 22nd February 2013, an order was issued in favour of the petitioner appointing her as Chief Accounts Officer on *ad hoc* basis. The Commissioner vide letter dated 24th February 2013 requested the petitioner to join the post of Chief Accounts Officer. On 19th June 2013, the Commissioner issued order appointing respondent No.4- Mr.Rajesh Lande as Chief Accounts Officer on deputation. Being aggrieved by the same the petitioner approached this Court by filing present petition. Respondent No.4 has been sent on deputation by the State Government on the request of the Commissioner. During pendency of this petition, tenure of respondent No.4 is extended by three years, which action is also challenged by the petitioner by carrying out amendment to the petition.

3. Learned counsel appearing for the petitioner submits that in view of the Government Resolution dated 25th February 2005, relaxation in experience from 10 years to 3 years was granted. The petitioner was recommended by the Departmental Promotion Committee for appointment to the post of Chief Accounts Officer and General Body of the Corporation has approved the said recommendation. The Commissioner

has no authority of law to independently call for candidate on deputation by sending requisition to the State. The act of the Commissioner is contrary to the regulations of the Corporation. The resolution of General Body will prevail over the decision of the Commissioner. The extension granted by the State Government to respondent No.4 is also contrary to the regulations and the same deserves to be taken note of.

4. An affidavit in reply has been filed on behalf of respondent Nos.2 and 3 duly sworn by Shri Anant Gajanan Jantre, Assistant Commissioner of the Corporation. The deponent, in para-15 of the affidavit, has stated as under:

“15. I submit that as per the existing rule the experience of having work in the post of Dy.Chief Accounts officer for 10 years could be relaxed only in the case of candidates belonging to reserved categories of Scheduled Caste and Schedule Tribes etc. I say that this is being reconsidered by the DPC and appropriate recommendation will be made to the general body this post being class-I post as well as vital and important post.”

5. The learned counsel appearing for respondent Nos.2 and 3 submits that in view of regulation framed under section 465(1) of the said Act relaxation can be made only in respect of candidates belonging to reserved categories. Petitioner belongs to open category, therefore such a relaxation is not permissible and is contrary to law. Considering the exigency the Commissioner sent requisition and, accordingly, the State Government forwarded the name of respondent No.4 for the post of Chief

Accounts Officer on deputation. Accordingly, respondent No.4 is appointed and continuing on the said post.

6. This petition is pending since the year 2013. In spite of notice to respondent No.4, he has chosen to remain absent. We are informed that notice has been duly served on respondent No.4.

7. The record reveals that as per the government resolutions, relaxation in experience could be granted in favour of candidate. The petitioner is the beneficiary of the said relaxation. The general body has accepted the said relaxation. We do not find any record to show that present Commissioner, before issuing any requisition to the State had sought permission of the Corporation or intimated the General Body of such move on his part. Prima facie, we find that whether to send requisition to the State for calling candidate on deputation is the discretion of the General Body of the Corporation. On the requisition sent by the Commissioner, State Government sent respondent No.4 on deputation. After one year tenure, State Government preferred to continue him for further period of three years. The stand of respondent Nos.2 and 3 in the said affidavit is self conflicting. In the facts, we find that respondent No.4 is working since last two years and the petitioner is expecting her promotion in accordance with the General Body resolution.

8. We are of the view that the issue could be placed before the General Body. The General Body shall take appropriate decision which includes confirmation of recommendations of Departmental Promotion

Committee in appointing the petitioner as Chief Accounts Officer or to approve the State nominee i.e. respondent No.4 on deputation. We leave this decision to the highest decision making authority of the respondent Corporation i.e. General Body.

9. We direct the Commissioner/ Corporation to place appropriate proposal, in the light of the observations and directions made by this court, before the next General Body meeting.

10. Rule is made absolute in the above terms.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)