

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2723 OF 2016

Ms. Supriya Suryakant More	}	Petitioner
versus		
Mumbai Municipal Corporation	}	Respondent

Mr. Uday P. Warunjikar for the petitioner.

Mr. H. C. Pimple for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- DECEMBER 9, 2016

P.C. :-

1. By this petition under Article 226 of the constitution of India, the petitioner prays for issuance of a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, calling for the records and proceedings relating to an advertisement published on 19th December, 2015 by the Mumbai Municipal Corporation. That advertisement invited applications from eligible candidates so as to fill up the post of Junior Accountant and Auditor. The petitioner prays that upon perusal of the relevant records and proceedings, this court should issue a writ of mandamus directing the Municipal Corporation to appoint the petitioner on this post.

2. It is the claim of the petitioner that in pursuance of this advertisement, she submitted her application. The application was in order. She was informed, by letter dated 7th August, 2016, that she must produce the mark-sheet proving clearance and passing of 9th Standard examination. Relying upon this letter, it is submitted by her that she produced this certificate. Thereafter, she was informed that she is selected for appointment and she must undergo medical examination. The petitioner underwent such examination. Subsequently, the petitioner was asked to obtain police verification about her character. That also was duly complied with by forwarding the requisite certificate on 3rd September, 2016. Thereafter, the petitioner was directed to appear on 20th September, 2016 for fulfilling procedural requirements. The petitioner also made the mandatory deposit of one month salary in advance on 29th September, 2016. It is in these circumstances that she was expecting an appointment order.

3. However, no such appointment order/letter was issued and on inquiries being made, she was informed by the competent authority that there is no fulfillment of the requirement to obtain one certificate. That certificate to prove knowledge of computer having not been produced, the petitioner cannot be issued such appointment order.

4. It is on these pleadings that the petitioner has approached this court.

5. Mr. Warunjikar, learned counsel appearing for the petitioner relies upon the terms and conditions of the advertisement, copy of which is at page 13 of the paper book. Mr. Warunjikar submits that the relevant clause with regard to eligibility would denote that the petitioner must possess knowledge of computers. If that is how the advertisement emphasises, then, all that is required is production of certificate evidencing either clearance of the examination conducted by the State Education Board with Information Technology or computer as a subject or the Government technical course such as MS-CIT or GECT. That should be proved to be cleared.

6. The petitioner has established that these certificates being on record, the authority was satisfied and processed her application. That is how further steps were taken, including directing the petitioner to comply with the requirement of undergoing a medical examination, production of character certificate and making a deposit.

7. Mr. Warunjikar also relied upon a recent advertisement published, which would also, according to him, indicate that the

respondent Corporation emphasises, throughout, that a candidate must possess knowledge of computer. Thereafter, the requisite qualifications are referred. With the latest advertisement, it is possible for the candidate to make a statement in the application itself that he/she would obtain the certificate subsequently. That is how, the recent advertisement understands that a candidate may require time to produce the certificate. The advertisement itself indicates that two years time is sufficient for that purpose. If this is how the understanding of the Corporation is, then, Mr. Warunjikar submits that the affidavit in reply filed cannot allege the petitioner's application being deficient or she lacking in the qualification or not fulfilling the eligibility criteria. Mr. Warunjikar invites our attention to the Government Resolution dated 4th February, 2013, copy of which is at pages 36 to 38 of the paper book and condition no. 3 appearing therein. That is that the petitioner must clear the Secondary School Certificate Examination (10th or 12th Standard) with Information Technology as a subject. Mr. Warunjikar finally submits and in the alternative that the Corporation is deviating from its own stand and taken throughout. That should not be permitted. The advertisement demands substantial compliance of such a condition. Now, the 10th Standard mark-sheet of the petitioner evidences that she cleared the examination with Information

Technology as a subject. There is hardly any difference between Information Technology and Computer. That means very same thing as possessing computer knowledge. In these circumstances, he would submit that the writ petition be allowed.

8. Reliance is placed by Mr. Warunjikar on the affidavit in rejoinder tendered today, which says that the petitioner possesses 10th Standard certificate, copy of which is at page 133 of the paper book. That indicates that one of the subjects, which she appeared, is Information Technology. For all these reasons, he would submit that the writ petition be allowed.

9. Mr. Pimple, appearing for the Municipal Corporation, on the other hand, submits that in matter of this nature, the crucial and relevant date is the date of publication of advertisement. On 15th December, 2015 the advertisement was published and the last date of filing an application was 18th January, 2016. It is that date which is relevant. On that date, the petitioner must possess all the qualifications and fulfill the eligibility criteria. He would submit that even if the communications, as are referred in the present petition, have been issued, there is no vested right for appointment to a public post. The right as guaranteed by Articles 14 and 16(1) of the Constitution of India is of being considered for appointment and not of appointment. Therefore, placement in

the select list does not guarantee an appointment. There is no absolute right as claimed. On record, the petitioner produced certain documents evidencing her fulfillment of the criteria regarding possessing knowledge in computer. On verification of the documents and after issuance of the subject letters, it was noticed that the petitioner submitted a mark-sheet evidencing clearance of 9th Standard examination. That is issued by Sharadashram Vidyamandir, Dadar with computer as a subject. Surprisingly, the petitioner also submitted another mark-sheet of that very date from the same school with Information Technology as a subject having been cleared. It is in these circumstances that the authorities were alerted. They, once again, scrutinised and verified her application and found out as to whether she fulfills the eligibility criteria. The Government Resolution dated 4th February, 2013 cannot be mis-read and mis-interpreted. It requires clearance of 10th Standard and 12th Standard examinations with requisite subject, namely, computer. The petitioner submitted 12th Standard mark-sheet, which was not evidencing her clearing that examination with Information Technology as a subject. She has also not submitted her 11th Standard mark-sheet.

10. Mr. Pimple invites our attention to page 68 of the paper book, which is a photo copy of the petitioner's application form. The relevant column, according to him, is as to whether the petitioner possesses a certificate such as MS-CIT issued by the Maharashtra State Higher and Technical Education Board and the answer given by the petitioner is 'Yes". She says that she has MS-CIT certificate. Then, she says that she has operating knowledge of the computer. Then, she says and answers in the positive that she has passed Government affiliated S.S.C. or H.S.C. Board Exams with English and Marathi subjects of 100 marks each. Thus, the claim of possessing the relevant qualification being highly suspicious and doubtful, the appointment is rightly denied. The petition be dismissed.

11. After hearing both sides and perusing the entire record, what we have noted is that we are concerned in this case as to whether on the date of the advertisement the petitioner qualifies for the post and whether she fulfills the eligibility criteria. Upon perusal of the record, we are in agreement with Mr. Pimple that the petitioner does not fulfill the requisite eligibility criteria. The petitioner possessed a certificate evidencing her clearance of MS-CIT course. However, that is issued, admittedly, in April, 2016. On the date of the issuance of the advertisement and relying upon

the Government Resolution, the Corporation was to determine whether the petitioner has cleared the requisite examinations with computer as a subject. The requirement was possessing knowledge of computer. That is to be established by production of certificates evidencing clearance in requisite examinations, namely, 10th and 12th Standards, with computer science as a subject. Admittedly, the petitioner has obtained two certificate from Sharadashram Vidyamandig, Dadar and of the same date. She has not submitted the certificate other than 10th Standard as determined in the Government Resolution. Once the Corporation has perused the record minutely and carefully so as not to cause injustice, then, the interpretation placed on the advertisement by the Corporation does not require our interference in writ jurisdiction. That interpretation is a possible and plausible one given the language of the terms and conditions of the advertisement. In such circumstances, the petitioner does not possess any legal right to appointment to the post advertised. Equally, we find no merit in the writ petition. It is dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)