

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4773 OF 2017

Rohini Lakshimanrao Waghmare	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. Vijay Killedar for the petitioner.

Mr. B. V. Samant-AGP for State.

Mr. Kiran S. Bapat i/b. Mr. G. H. Keluskar
for respondent no. 2.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
DATED :- NOVEMBER 20, 2017

P.C. :-

1. On this petition, on 7th November, 2017, after a lengthy hearing, we passed the following order:-

“1. Pursuant to the earlier order, an affidavit is filed by the Pimpri Chinchwad Municipal Corporation (PCMC).

2. Copy of this affidavit has been served on Mr. Killedar on 6/11/2017.

3. This affidavit specifically relies upon a decision of the Selection Committee of the PCMC contained in the Minutes dated 19/2017.

4. Hence, we grant leave to amend the writ petition so as to challenge this decision of the PCMC.

5. The amendment be carried out within a period of one week from today. The amended memo be also served on all the parties.

6. The office notice to respondent No.3 has been despatched but the report of service is still awaited. We grant Mr. Killedar liberty to serve the third respondent privately.

7. Since the third respondent is working with the PCMC, in the peculiar facts and circumstances of this case, we direct the Assistant Commissioner, PCMC, who is the Deponent of this affidavit, to serve a copy of this petition, as amended, with all annexures including the affidavit of the PCMC, on the third respondent. The Assistant Commissioner shall obtain an acknowledgement of such service from the third respondent while on duty.

8. We post this petition on 20112017, under the caption "For Passing Orders".

2. This order, which is reproduced above is in continuation of the order passed on 9th October, 2017. The present order shall be treated as a continuation of the earlier orders and directions.

3. After the petition has been amended, Mr. Killedar appearing for the petitioner has submitted that the second respondent has illegally and unauthorisedly published an order dated 17th October, 2017 only partially cancelling the wait-list. That was cancelled on the ground that the two years' period has lapsed. However, this action is illegal, inasmuch as that takes away the rights guaranteed under Articles 14 and 16 of the Constitution of India to the petitioner. Apart therefrom, the learned counsel relies upon two Government Resolutions, first is of October, 2007 and subsequent is of 27th June, 2008 correcting the prior one. According to the learned counsel, the two

Government Resolutions clarify that the appointments from the category of sportsman cannot be denied, particularly to the Scheduled Tribe and Scheduled Caste candidates only on the ground that the select list/wait-list has lapsed. The select list/wait-list, according to Mr. Killedar, continues till such time as the fresh exercise is not commenced. Therefore, it is not that the select list/wait-list lapses immediately on the two years' period coming to an end.

4. We do not wish to go into this larger controversy. It is kept open for being decided in an appropriate case.

5. We have found from the record of the Pimpri Chinchwad Municipal Corporation itself that it published a list. That list was published pursuant to a very avowed and laudable policy of the State of encouraging those persons who excel in sports. In order to give them a security and further encourage them to continue their sports activities, a scheme was promulgated to accommodate them in Government and semi-Government employment.

6. It is in pursuance of such a scheme that the petitioner laid her claim for appointment. The petitioner's name appears in the list of Scheduled Caste candidates after the name of one Vilas

Gaikwad. He was at serial number 29 of the list. He is a Scheduled Caste candidate from the sportsman category. The petitioner is immediately after him in this list and she belongs to Scheduled Caste (sports woman category). That is how she has been shown in the list.

7. The order passed on 1st September, 2017 does not dispute this position, but brings to the notice of the court that this court was seized of about 9 writ petitions filed by nine candidates. They were declared as ineligible for they did not comply with the criteria of educational qualifications. They had filed a writ petition. In their case, the categories other than sports were in issue. Once they could not be granted the appointments, then, in the case of this petitioner, whose case was considered by the Pimpri Chinchwad Municipal Corporation, a decision has been recorded. In that, firstly, it says that the petitioner has forwarded a certificate. This certificate shows that she has participated in a State level sports/programme/activity/event and she has excelled in the same. She has been issued a certificate and which has been endorsed by the Directorate of Sports and Youth Services, Government of Maharashtra. After that, the petitioner points out that she should have been considered, but her case was not considered. Therefore, a writ

petition was filed being Writ Petition No. 726 of 2017. In that, an order was passed after this petitioner accepting the condition that in the event her claim is considered, she would not press the petition. Thereafter, the committee proceeded to consider her claim. However, it came to the conclusion that the select list as also the wait-list having lapsed as two years have been completed from the date of its issuance, namely, 26th June, 2015, the petitioner cannot be appointed.

8. We had taken the affidavit of the Pimpri Chinchwad Municipal Corporation on record and in that, the Municipal Corporation indicated that the third respondent was appointed upon being duly selected and when the select list was very much in existence. It had not lapsed.

9. We do not wish to disturb the appointment of the third respondent. What we have on record is an undisputed position, namely, a candidate Shri. Gaikwad Vilas Vankatrao being found to be ineligible or disqualified. He is, thus, though selected, not appointed by the Municipal Corporation. The record of the Municipal Corporation itself indicates that the vacant post, after Shri. Gaikwad was found ineligible, has not been filled in. Thus, the post of Scheduled Caste (Sportsman) is yet not filled in by the committee/Pimpri Chinchwad Municipal Corporation.

10. In the facts and circumstances peculiar to this case and there being a doubt about the lapsing of the select list/wait-list and reliance being placed on the further Government Resolutions, but without expressing any opinion on the legality and validity of these resolutions, interest of justice would be served, if we direct the Pimpri Chinchwad Municipal Corporation to consider the petitioner for appointment to the vacant post of Scheduled Caste (Sportsman) and particularly because she is from the woman category.

11. It is not that we are extending the life of the select list/wait-list, but what we find is that there is a vacant post, the petitioner fulfills the criteria and because of an interpretation placed by the Municipal Corporation on the select list/wait-list unmindful of the further stipulations and the Government Resolutions relied upon by the petitioner, this order would meet the ends of justice. We do not think that any right has been created just because we direct the petitioner's case to be considered. The petitioner would have to satisfy the other criteria and requirements.

12. The petitioner has stated that though the appointment order has been issued in favour of the third respondent, as set out in the affidavit, on 10th June, 2016, the petitioner, if appointed, would not claim wages from the date of the appointment of the

third respondent till her appointment. In the event the petitioner is appointed and by issuance of an appointment order now, then, only for the purpose of grant of continuity in service, the service of the petitioner shall be reckoned from 10th June, 2016. However, the petitioner shall not be paid any wages or other monetary benefits with effect from that date.

13. We further direct that this order is passed in the peculiar circumstances of the petitioner's case and because she has been fighting for her rights since she had filed Writ Petition No. 726 of 2017, which came to be disposed of earlier with a direction as referred above. She was compelled to file the present writ petition only because her claim was denied. That was denied though she was found to be otherwise eligible. In these circumstances, we dispose of this writ petition with the aforesaid directions.

14. The Pimpri Chinchwad Municipal Corporation shall consider the claim of the petitioner and issue the requisite orders so also communicate them to the petitioner as expeditiously as possible and in any event, within a period of six weeks from today.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)