

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 9124 OF 2015

Annapurna Nagnath Pegdyal

.....Petitioner

V/s.

Municipal Corporation of Greater Mumbai  
(MCGM) and another

....Respondents

Mr. R. P. Sabban Advocate for Petitioner.

Mr. S. S. Pakale a/w Mr. Pradeep M. Patil Advocate for Respondent

**CORAM : NARESH H. PATIL &  
Z. A. HAQ, JJ.**

**DATE : 28<sup>th</sup> AUGUST 2017.**

**P.C. (Per: Z.A. Haq, J.)**

1 Heard.

2. The petitioner complains that though she was selected for being appointed as 'Clerk' in the post reserved for Special Backward Class candidate and was asked to undergo medical fitness test, she was illegally deprived appointment on the ground that she was in the advanced stage of pregnancy, she was asked to report within 90 days after delivery and when she reported accordingly, she was again asked to undergo medical fitness test but she was not given appointment. The petitioner seeks writ of *mandamus*

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directing respondent/Corporation to appoint her as clerk giving deemed date with all consequential benefits.

3 According to the petitioner, 16 posts of clerks were advertised showing them reserved for Special Backward Class candidates, the petitioner submitted her application, underwent selection process, was selected and order dated 07/03/2012 was issued. The petitioner was asked to undergo medical fitness test which she underwent. By communication dated 19/04/2012, the petitioner was informed that she was in the advanced stage of pregnancy (28 weeks/7 months) and therefore, as per the Rules she was not eligible to be appointed. The petitioner was informed that she should report within 90 days of delivery for further medical / fitness test. The petitioner reported accordingly and her medical / fitness test was conducted on 04/08/2012 and the Medical Superintendent certified that the petitioner was fit for appointment. The petitioner has complained that in spite of the fact that she is found to be medically fit, the respondent/Corporation has not given appointment order.

4 The Respondent/Corporation has filed reply stating that in the select list (placed on record at page 43), the name of the petitioner appeared at serial

no. 16, that candidates upto serial no. 10 came to be appointed against 9 posts and then appointments were not made on the remaining posts. According to the respondent/Corporation, the names of the other remaining candidates and the name of the petitioner were kept on waiting list, however, the waiting list lapsed after one year and in these circumstances, the petitioner has no right to claim appointment.

5 After considering the submissions made by the learned Advocates for the respective parties, we are of the view that the reliefs sought by the petitioner cannot be granted. The name of the petitioner was at serial No.16 in the waiting list. The petitioner has not placed anything on record to show that the candidates whose names appeared at serial nos. 11, 12, 13, 14 & 15 in the list and who are above the petitioner have been given appointment. The facts on record show that the candidates whose names appear at serial nos. 11, 12, 13, 14 & 15 and who are above the petitioner are not given appointment. Apart from this, the communication dated 19/04/2012 by which the petitioner was informed that she could not be given appointment immediately as she was in advanced stage of pregnancy, shows that the petitioner was asked to report within 90 days from the date of delivery for

medical / fitness test, that the petitioner reported accordingly and her medical / fitness test was conducted on 04/08/2012, however, the petitioner has not explained why she had not taken appropriate steps immediately to enforce the right as claimed by her after medical / fitness test was conducted on 04/08/2012. Except for making a general submission that the petitioner had been requesting the Authorities to give her appointment order, the petitioner has not placed any material on record to substantiate that she followed up the matter with the authorities. The first representation of the petitioner in the matter which is placed on record is dated 06/01/2014 i.e. much after the waiting list lapsed, as submitted by the respondent/Corporation.

6 In the above facts, we find that the petitioner is not entitled for the relief sought by her.

7 The Writ Petition is dismissed. In the circumstances, the parties to bear their own costs.

**[Z. A. HAQ, J.]**

**[NARESH H. PATIL, J.]**