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

WRIT PETITION NO.731 OF 2017

1. Santosh s/o Sitaram Shirgole,
Age: 40 years, Occu: Service,
R/o. Morandi, Old Jalna,
Tq. & Dist. Jalna
2. Nilesh s/o Vijay Shankarpelly,
Age: 38 years, Occu: Service,
R/o Narayanpura, Old Jalna,
Tq. & Dist. Jalna
3. Vilas s/o Uttamrao Gawande,
Age: 39 years, Occu: Service,
R/o. Nilkantnagar, old Jalna,
Tq. & Dist. Jalna
4. Satish s/o Gulabrao Pajange,
Age: 42 years, Occu: Service,
R/o Subhadra Nagar, Jalna,
Tq. & Dist. Jalna
5. Harihar s/o Manohar Chandode,
Age: 38 years, Occu: Service,
R/o. Narayanpura, Old Jalna,
Tq. & Dist. Jalna

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Town Planning Department,
Maharashtra State,
Mantralaya, Mumbai
2. The Director,
Municipal Council,
Administration,
Directorate
Government Transportation
Service Building,
3rd Floor, Sir Pochkhanwala Road,
Warli, Mumbai

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3. The Collector
& President of District
Selection Committee,
Jalna, Tq. & Dist. Jalna

4. The Chief Officer,
Municipal Council,
Jalna, Tq. & Dist. Jalna

..RESPONDENTS

Mr M. P. Kale, Advocate for petitioners;
Mrs A. V. Gondhalekar, A.G.P. for respondent Nos.1 to 3;
Mr S. D. Hiwrekar, Advocate for respondent No.4

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 14th December, 2018

ORAL ORDER:

Heard Mr Kale, learned Counsel appearing on behalf of the petitioners, learned Addl. Govt. Pleader appearing on behalf of respondent Nos.1 to 3 and Mr Hiwrekar, learned Counsel appearing on behalf of respondent No.4.

2. The petitioners, by way of present petition challenge the advertisement dated 27th December, 2016. It was the submission in petition that there is no compliance of the ratio of 50:50 i.e. 50% posts being considered for in-service candidates and 50% posts being considered for direct recruit employees.

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3. Though notice was issued by this Court and opportunities were granted, respondent State has failed to file affidavit-in-reply, as such, by an order dated 28th November, 2018, respondent No.2 - Director of Municipal Council Administration was directed to remain present in this Court and further it was directed that he shall file personal affidavit explaining delay caused in filing reply.

4. Learned Addl. Govt. Pleader submitted that affidavit-in-reply in response to the order of this Court dated 28th November, 2018, is filed. The Commissioner and Director, Directorate of Municipal Council - respondent No.2 is also present in this Court. It is submitted in the affidavit-in-reply on behalf of the Director and the Commissioner that the District Administrative Officer who was conversant with the fact of the matter was supposed to reply in response to the notice of this Court and failure of the District Administrative Officer resulted into non-filing of reply before this Court. It is further stated that the show cause notice is issued to the District Administrative Officer, vide communication dated 10th December, 2018. It is further submitted that certain action is also taken against the subordinate officer, namely concerned Clerk, who failed to apprise the District Administrative Officer within time and this action is in the nature of departmental inquiry. It is then submitted by learned Addl. Govt. Pleader that these were the reasons causing delay in filing affidavit-in-reply and the Director who is present in this Court assures that henceforth due care and

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caution would be taken to file the affidavit-in-reply in this Court, in response to the notice of this Court, promptly.

5. Learned Addl. Govt. Pleader, on instructions received from the Commissioner and the Director of Directorate of Municipal Administration submitted before us that insofar as the advertisement dated 27th December, 2016 is concerned, the department is not proceeding further in pursuance to the advertisement dated 27th December, 2016.

6. Insofar as the other grievance of the petitioner which is raised in prayer clause (D), our attention is invited to the affidavit-in-reply filed on behalf of Shri. Umesh Bapurao Kothikar, District Administrative Officer. A statement is made in the affidavit-in-reply and same reads that the Directorate of Municipal Administration, Mumbai has issued Circular dated 31st October, 2018 to the Municipal Councils directing thereby not to appoint Sanitary Inspectors in the Municipal Council as the process of creating State Cadre of Sanitary Inspector is in progress. Our attention was also invited to the very circular which is placed on record at Exh.R-3. Perusal of this circular shows that certain pre-requisites are yet to be complied with, namely, an approval from the State Government on the proposal submitted to the State Government for preparation of the Rules and Conditions of service. It is also stated in the circular that the request is made to the State Government to take appropriate decision on the proposal.

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It is further stated that no steps can be taken for effecting the promotions on the posts of Sanitary Inspector unless and until the State Government grants approval to the proposal.

7. In view of the circular, it is more than clear that the issue is pending consideration before the State Government and as the statement is made in this Court that the respondents authorities would not proceed in pursuance to the advertisement dated 27th December, 2016, no purpose would be served by keeping the petition pending in this Court. The petitioners may approach the competent forum by availing the remedies available in law, after the Rules are finalized and if they have any grievance with regard to the Rules so framed and finalized, if so advised.

With these observations, the petition is disposed of.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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