

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

WRIT PETITION NO.2477 OF 2014

Prakash Padmakar Gharat ... Petitioner
Aged 34 years, Occupation: Unemployed,
R/o Village: Kasgaon, Post: Dhasai,
Taluka: Shahapur, Dist: Thane
Vs

1 The Commissioner,
Municipal Corporation for Greater
Mumbai-400 001

2 Additional Commissioner,
Municipal Corporation for
Greater Mumbai,
Mumbai 400 001

3 Chief Labour Officer,
Municipal Corporation for
Greater Mumbai,
Mumbai 400 001

... Respondents

...

Mr. Mandar Limaye I/by Ms. Deepali Deherkar for the
Petitioner.

Mr. Vinod Mahadik for the Respondents.

CORAM : A.S.OKA &

SANDEEP K. SHINDE JJ.

DATE : 10 DECEMBER, 2018

ORAL JUDGMENT : [Per A.S.Oka, J.]

Considering the facts of the case and considering the fact that this Petition is of the year 2014, we have taken up this Petition for final disposal.

2 **Rule.** The learned counsel appearing for the Respondents waives service. The Mumbai Municipal Corporation published an advertisement for filling up 3916 vacant posts of labourers in Class IV category. The Petitioner applied on the basis of said advertisement. Initially, the Petitioner was called for written test. According to the case of the Petitioner, he performed very well in the written test and that he was expected to get full marks. However, the Petitioner got 95 marks out of 100 and perhaps that was the reason, he was not selected.

3 After making couple of representations, the Petitioner applied under the Right to Information Act, 2005 (for short ‘**RTI Act**’) for grant of a copy of the answer-sheet. After looking at the

answer-sheet, he realised that Question No.7 was rightly answered by him but the same was assessed as incorrect. Thereafter, the Petitioner made a fresh representations to various authorities of the said Municipal Corporation. The Petitioner was forced to apply under the RTI Act for getting information on the decision taken on the basis of representations. On the basis of said application, the Petitioner was granted copies of the documents. The said documents have been annexed as Exhibit 'I' Collectively. The first document in Exhibit 'I' is a note prepared by the third Respondent which deals with the grievance not only of the Petitioner but the other four applicants. As regards the Petitioner, in the note, the third Respondent has observed that one Madhukar Kisan Koshti who examined answer-sheet of the Petitioner inadvertently treated the answer to Question No.7 as incorrect. He has observed that if the said answer could have been treated as correct, he would have got 100 out of 100 marks. It was mentioned that considering the date of birth of the Petitioner, he was eligible for appointment. Therefore, in the said note, a proposal marked as 'A' was submitted. The first part of the proposal was to fix

responsibility on the teacher who assessed the answer-sheet of the Petitioner and others. The second part was that the Petitioner and others should be selected in the concerned category and their selection should be sent for approval. It appears from the note that on 19th January, 2013, the same was forwarded by the concerned Deputy Commissioner to the Additional Municipal Commissioner (City). It is recorded that the said proposal in terms of 'A' was disapproved on 31st January, 2013 by the Additional Municipal Commissioner.

4 The prayer in this Petition under Article 226 of the Constitution of India is inter-alia for issuing a writ of mandamus directing Respondents to consider the Petitioner for appointment to the post of Labourer. The Petitioner is relying on the representations made by the then Mayor and the then Member of the Standing Committee.

5 There is a reply filed by the Respondents of Smt.

Kamathe Shubhada Ramesh, Chief Labour Officer (Third Respondent). One of the objections raised is of delay. The second contention is that a fair procedure was followed for recruitment. The third contention is that there is no provision for re-valuation of the answer-sheet of the candidates and the Head of the Department has no authority to check the answer-sheets. In fact, it is contended that the Deputy Municipal Commissioner has directed initiation of an enquiry against the concerned officer who re-checked the papers.

6 We have heard the learned counsel appearing for the Petitioner. He submitted that fact that there was a mistake in the assessment of the answer-sheet of the Petitioner is an accepted position and, therefore, the Petitioner should not be made to suffer. The submission of the learned counsel appearing for the Respondents is that there was no occasion for the officer to re-check the answer-sheet of the Petitioner. As there is no provision for re-valuation or re-checking, the decision taken by the Additional Municipal Commissioner is correct.

7 We have considered the submissions. Neither in the endorsement made by the Additional Municipal Commissioner on 31st January, 2013 nor in the affidavit-in-reply filed by the Respondents is it is disputed that there was an inadvertent error while assessing the answer-sheet of the Petitioner and if answer-sheet would have been correctly assessed, the Petitioner would have got 100% marks. We have perused all the remarks on the note prepared by the third Respondent who is the Chief Labour Officer of the said Municipal Corporation. Though in the affidavit-in-reply it is contended that there was no provision for re-checking the answer-sheet, no such specific prohibition is pointed out in the reply. Moreover, in the note prepared by the third Respondent on 9th January, 2013, there was an endorsement made by the Deputy Municipal Commissioner stating that the matter requires discussion. It appears that after discussion on 22nd January, 2013 on the said proposal of the third Respondent, the Deputy Municipal Commissioner wrote a remark that proposal in terms of 'A' be submitted for approval to the Additional Municipal Commissioner

(City). There appears to be a remark of 25th January, 2013 of the Additional Municipal Commissioner that discussion was necessary. There is a single line endorsement made by the Deputy Municipal Commissioner on the said note that there was a discussion and the Additional Municipal Commissioner has ordered rejection of the proposal. Neither the Additional Municipal Commission nor the Deputy Municipal Commissioner or that any officer of the Municipal Corporation has noted that there was no provision for re-valuation of the answer-sheet or re-verification of the answer-sheets. In fact, no reason has been assigned by the Additional Municipal Commissioner for turning down the proposal. The reasons are for the first time stated in the affidavit of Smt. Shubhada Ramesh Kamathe who was the third Respondent. There is no reply filed by the Additional Municipal Commissioner who took the decision.

8 The note prepared by the Chief Labour Officer indicated that injustice has been done to the Petitioner as the answer to Question No.7 was correct, but due to inadvertent mistake of the

examiner, the same was shown as incorrect. Note records that if the said answer would have been treated as correct, the Petitioner would have been entitled for appointment.

9 Therefore, in our view, especially when reasons are sought to be supplied for the first time by filing a reply without disputing the factual aspects, the case of the Petitioner requires re-consideration at the hands of the Additional Municipal Commissioner (City). Accordingly, we dispose of the Petition by passing the following order:

(i) The order of the Additional Municipal Commissioner dated 31st January, 2013 which is recorded on Page 52 is hereby quashed and set aside;

(ii) We direct the Additional Municipal Commissioner (City) to re-consider the case of the Petitioner in the light of factual aspects recorded in the note at pages 40 to 42 of this Petition which is a part of Exhibit 'T' (Collectively);

(iii) Appropriate decision shall be taken by the Additional

Municipal Commissioner (City) within a period of two months from the date on which this order is uploaded;

(iv) Re-consideration shall be in the light of observations made in this judgment and order;

(v) The decision taken by the Additional Municipal Commissioner be communicated to the Petitioner within a period of 15 days from the date the decision is taken.

(vi) Rule is made partly absolute in the above terms.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)