

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

WRIT PETITION NO.6434 OF 2018

Makarand Subhash Dagadkhair	]
Age: 29 years, Occu: Nil,	]
Police Officers Quarter, 14, A Wing,	]
Near CID Passport Office, Crofert Market,	]
Mumbai-400 001	]..Petitioner

Versus

- | | |
|--|----------------|
| 1] The State of Maharashtra |] |
| Through its Secretary of Urban Development |] |
| Mantralaya, Mumbai-400 032. |] |
| | |
| 2] Maharashtra Public Service Commission, |] |
| Through its Secretary, |] |
| Having office at 5 ½, 7 and 8 floor, Cooperage |] |
| Telephone Nigam Building, |] |
| Maharshi Karve Road, Mumbai-400 021. |] |
| | |
| 3] Municipal Corporation of Greater Mumbai, |] |
| Through its Commissioner, |] |
| Municipal Corporation of Greater Mumbai, |] |
| Mahapalika Marg, Mumbai – 400 001. |] |
| | |
| 4] Deputy Municipal Commissioner, |] |
| General Administration Department, |] |
| Municipal Corporation of Greater Mumbai, |] |
| Mahapalika Marg, Mumbai – 400 001. |]..Respondents |

Mr. N. V. Bandiwadekar a/w Mr. Vinayak Kumbhar, Advocate for the Petitioner.

Mr. Y. S. Khochare, AGP for Respondent No.1.

Mr. Nitin Dalvi, Advocate for Respondent No.2 – MPSC.

Mr. Suresh S. Pakale a/w Mr. Vinod Mahadik & Mr. Santosh Parad,
Advocate for Respondent Nos.3 & 4 – MCGM.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 24th JANUARY, 2019**

ORAL JUDGMENT (Per N. J. Jamadar, J)

1] Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsels for the parties.

2] The Petitioner has approached this Court seeking the writ of mandamus to quash and set aside the re-declaration dated 26th July 2017 issued by the Respondent No.2 – MPSC, whereby the earlier declaration dated 9th June 2017, increasing the number of posts of Assistant Municipal Commissioner, for which the selection process was conducted, was withdrawn.

3] It is the case of the Petitioner that the Respondent No.3 - Municipal Corporation had initially given requisition for 7 posts. Pursuant to the said requisition, the Respondent No.2 – MPSC had issued advertisement on 25th November 2016. Under the said

advertisement, applications were invited for 2 open category posts and rest 5 reserved category posts. The Respondent No.3 – Municipal Corporation thereafter gave another requisition for increasing the number of posts by four. Pursuant to the said revised requisition, Respondent No.3 - MPSC issued a declaration dated 9th June 2017, and thereby increased the posts to 11 for which selection process was to be conducted. One post was added to the open category and 3 posts were added to various reserved categories.

4] The Petitioner participated in the selection process. The Petitioner secured highest marks in the open category. However, subsequently, since there were certain complaints by the office bearers of a political party, the Respondent No.2 – MPSC, vide impugned redeclaration dated 26th July 2017, withdrew the said declaration dated 9th June 2017, unilaterally without any requisition to that effect from the Respondent No.3 – Municipal Corporation. It is the contention of the Petitioner that the Respondent No.2 – MPSC, being an agent of the recruiting agency, could not have unilaterally revoked the earlier declaration dated 9th June 2017.

Hence, this Petition.

5] We have heard Mr. N. V. Bandiwdekar, learned counsel for the Petitioner. It was submitted on behalf of the Petitioner that the Respondent No.2 – MPSC committed manifest error in revoking the first declaration dated 9th June 2017 unilaterally. The Petitioner had competed from the open category. Even though the posts were not shown to be reserved for the categories in the advertisement dated 25th November 2016, were shown to be so reserved for those categories in the subsequent declaration, there was no change in the nature of the advertisement so far as open candidates are concerned, save and except the increase in number, from two to three. Since 2 posts were already reserved for the open candidates, all those who were interested in competing had adequate opportunity to participate in the selection process. Thus, increase in the number of posts, which was in tune with the clause in the advertisement that the number of posts are likely to vary, did not cause any prejudice to any candidate. In these circumstances, the Respondent No.2 – MPSC could not have withdrawn the earlier declaration dated 9th June 2017, on its own, urged the learned

counsel for the Petitioner.

6] Mr. Suresh S. Pakale, learned counsel appearing for the Respondent Nos.3 & 4 – Municipal Corporation submitted that the Petitioner had already participated in the process of selection subsequent to the declaration dated 9th June 2017. Learned counsel for the Respondent Nos.3 & 4 - Municipal Corporation further submitted that the approval of the Municipal Corporation to the creation of additional 4 posts is yet to be obtained. The issue was joined by the learned counsel for the Petitioner. He put forth a submission that a number of posts are still vacant.

7] We have perused the material on record. It is evident that the declaration dated 9th June 2017, whereby the posts were increased, came to be issued a day prior to the date of the written examination i.e. 10th June 2017. It is pertinent to note that in the said declaration, few posts were reserved for certain categories, to which posts were not reserved in the earlier advertisement dated 25th November 2016. The following table makes the position abundantly clear.

Sr. No.	Category	Advertisement - 2016	Declaration - 2017
1)	Open	2	3
2)	VJ	1	1
3)	SBC	1	1
4)	OBC	3	4
5)	SC		1
6)	NT(D)		1

8] The aforesaid statement indicates that while increasing the number of posts to be filled from 7 to 11, certain posts came to be reserved for the categories for which the posts were not reserved in the original advertisement dated 25th November 2016, namely Scheduled Caste and NT(D). In our view, such a course of action adopted by Respondent No.2 - MPSC does not seem to be legally permissible. The candidates of the newly added categories i.e. Scheduled Caste and NT(D) could not have applied in pursuance of the advertisement dated 25th November 2016, as no posts were reserved for them under the said advertisement. The fact that the declaration dated 9th June 2017 came to be issued a day prior to the date of written examination, ruled out any opportunity to the candidates belonging to those categories to apply for the post which

came to be reserved for them in the subsequent declaration.

9] In this backdrop, the impugned re-declaration dated 26th July 2017 indicates that the Respondent No.2 – MPSC gave consideration to the complaints which were received to the effect that number of posts was increased a day prior to the date of the written examination. The re-declaration further records that in view of possibility of adequate opportunity not having been provided to the candidates of the categories for which posts came to be reserved in the declaration, it was found appropriate to recall the said declaration dated 9th June 2017. This consideration and decision appears to be justifiable as the said declaration dated 9th June 2017 would have been susceptible to challenge on the count of depriving opportunity to the candidates of those reserved classes for submitting applications for the post.

10] The submission on behalf of the Petitioner that the said infirmity would not come in the way of the Petitioner since the Petitioner had applied under the 'open category' and there was no change in the 'open category' except increase in the number of posts, does not merit acceptance. We are not inclined to accede to

this submission as it would not be legally sustainable to sever the declaration dated 9th June 2017 and consider it to be valid for the open categories only and invalid so far as the posts meant for reserved categories. In the circumstances, the action of Respondent No.2 – MPSC of recalling the said declaration dated 9th June 2017 was proper and justifiable.

11] Even otherwise, the claim of the Petitioner is not acceptable on the legal premise. Firstly, mere fact that the Petitioner had participated in the selection process, does not confer any right upon the Petitioner to be selected and appointed for the post. It is pertinent to note that the Petitioner had participated in the selection process by submitting application dated 15th December 2016, in pursuance of the advertisement dated 25th November 2016, wherein only two posts were shown for the open category. Secondly, it is trite law that vacancies cannot be filled up over and above the number of vacancies advertised. The exercise of filling up vacancies over and above the notified vacancies amounts to filling up future vacancies and thus is not permissible in law. This position is enunciated in the judgment of the Apex Court in the case of Rakhi

Ray & Ors. Vs. High Court of Delhi & Ors.¹.

12] In the case at hand, Respondent No.3 – Municipal Corporation has made a categorical statement that the proposal for creation of additional four posts of Assistant Commissioner is yet to receive approval of the Municipal Corporation. Thus, an inference becomes inescapable that on the day the declaration dated 9th June 2017 increasing the number of posts was made, there was no sanction of the competent authority for the creation of those posts and, resultantly, there could not have been selection process for those posts.

13] For the aforesaid reasons, we are inclined to hold that by the impugned redeclaration the Respondent No.2 – Commission, in fact, rectified the mistake, occurred due to the declaration dated 9th June 2017, which, in effect, would have vitiated the entire selection process. Thus we are not persuaded to interfere with the said decision, and grant relief to the Petitioner in the extraordinary jurisdiction.

¹ (2010) 2 SCC 637.

14] Hence, the Writ Petition stands dismissed. In the circumstances, there shall no order as to costs.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]