Jvs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1501 OF 2019
WITH
INTERIM APPLICATION NO. 1335 OF 2021

Smt. Apexa Navinbhai Damania } Petitioner
Versus
Union of India & Ors. } Respondents

Mr. Vishal P. Shirke for the petitioner.

Mr. Aayush Kedia i/b. Mr. H. S. Venegaonkar for respondents 2 and 3.

Mr. Rahul Walia for respondent no. 4, for the applicant in IA/1335/2021.

CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.

DATE : NOVEMBER 9, 2022

P.C.:

1. The challenge in this writ petition is to an order dated 12th November 2018 of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) allowing Original Application No. 489 of 2015 filed by the respondent no. 4. Such challenge is at the instance of the respondent no. 4 in the original application.

2. An advertisement bearing No. DMN/VAT/AVATO/2014-15/720 dated 1st November 2014 was issued by the Union Territory Administration of Daman and Diu, VAT Department inviting applications for filling up 1 (one) post of Assistant VAT Officer from candidates who possess the below mentioned educational qualification and experience: -

Sl. No.	Name of the post and Pay Band + GP	No. of Posts	Educational Qualifications	Age Limit	Reservation
1.	Assistant VAT Officer R. 9300-34800 With Grade Pay of R. 4200 in PB-2 Group 'B' (Non-Gazetted)	01	**Essential:** i) Degree of a Recognized University preferable in Economics or Commerce. ii) Degree in Law of a recognized University. iii) Experience Commercial accounts in a responsible capacity in Government or semi Govt. or Commercial or banking Organization of repute or in a firm of Chartered Accounts of standing.	Not exceeding 30 years (Relaxable for Govt. Servants upto 5 years in accordance with the instructions /orders issued by Central Govt.)	Un-Reserved

3. The petitioner as well as the respondent no. 4 offered their candidature for appointment on the post of Assistant VAT Officer. It is not in dispute that the petitioner obtained 64.03 marks out of 100 marks, whereas the respondent no. 4 obtained 59.76 marks. The breakup of such marks obtained by the petitioner and the respondent no. 4 reads as follows: -

Roll No.	Name of the Candidates	Written Test Marks	Academic Qualification Marks	Weightage for Local Candidates (if any)	Total
		70	**10**	**20**	**100**
4	Damania Apexa Navinbhai	38	6.03	20	64.03
2	Tushar Sannu Dahiya	53	6.76	0	59.76

4. It is, therefore, clear from the above that the petitioner stole a march over the respondent no. 4 being a local candidate. She was awarded of 20 (twenty) marks in addition to what she had obtained in the written examination as well as for academic qualification. Although the recruiting authority had earmarked 20 marks for local candidates, the extant recruitment rules did not provide for the same. While hearing the original application instituted by the respondent no. 4, the Tribunal took exception to this aspect of the matter. It held that without there being any stipulation in the recruitment rules for award of 20 (twenty) marks to local candidates and without even seeking a clarification from the Administrator of the Union Territory Administration, no such weightage should have been given by the recruiting authority at all to any local candidate. If indeed 20 (twenty) marks were deducted from the total marks obtained by the petitioner, she would have been relegated to a lower position in the merit list and obviously below the respondent no. 4.

5. It is further undisputed that the respondent no. 4 secured more marks than all other candidates, who had applied for the post of Assistant VAT Officer. Bearing such position in mind, the Tribunal proceeded to set aside the selection of the petitioner and allowed the original application with costs of Rs. 1 lakh to be paid to the respondent no. 4 together with consequential direction for consideration of the merit list and eligibility criteria to select appropriate person and thereafter extend consequential benefits in accordance with the rules.

6. We find that upon this writ petition being moved *ex-parte* before this Court, a coordinate Bench granted ad-interim order in terms of prayer (b) reading as follows: -

> "b. Pending the hearing and final disposal of the Petition, the judgment and order dated 12.11.2018 passed by Central Administrative Tribunal, Mumbai in Original Application No. 489 of 2015 be stayed."

7. As a result of grant of such ad-interim order which has been continued by subsequent orders, the petitioner has really been the beneficiary of an illegal action and reaped the benefits of occupying the office of Assistant VAT Officer without any authority of law.

8. We have heard learned advocates for the parties.

9. Although the Tribunal has examined several aspects touching the illegality in the selection process based on points urged before it by the respondent no. 4 and held in his favour on all but one of such points, we would commence our consideration with the aspect of weightage by award of full 20 (twenty) marks in favour of the local candidates. This weightage, in our opinion, is clearly dehors the recruitment rules. The advertisement dated 1st November 2014 set the ball in motion for recruitment of Assistant VAT Officer. It contained terms which were in consonance with the recruitment rules. Neither the recruitment rules nor the advertisement indicated that weightage would be given to local candidates. If the recruitment rules did permit such weightage to be given, there ought not to be any interference unless challenged at the inception of the process. No officer of the Union Territory Administration, and even its Administrator, could have altered the eligibility criteria as well as the procedure for award of marks to the aspirants without appropriate amendment being effected in the recruitment rules. The weightage [by award of 20 (twenty) marks for local candidates] not being traceable in the recruitment rules, none of the local candidates who were aspirants and who were give weightage and awarded marks under such head were legally entitled to the same. In our further considered opinion, such weightage by award of marks is in the teeth of the decisions of the Supreme Court in **Kailash Chand Sharma vs. State of Rajasthan and Ors.**, reported in

(2002) 6 SCC 562, and **State of Rajasthan vs. Nemi Chand Mahela and Ors.**, reported in (2019) 14 SCC 179. Accordingly, the direction given by the Tribunal for ignoring the marks awarded to local candidates under the head 'weightage' and to proceed afresh with the selection process for appointment based on recasting of the merit list appears to us to be legally unexceptionable.

10. Having regard to the aforesaid finding of ours, the position of the aspirants in the merit list is bound to change and the petitioner relegated to a lower position that many others who obtained more marks than her for academic qualification and in the written examination. Thus, we do not see the need to examine the other points on which the original application succeeded before the Tribunal.

11. It has been contended on behalf of the petitioner that she has been discharging duty to the complete satisfaction of her employer all these years (more than half a decade) since her appointment and dislodging her from service at this distance of time would work out serious prejudice to her. This contention has no substance. The petitioner cannot reap the benefits of an illegal selection process. Her appointment being illegal *ab initio*, she has to make way for the most suitable candidate to be appointed on the post of Assistant VAT Officer.

12. We, therefore, find the writ petition to be devoid of substance; accordingly, it stands dismissed. Interim order stands vacated forthwith. The Union Territory Administration is granted a month's time to comply with the directions contained in paragraph 22 of the impugned order including the direction for payment of costs.

13. The parties are left to bear their own costs insofar as the instant proceedings are concerned.

14. In the light of dismissal of the writ petition, the interim application stands disposed of.

SALUNKE J V

Digitally signed by SALUNKE J V
Date: 2022.11.14 17:32:47 +0530

(MADHAV J. JAMDAR, J.) **(CHIEF JUSTICE)**