

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7202 OF 2022

Vikrant Gyanprakash Rathor

...Petitioner

V/s.

Pune Municipal Corporation

and anr.

...Respondents

Mr. Sangram Chinnappa a/w. Mr. Kartikeya Bahadur, for the Petitioner.

Ms. Manisha Jagtap, for Respondent no.1 -PMC.

Mr. B.V. Samant, AGP for Respondent no.2-State.

Mr. Siddheshwar Biradar a/w. Mr. Shriniwas Solanke, for Respondent No.4.

**CORAM : NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 15 June 2023.

ORDER (Per : SANDEEP V. MARNE, J.)

1. Petitioner has filed the present petition challenging the recruitment process for appointment to the post of Ayurvedic Medical Officer under Scheduled Tribe (ST) category. He has sought a further direction for award of marks commensurate to the marks scored by him in BAMS course and to adjust him in the merit list suitably.

2. Facts of the case, briefly stated, are that an advertisement dated 17 April 2020 was issued by the Pune Municipal Corporation for filling up various posts including that of Ayurvedic Medical Officer. Two posts were reserved for ST category, out of which, one ST vacancy was reserved for women. The candidates possessing BAMS degree and three years of experience were eligible to apply. Petitioner applied in pursuance of the advertisement. The candidates were called upon to submit their documents for verification. The candidates were awarded marks based on the documents submitted by them. A provisional list of marks secured by candidates was published by the Municipal Corporation on 8 July 2020 and the candidates were given an opportunity to submit their objections to award of marks. In the list so published, Petitioner was awarded total 58.83 marks with 30 marks being awarded under the Column 'Marks for Education'. As against Petitioner, Respondents no.3 and 4 who also belong to ST category were awarded 38.6 and 34.32 marks respectively under the column 'Marks for Education'. They were awarded total 58.06 and 53.82 marks respectively in the provisional list. Despite being awarded only 30 marks under the column 'Marks for Education', Petitioner failed to submit any objection despite grant of opportunity. On the other hand Respondent Nos. 3 and 4 objected to award of lesser marks for experience.

3. It appears failure on part of the Municipal Corporation in not publishing the final merit list resulted in Petitioner and other candidates filing Writ Petition No. 7976 of 2021 seeking relief of

declaration of results. The Writ Petition was disposed of by this Court by order dated 13 May 2022 recording statement made on behalf of the Corporation that results would be published shortly. Thereafter, final merit list was published on 18 May 2022. Petitioner's name was placed at serial no.4 amongst ST candidates. One Ms. Mangaladevi Kondiba Titkarl was selected against ST-Women category and Respondent no.4- Dhanraj Giridhar Gaikwad was shown to be selected against ST-Open vacancy. The name of Respondent no.3 was included at serial no.1 in the waiting list and Petitioner's name figured at serial no. 2 in the waiting list. Petitioner alleges that marks of Respondents no.3 and 4 have been shown to have been increased in the final merit list. Petitioner has given following tabular chart of the marks obtained by him and Respondents no.2 and 3 :

Sr. No	Name of Candidate	Position as per Provisional List	Position as per Final List	Total Marks as per Provisional List	Total Marks as per Final List
1.	Dr. Vikrant Gyanprakash Rathor	2	4	58.83	58.83
2.	Dr. Arun Dhondur Rawate Respondent No.3	4	2	58.06	61.23
3.	Dr. Dhanraj Giridhar Gaikwad Respondent No.4	6	1	53.82	61.32

4. Petitioner made representation dated 19 May 2022 against the final merit list and also filed application under the Right to Information Act, 2005 on 19 May 2022. Since no response was received, he has filed the present petition. When petition came up

before this Court on 13 July 2022, this Court restrained Respondents no.3 and 4 from taking over the charge of the post of Ayurvedic Medical Officer. The said interim order continues to operate till date.

5. Mr. Chinappa, the learned Counsel appearing for Petitioner would submit that the entire selection process is vitiated. That the Respondent-Municipal Corporation has erroneously not taken into consideration the final year marksheet of BAMS course submitted by him, on account of which he has been awarded lesser marks than Respondents no.3 and 4. He would submit that the said marksheet was submitted by Petitioner alongwith the application form and has erroneously been ignored by the Respondent-Municipal Corporation. That he could not object to the provisional marklist as there was no remark therein to show that Petitioner had failed to submit his marklist for final year of BAMS course. That he noticed such a lacuna only after the final merit list was published by the Respondent-Municipal Corporation. That the Municipal Corporation has erroneously taken into consideration experience of Respondent no.3 even though the same was not mentioned in the application. He would submit that this Court in *Padmavir Bhagwanrao Thorat V/s. Pune Municipal Corporation* (Writ Petition No. 7201/2022) decided on 30 August 2022 has held that the experience not stated in the application cannot be taken into consideration on the basis of experience certificate subsequently submitted.

6. So far as Respondent no.4 is concerned, Mr. Chinappa would submit that if Petitioner's final year marksheet was taken into consideration, he would secure more marks than Respondent no.4 and would be selected against ST-Open vacancy. He would submit that marks awarded to Petitioner are required to be recomputed and a fresh merit list is required to be prepared.

7. Petition is opposed by Ms. Jagtap, the learned Counsel appearing for the Respondent-Municipal Corporation. She would submit that all candidates were given fair opportunity of raising their objections to the marks awarded to them in the selection process. That though Petitioner was made aware of award of only 30 marks for educational criteria, he failed to object about the same. That Petitioner is now estopped from raising any grievance about award of lesser marks for educational criteria. That the selection process has been conducted objectively and that there are no allegations of malafides. She would pray for dismissal of the petition.

8. Mr. Biradar, the learned Counsel appearing for Respondent no.4 would also oppose the petition. He would submit that Respondent no.4 has been selected for appointment against ST-Open vacancy. That Respondent no.4 has secured more marks than the Petitioner and therefore has a right to be appointed. Having not raised any objection of award of marks, Petitioner is now estopped from raising any objection about the same. That Respondent no.4 is made to wait indefinitely on account of pendency of the present petition.

9. Rival contentions of the parties now fall for our consideration.

10. Petitioner has questioned the marks allotted to Respondents no.3 and 4 and has also prayed for re-computation of his own marks and consequent revision in the final merit list. The prayers sought by the Petitioner in the petition are as under :

“a. That this Hon’ble Court be pleased to issue a writ of Certiorari or writ, or order or direction in the nature of certiorari, calling for the records and proceeding of the files pertaining to the recruitment to the Post of Ayurvedic Medical officer in ST Category (General) leading to the final merit list dated 18.05.2022 at EXHIBIT H and after ascertaining the legality and validity of the order be pleased to quash and set aside the same to the extent that it wrongly shows the Respondent No.3 and 4 to be above the Petitioner.

b. That this Hon’ble Court be pleased to issue a writ of Mandamus or writ, or order or direction in the nature of Mandamus directing the Respondent Authorities to grant the Petitioner marks commensurate to his marks in his BAMS course and suitably adjust the merit list accordingly.”

11. It must be observed at the very outset that the Petitioner has not sought any specific prayer for his own appointment on the post of Ayurvedic Medical Officer. He has questioned the placement of Respondents no.3 and 4 above him in the final merit list. The second prayer sought for by him is for award of marks commensurate to his marks in BAMS course and suitable adjustment in the merit list.

12. In the advertisement, out of nine posts of Ayurvedic Medical Officer, two posts were reserved for ST Category. Out of such two vacancies, one vacancy was reserved for ST-Women Category. One Ms. Mangaladevi Kondiba Titkarl has already been selected and appointed against ST-Women Category. Thus, the entire controversy is about one ST-Open vacancy, against which Respondent no.4 is shown to have been selected. The name of Respondent no.3 appears in the waiting list at serial no.1 and Petitioner's name figures in the waiting list at serial no.2. Respondent no.4 is interested in the appointment and therefore once Respondent no.4 is appointed, waiting list would become redundant. In that view of the matter, we need not go into the issue of award of marks to Respondent no.3 or his placement above Petitioner in the final merit list. We would therefore concentrate on the competing claims between Petitioner and Respondent no.4.

13. Ms. Jagtap has placed on record the following chart showing the marks secured by candidates in the selection process :

Candidate	Marks as per certificate in provisional list (out of 40)	Documents submitted at time of objection/suggestion	Marks as per experience in final list (out of 40)	Marks as per education criteria in provisional list (out of 60)	Marks as per education criteria in final list (out of 60)	Position as per final list	Marks for provisional list	Marks for final list
Dr. Arun Dhondur Rawte (sr. no. 43)	20 Government-6 years 6 months= 20 Marks (non-tribal area Government service 6 marks per year)	a. Experience certificate of Vivek Maternity and nursing home 1 year 7 months= 3.17 Marks b. Certificate of MS-CIT course c. Objections raised about Vikrant	<u>23.17</u> Government - 6 years 6 months = 20 Marks Private -1 year 7 months= 3.17 Marks (non-tribal area Government service 6 marks for	38.06	38.06	1 (in waiting list)	58.06	61.23

		Rathod's (present petitioner's caste validity certificate and caste certificate and application for conducting further enquiry about the same.	service in private Hospital; 2 marks per year)					
Dr. Dhanraj Gaikwad (sr.no.74) (Respondent No. 4)	<u>19.50</u> Government -2 years 1 month = 12.50 (Per Year 6 Marks) Private -3 Years 6months= 7 Marks	a. Application for Correction in final year B.A.M.S marks b. Health Department, Zilla Parshad-Nandurbar Experience Certificate Tribal-1 Years 1 moth -8 Marks	<u>27</u> Government -2 years 1 month = 12.50 Marks Private -3 years 6 months= 7 Marks Tribal -1 year 1 month= 8 Marks ; for service in tribal area 8 marks per year)	34.32	34.32	1	53.82	61.32
Dr. Vikrant Dyanprakash Rathod	<u>28.83</u> Government -5 years 10 months= 20 Marks Private -4 years 5 months= 8.83 Marks (non - tribal area Government service 6 marks for service in private Hospital; 2 marks per year	None	<u>28.83</u>	30	30	2(waiting list	58.83	58.83

14. So far as Petitioner and Respondent no.4 are concerned, there is no dispute about the award of marks for 'Experience' criteria. Out of 40 marks, Respondent no.4 has secured 27 marks and Petitioner has secured 28.83 marks. The entire controversy is about marks awarded for 'Educational Criteria'. While Respondent no.4 is awarded 34.32 marks, Petitioner is awarded 30 marks. From the chart produced by Respondent-Municipal Corporation, it appears that there has been

some change in the award of marks for 'Experience' criteria in the provisional list and the final list for Respondents no.3 and 4. Their marks have been increased from 20 to 23.17 and 19.50 to 27 respectively. This has possibly happened on account of objections raised by them. Since Petitioner did not raise any objection to the provisional marks, there is no change in the marks awarded to him in the 'Experience' criteria which has remained same (28.83) in both provisional and final list. Though Petitioner has questioned award of marks in 'Experience' criteria to Respondent no.3, we need not go into that issue as Respondent no.3 is placed in the waiting list and in the event of Respondent no.4 being appointed, the waiting list would become redundant. As observed above, we are concentrating on the competing claims of Petitioner and Respondent no.4. Petitioner has no grievance of award of marks in 'Experience' criteria to Respondent no.4.

15. Now we turn to Petitioner's contention about non-consideration of marks obtained by him in the final year BAMS course. It is contended on behalf of Petitioner on account of such non-consideration, Petitioner has been awarded less (30) marks for 'Educational' criteria and that upon consideration of the marks secured by him in the final year of BAMS course, there would be substantial increase in his marks. That he would then secure 35.84 marks for educational criteria thereby increasing his final score to 64.37. Petitioner was awarded 30 marks for 'Educational' criteria in the provisional list. Though given an opportunity, he failed to raise any objection about award of lesser marks. Petitioner did notice award of

higher marks to other candidates. He possibly knows the system of award of marks for educational criteria as he has made his own calculations in the petition about the correct marks that were required to be awarded to him against educational criteria. Despite this knowledge, Petitioner failed to raise any objection to award of 30 marks. He in fact approached in this by filing Writ Petition No. 7976 of 2021 for early finalization of selection process, but did not question award of lesser marks for educational criteria therein. Therefore, Petitioner is now estopped from raising this grievance in the present petition.

16. There is some factual dispute between the parties whether Petitioner indeed submitted his final year marksheet to the Respondent-Corporation. Respondent-Municipal Corporation has taken a stand that his final year marksheet was not submitted. Petitioner has not raised allegations of malafides against any particular officer of the Municipal Corporation. He had an opportunity to produce the final year marksheet when objections were invited to provisional list. He however failed to avail that opportunity. In writ jurisdiction, we cannot go into the factual dispute as to whether Petitioner did submit the final year marksheet or not. Suffice it to observe that, he did have an opportunity to submit the same by raising an objection to the provisional list.

17. This Court therefore cannot come to the aid of the Petitioner who was not vigilant enough in respect of his rights. It must

be borne in mind that Respondent no.4 who was diligent in raising his own objection and has been awarded higher marks than Petitioner. He is waiting for his appointment on account of pendency of the present petition.

18. In absence of allegations of malafides against any particular Officer of Municipal Corporation, it would not be possible for the Court to hold that marks scored by him in the Final Year of BMS Course were deliberately ignored by the Selection Committee despite availability of marksheet.

19. Resultantly, we find the petition to be devoid of merits. Petition is therefore dismissed with no orders as to costs. Interim orders granted earlier shall stand vacated.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE