

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11730 OF 2023

Amol Machindra Chandanshiv and Anr. ... Petitioners.

V/s.

The Commissioner and Director, Municipal
Administration and Anr. ... Respondents.

WITH
WRIT PETITION NO. 12934 OF 2023

Vishal Sambhaji Tengale ... Petitioner.

V/s.

The Commissioner and Director, Municipal
Administration, and Anr. ... Respondents.

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Mr. Sanjiv Sawant a/w Ms Bhakti Wast i/b Mr. Abhishek Deshmukh
for the Petitioners.

Mr. P. P. Kakade, Government Pleader a/w Mr. S. H. Kankal, AGP
for Respondent No. 2.

.....

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 27 October 2023.

P.C. :

Heard the learned Counsel for the parties.

2 The Petitioners have challenged the order passed by the

Maharashtra Administrative Tribunal dated 14 July 2023 in Original Application Nos. 909 of 2021 and 141 of 2022. By the impugned order, the Tribunal dismissed the Original Applications filed by the Petitioners.

3 Respondent No. 1 had published an advertisement for preliminary examination for the post of Accountant/Auditor on 7 April 2018. The Petitioners appeared in the preliminary examination and cleared the same. Thereafter, they appeared for main examination on 30 July 2018. The advertisement prescribed minimum 45% marks required to be eligible for selection. Since the Petitioners' name did not appear in the list, the Petitioners filed their respective Original Applications. The Petitioners had sought a direction to the Respondents to include the names of the Petitioners in the list/order dated 5 July 2021 issued by Respondent No. 1- Commissioner and Director of Municipal Administration for the post of Accountant/Auditor. After registration of the Original Applications, the Petitions are filed. Reply affidavit is filed. The Petitioners have also filed a rejoinder

4 Before the Tribunal, the Petitioners relied upon the cases of similarly situated candidates who were protected in service, even though they had secured less than 45% marks. The Petitioners also relied upon decision of the Division Bench of the Punjab and Haryana High Court in the case of *Sahil Aggarwal V/s. State of*

Punjab and Others.¹ The Tribunal distinguished the case of *Sahil Aggarwal* and after holding that the Petitioners had secured less than 45% marks, they were not eligible and dismissed the Original Applications. The contention of the Petitioners, that the Respondent No. 1-The Commissioner and Director, Municipal Administration had power of relaxation and should have been used in the petitioners' case, was not accepted by the Tribunal.

5 The Petitioners have relied upon clause 11 of the advertisement, wherein it is stated that 45% marks are necessary and the Respondents deserve right for making a change as regards the qualifying marks. Based on this stipulation, the Petitioners contend that there exists the power of relaxation and this power of relaxation has been exercised by the Respondents- State in favour of some of the candidates, and the Petitioners relied upon orders passed by the Tribunal in respect of such candidates, more particularly, order in Original Application No. 207 of 2022. It is contended that the Tribunal in Original Application No. 207 of 2022 has protected the services of this candidates by passing order 24 June 2023, even though they had secured less than stipulated marks.

6 According to the Petitioners, the record shows that power of relaxation exists and even after accepted by the Tribunal. The reliance is also placed by the learned Counsel on the decision of the Division Bench of the Punjab and Haryana High Court in the case of

¹ CWP No. 12835 of 2012.

Sahil Aggarwal V/s. State of Punjab and Others to contend that parity must be maintained when relaxation is extended to some of the similarly situated employees.

7 First and foremost position is that the Petitioners do not possess the qualifying marks. Question is whether parity can be extended as sought for by the Petitioners and whether contention that relaxation is exercised needs to be accepted. The parity cannot be a vague concept but it has to be based on definite examples.

8 As regards the Original Application No. 207 of 2022 is concerned, the Respondents-State had terminated the services of the applicants therein on the ground that they did not possess the requisite qualifying marks. Thereafter, the applicants approached the Tribunal, and the perusal of the order would show that the Tribunal was faced with the fact that the applicants had completed three and half years of service and their posts were also counted in vacancy chart. The marks were just below 1.25. Considering this position, the Tribunal, primarily on equitable consideration, protected their services. However, as regards the stand of the Respondents, that is consistent, that those who do not possess qualifying marks, cannot be appointed. This case therefore is not comparable with the case of the Petitioners. The Petitioners are yet to be appointed.

9 As regards the decision in the case of *Sahil Aggarwal* is concerned, the basic principle, that there needs to be a parity, and if

relaxation is granted, it must be uniform, cannot be disputed. But in the case at hand the approach of the Respondents is consistent of not appointing those below 45%, and those who were appointed were sought to be terminated. Therefore, no grievance can be made by the Petitioners.

10 We are informed that the next selection process is on going where the Petitioners have already applied.

11 In these circumstances, we do not find any error in the view taken by the Tribunal. The Writ Petitions are accordingly rejected.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)