

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2023.02.03
18:16:29
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 592 OF 2019

Vishal Kashinath Mestri & Ors.

..... Petitioners

Vs.

The State of Maharashtra & Ors.

..... Respondents

**WITH
WRIT PETITION NO. 2948 OF 2019
WITH
INTERIM APPLICATION NO.284 OF 2019
IN
WRIT PETITION NO. 2948 OF 2019**

Adhal Pandurang Soma & Ors.

..... Petitioners /
Applicants

Vs.

The Municipal Commissioner
Municipal Corporation of
Greater Mumbai & Ors.

..... Respondents

Dr. Uday P. Warunjikar for the Petitioners
Smt. Jyoti Chavan, AGP for the State
Mrs. Rupali Adhate for the Municipal Corporation
Mrs. Kshitija Kandarkar, Jt. Labour Officer, Labour Dept.

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

**RESERVED ON : JANUARY 31, 2023
PRONOUNCED ON : FEBRUARY 3, 2023**

JUDGMENT (PER : ACTING CHIEF JUSTICE)

1. Rule.

Rule is made returnable forthwith.

By consent of the parties, taken up for final disposal.

2. Writ Petition No.592 of 2019 has been filed seeking directions against the Respondents to relax the conditions of Recruitment Scheme, 2009 with regard to the legal sanction and recruit the remaining candidates from the merit list with other reliefs.
3. Writ Petition No.2948 of 2019 is filed challenging the decision dated 18th July 2018 of the Respondents whereby the representation filed by the Petitioner is rejected.
4. The Petitioners in these Writ Petitions had participated in the selection process pursuant to the advertisement dated 6th November 2009 for the post of Labourers and Aayaas. The Petitioners' names were included in the wait list.
5. Mr. Warunjikar, the learned Counsel for the Petitioners submit that the advertisement was issued to fill in 3916 posts. The 3916 posts were filled-in in the year 2011. In the year 2012, 815 posts were filled in and in the year 2013, 752 more persons from the wait list were appointed. The Petitioners have also secured 100/100 marks. The Petitioners deserve to be given the same treatment. The Municipal Corporation also passed the resolution that the case of the Petitioners shall be considered and be sent to the Government. The

Corporation was also positive to consider the case of the Petitioners. The Petitioners have also secured full 100 marks. They cannot be discriminated. It would be injustice upon the Petitioners if they are not given appointment orders though they have got full 100 marks and the posts are vacant. The learned Counsel further submits that some of the Petitioners had filed Writ Petition (L) No.3326 of 2017, Writ Petition (L) No.50 of 2018, Writ Petition (L) No.3418 of 2017, Writ Petition (L) No.57 of 2018 and Writ Petition No.2967 of 2016 challenging the fresh advertisements issued, so also seeking relief of grant of employment based on the selection of the year 2009. The Division Bench of this Court, under order dated 18th June 2018, accepted the motion of the Petitioners for withdrawal of the petitions with liberty to approach the Commissioner / Competent Authority of the Municipal Corporation for redressal of their grievance in the light of the resolution passed on 20th May 2013 in the joint meeting of the Corporation. The Court directed that if such representation is made, it may be decided expeditiously. Pursuant thereto a decision was taken by the Commissioner rejecting the representation. The learned Counsel for the Petitioners submits that the representation is rejected without affording opportunity of hearing to the Petitioners. The Respondents be directed to hear the Petitioners and decide the representation, afresh.

6. The learned Counsel for the Petitioners submits that the Petitioners are discriminated. They are similarly situated and had obtained same marks with other persons who were appointed pursuant to the selection process of 2009.

7. The learned Counsel for the Corporation submits that after the selection process of the year 2009, fresh selection process has been conducted in the year 2017 and fresh appointments are also made. The Petitioners cannot be considered for appointment pursuant to the fresh selection process of the year 2009.

8. We have considered the submissions.

9. The Petitioners are seeking directions to appoint the Petitioners pursuant to the selection process of the year 2009.

10. In the year 2009 advertisement was published by the Respondent Corporation for the post of Labourer to fill in 3916 posts. The Corporation received about 2,89,248 Applications and about 2,08,565 Applicants were found to be eligible for the physical test. As the number of Applicants was disproportionately large vis-a-vis the posts advertised, it was decided by the Corporation to call 15 times the number of vacant posts of respective reservation category as per their seniority of age. 54,187 candidates were

invited for the physical test. Out of 54,187 candidates 18,943 candidates were qualified for the final written examination. About 1,405 from handicapped category were also called for written examination. Total 20,348 candidates were qualified for the written examination. 18,996 candidates appeared for the written examination. Out of 18,996 candidates, 5,148 candidates secured 100/100 marks in the written examination.

11. The vacant posts were only 3,916 and 5,148 candidates secured 100/100 marks. Select list was prepared considering the age of the candidates. It appears that 3,916 candidates were selected and the rest of the candidates were on merit-cum-wait list. The appointment orders, it appears, were issued in the year 2011. The final merit list was announced on 26th July 2011. In the year 2012 and 2013 it appears that 752 and 815 candidates from merit-cum-wait list were also given appointment orders in view of the fresh vacancies. The validity period of wait list is only one year as per the Government Circular dated 28th July 1994 and Municipal Corporation of Greater Mumbai circular dated 20th June 2001.

12. It appears that in the year 2016 fresh recruitment was conducted for handicapped labour and in the subsequent year fresh recruitment was conducted for the regular labours.

13. Only because some of the candidates were appointed in the year 2012 and 2013, that would not mean that the Petitioners should be appointed after a long slumber, more particularly, when fresh selection process was also undertaken in the year 2016 and 2017.

14. It is trite that mere name in the wait list would not give indefeasible right to the candidate to be appointed. Moreover, it would not be possible to accept the contention of the Petitioners of giving appointment order on the basis of the select list pursuant to the advertisement of the year 2009. The total posts advertised are filled in. It would not be possible for this Court to give directions to the Corporation to fill in the posts more than advertised on the basis of the select list of that year. Only because some candidates' appointments were issued in the year 2012 and 2013, it will not be possible to direct the Corporation to appoint those persons, after the long slumber of 12 to 14 years and that too after the fresh selection process has been conducted and appointments pursuant to the fresh selection process have been made.

15. The Petitioners had made representation. Same has been negated. There would be no question of affording opportunity of hearing to these Petitioners by the Corporation. The Petitioners, as observed above, do not have vested right to get appointment orders

with the Corporation pursuant to the selection process of the year 2009 .

16. In light of the aforesaid facts and circumstances, this Court cannot come to the aid of the Petitioners.

17. The Writ Petitions, as such, are disposed of. No costs.

18. Rule stands discharged.

19. Interim Application stands disposed of.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)