

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 1881 OF 2020

Sikandar Rashid Shaikh,
Aged – 28 years, Occupation – Nil,
R/o House No. 7263,
Bhagatsinghnagar, Ozar (MIG),
Tahsil – Nepad, District - Nashik-422206.

.....**Petitioner**

...Versus...

(1) The Municipal Commissioner,
Nagpur Municipal Corporation,
NMC Office, Civil Lines, Nagpur.

(2) The Chief Fire Officer,
Nagpur Municipal Corporation,
NMC Office, Civil Lines, Nagpur.

.....**Respondents**

Mr. Ritesh Badhe with Ms. Shrushti Shahakar, Advocates for the petitioner
Mr. Rohan Chhabra, Advocate for the respondents

CORAM : ROHIT B. DEO AND M. W. CHANDWANI, JJ.

DATE : 08-06-2023

ORAL JUDGMENT : (PER ROHIT B. DEO, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent,
heard finally.

3. The genesis of the petition is the advertisement dated
3-2-2018 published by the Nagpur Municipal Corporation (NMC)

inviting applications to fill in several vacancies in the Fire Service Department.

4. We are concerned with the vacancies in the post of Driver/Operator.

5. The advertisement dated 3-2-2018 envisages 57 vacancies of Driver/Operator as follows.

पदाचे नाव	वेतनश्रेणी ग्रेड पे	प्रवर्ग	एकूण पद संख्या	समांतर आरक्षण							समांतर आरक्षण व्यति. रीक्त (इतर)
				महिला	अपंग	माजी सैनिक	खेळाडू	भुंकप ग्रस्त	प्रकल्प ग्रस्त	अंशक. ालीक बेरोजगार	
				30%	3%	15%	5%	2%	5%	10%	
चालक यंत्र चालक	5200-20200 ग्रेड पे 2400	अजा	08	02	—	01	—	—	—	01	04
		अज	03	01	—	—	—	—	—	—	02
		विजा(अ)	02	01	—	—	—	—	—	—	01
		भज(क)	03	01	—	—	—	—	—	—	02
		भज(ड)	01	--	--	--	--	--	--	--	01
		विमाप्र	01	--	--	--	--	--	--	--	01
		इमाव	12	04	0	02	01	0	01	01	03
		मुक्त	27	08	01	04	01	01	01	03	08
		एकुण	57	17	01	07	02	01	02	05	22

6. The petitioner asserts that he is eligible and qualified for consideration to the post of Driver/Operator. This aspect need not detain us since it is not the case of the NMC that the petitioner is not qualified to hold the post.

7. The petitioner contends that the select list and the waiting list for the post of Driver/Operator was published on

7-3-2019 and the petitioner is shown at Serial 1 in the waiting list from the Open category. The petitioner then contends that Mr. Gajanan Mohan Chauhan, whose name is at Serial 4 in the select list, was already employed with the military, which fact he suppressed. The petitioner then contends that Mr. Gajanan Chauhan was appointed, he did not report on duty for month, and this being the position, the NMC ought to have cancelled the appointment of Mr. Gajanan Chauhan and appointed the petitioner who was at Serial 1 in the waiting list in the Open category.

8. We need not make an elaborate reference to the rest of the pleadings in the petition which are only an extension of the basic premise that the petitioner ought to have been appointed in place of Mr. Gajanan Chauhan considering the petitioner's position in the waiting list.

9. During the course of hearing, we were impelled to pass the following order on 1-3-2023, which is self speaking.

“We heard the learned Counsel for the petitioner Mr. N.S. Badhe and the learned Counsel for the respondents-Nagpur Municipal Corporation Mr. Rohan

Chhabra in the first session, at some length.

2. *We were impelled, for reasons which we do not consider necessary to articulate, to insist on the personal presence of any senior officer of the Corporation who would assist us.*

3. *We have heard the learned Counsel again post session. Mr. Prakash Laxman Warade, the Assistant Commissioner (General Administration) of the Corporation and Mr. Mahesh Dhamecha, Assistant Commissioner (Information and Technology) who was the Assistant Commissioner (General Administration) of the Corporation when the recruitment impugned was conducted, are personally present to assist Mr. Rohan Chhabra.*

4. *One glaring aspect of the matter is that while in the advertisement dated 03-2-2018 twenty-seven posts are earmarked for the Open category, only twenty-four posts are filled in. Inasmuch as, the petitioner was shown at Serial 1 at the Wait List, our obvious query to Mr. Rohan Chhabra was why the twenty-seven posts were not filled in. In response, Mr. Rohan Chhabra states, on the basis of the instructions received from the officers present, that in view of Government Resolution dated 28-12-2018, the posts earmarked for ex-serviceman cannot be filled in. We are informed that from the twenty-seven posts, four posts were reserved horizontally for the ex-serviceman category.*

5. *Perusal of the Government Resolution dated 28-12-2018 reveals that certain other categories are contemplated for horizontally reservation. One category is persons suffering from handicap or disability. Government Resolution dated 28-12-2018 places the category of handicapped persons and ex-serviceman on the same pedestal, inasmuch as it is specifically provided that the vacancy reserved for handicapped category shall be carried*

forward. As a fact, there is enough play in the joint in so far as the ex-servicemen reservation is concerned since the Corporation was expected to forward a proposal for seeking permission to fill in the post reserved for ex-servicemen from the candidates available. Presently we are not delving deeper in the broader question.

6. *What is disturbing is that while the advertisement contemplates horizontal reservation for the handicapped category, it does not appear that any candidate from the said category is appointed. Further, assuming that there was no candidate available from the handicapped category, the vacancy has not been carried forward and appears to have been filled from the candidate from the Open category. Prima facie, the actions of the Corporation may be vulnerable to the charge that there is a deliberate defiance of the letter and spirit of the rights available to persons suffering from disabilities, entailing prosecution under the provisions of the Rights of Persons with Disabilities Act, 2016.*

7. *Before we pass any further order, we are inclined to grant an opportunity to the Corporation to explain the following :*

(i) Whether there was any person available from the physically handicapped category who could have been appointed in the vacancy reserved under the advertisement ?

(ii) If there was no such person available, is the vacancy carried forward ?

(iii) If the vacancy reserved for the handicapped is not carried forward, is the vacancy filled in from other candidate from Open category ?

(iv) If the answer to (iii) is in the affirmative, whether such a course is permissible in law ?

(v) *Whether there was any proposal submitted by the Corporation seeking permission to fill in the vacancies reserved for the ex-servicemen from the other available candidates ?*

(vi) *Whether the three vacancies reserved for ex-serviceman have been carried forward and included in any other advertisement ?*

8. *At this stage, the learned Counsel Mr. N.S. Badhe states that as a fact, Mr. Balaram Dnyaneshwar Thorat who is shown to have been selected against one vacancy out of the four vacancies for ex-servicemen, has not been issued the appointment order. If this be so, certain other serious questions may arise.*

9. *We direct the Commissioner of the Municipal Corporation, Nagpur to file his personal affidavit on the aspects which we have flag-marked supra, after making due enquiry and considering the entire record. The affidavit shall be filed on or before 10-3-2023.*

10. *Stand over to 15-3-2023.”*

10. In response to the said order, the Commissioner has filed an affidavit in response dated 8-3-2023. The Commissioner, after examining the record and due application of mind found that the subject advertisement erroneously provided horizontal reservation for the physically challenged. The Commissioner asserts, after referring to the Government Resolution dated 10-9-1981 and the Recruitment Rules for the Fire and Emergency Department of the NMC, that physically challenged person is not

eligible for appointment. Particular reference is made to Rule 6.2.

11. In so far as the horizontal reservation for the ex-servicemen, the response of the Commissioner is that one vacancy out of the four reserved for ex-servicemen is filled in and the remaining vacancies are carried forward and shall be included in the next recruitment drive.

12. In so far as the submission of the petitioner that Mr. Gajanan Mohan Chauhan resigned and one vacancy became available, in the affidavit dated 31-7-2020, the NMC asserts that while Mr. Gajanan Mohan Chauhan was appointed and he remained present at the Regional Fire Training Centre, Kalamna on 6-7-2019, he virtually abandoned duty and remained absent without permission from 7-7-2019 and was issued show cause notice dated 30-8-2019. NMC contends that in response to the said show cause notice, Mr. Gajanan Chauhan submitted a medical certificate which was forwarded to the Health Officer for verification. NMC contends that Mr. Gajanan Chauhan did not report and on 19-6-2020 sought extension of time till 10-7-2020 to join duty. This request was considered favourably and

Mr. Gajanan Chauhan was directed to report on duty on 10-7-2020. Mr. Gajanan Chauhan, however, did not report and a proposal was submitted for administrative approval for his dismissal from service. It appears to be an admitted position that Mr. Gajanan Chauhan resigned on 29-7-2020 which resignation was accepted by the NMC on 5-10-2020. We have noted that the entire edifice of the petition is that the NMC ought to have dismissed Mr. Gajanan Chauhan and in the vacancy occurring, the petitioner ought to have been appointed.

13. In fairness to the learned counsel Mr. Badhe, he is not disputing that the wait-list has a limited life of one year which would mean that as on the date the vacancy did occur in view of the acceptance of the resignation of Mr. Gajanan Chauhan, the wait-list stood lapsed. In this view of the matter, it would not be possible to consider the claim of the petitioner to appointment in the vacancy which may have been created due to resignation of Mr. Gajanan Chauhan.

14. The petition is dismissed.

(M. W. Chandwani, J.)

wasnik

(Rohit B. Deo, J.)

Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 14.06.2023 18:15