

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7676 OF 2023

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| 1. Sable Tulshiram Rupaji |] |
| 2. Dhanwat Sanjay Kumar Baban |] |
| 3. Patole Rupali Ashok (Jadhav Rupali Amar) |] |
| 4. Kakade Nilima Subhash |] |
| 5. Pandhare Suhas Narayanrao |] |
| 6. Thopte Vinay Dashrath |] |
| 7. Mujawar Nisar Rashid |] |
| 8. Pujari Seema Sahebrao |] |
| 9. Bhagwat Ashwini Prasad (Kadam Ashwini Tukaram) |] |
| 10. Khandode Milind Ashok |] |
| 11. Pawar Sandeep Krishnakant |] |
| 12. Kamble Nitin Dattatraya |] |
| 13. <i>Sable Vinod Baban (Deleted)</i> |] |
| 14. Bhandge Priti Ravindra |] |
| 15. Gholave Sunil Shrihari |] |
| 16. Bhaik Santosh Narayan |] |
| 17. Pawar Priyanjali Parshuram |] |
| 18. Shitole Pravin Hanumant |] |
| 19. Salunke Sanjay Khemchand |] |
| 20. Kamble Sridhar Amrut |] |
| 21. Gawari Lakshmi Budhaji |] |
| 22. Shinde Nanaso Dashrath |] |
| 23. Kokani Rahatbegum A. Kareem |] |
| 24. Kadam Archana Vishal |] |
| 25. Borde Atish Satish |] .. Petitioners |

Versus

- | | |
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| 1. State of Maharashtra, |] |
| 2. Municipal Corporation of the City of Pune |] |
| 3. Municipal Commissioner, |] |
| Pune Municipal Corporation. |] .. Respondents |

Mr. A.A. Kumbhakoni, Sr. Advocate, with Mr. Susheel Mahadeshwar, i/by Ms. Ranjana Todankar, for the Petitioners.

Ms. A.A. Purav, AGP for Respondent No.1-State.

Mr. Abhijit P. Kulkarni, with Ms. Sweta Shah, for Respondent Nos.2 and 3-Pune Municipal Corporation.

**CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

**DATE : 4TH JANUARY, 2024.
[IN CHAMBER – AT 2.20 P.M.]**

PC. :

1. The challenge raised in this Writ Petition is to the advertisement dated 6th March 2023 issued by the 2nd respondent – Municipal Corporation, Pune inviting applications for recruitment on the post of “Senior Sanitary Inspector”. In the draft Recruitment and Promotion Rules, 2011 (for short, “the draft Rules of 2011”) framed by the 2nd respondent-Municipal Corporation, insofar as the post of “Senior Sanitary Inspector” is concerned, the appointment was to be made through promotion of employees of the Municipal Corporation. When these Rules were forwarded to the Urban Development Department of the State

Government for due sanction under the provisions of Sections 454, 455 and 465(1)(l) of the Maharashtra Municipal Corporations Act, 1949 (*for short, “the Act of 1949”*), the Urban Development Department directed that 75% of the posts of Senior Sanitary Inspector be filled in through nomination and 25% posts be filled in through promotion. It is on that basis that advertisement dated 6th March 2023 came to be published by the Municipal Corporation seeking to fill-in 20 posts of Senior Sanitary Inspector. According to the petitioners, it is not permissible for the Urban Development Department to unilaterally modify the draft Rules of 2011 and direct a different mode of recruitment from the one proposed by the Municipal Corporation as such exercise is beyond the jurisdiction of the Urban Development Department. It is in this backdrop that the advertisement dated 6th March 2023 is under challenge.

2. After hearing Mr. A.A. Kumbhakoni, learned Senior Advocate for the petitioners, Ms. A.A. Purav, learned AGP for respondent no.1-State and Mr. A.P. Kulkarni, learned counsel for the 2nd and 3rd respondents, we find that earlier insofar as the post of “Telephone Operator” under the Technical Services – Grade IV is concerned, the same was to be filled-in through nomination. The Municipal Corporation, by following the requisite procedure, sought modification / amendment in the Pune Municipal Corporation (Recruitment and Promotion) Rules, 2014 (*for*

short, ***“the Rules of 2014”***), by proposing that 50% of the posts of “Telephone Operator” be filled-in through nomination and 50% posts be filled-in through promotion. Communication dated 11th November 2022 was addressed by the Municipal Commissioner to the Principal Secretary, Urban Development Department and approval was accordingly sought under Section 457(3)(a) of the Act of 1949. After considering the same, the Urban Development Department vide its communication dated 30th May 2023 approved the amendment / modification that was proposed by the Municipal Corporation and permitted recruitment to the post of “Telephone Operator” through nomination to the extent of 50% and through promotion to the extent of 50%. This indicates that on a proposal for modification / amendment being moved by the Municipal Corporation, the same was considered by the Urban Development Department under Section 457(3)(a) of the Act of 1949 and the modification / amendment was granted.

3. Insofar as the post of “Senior Sanitary Inspector” is concerned, various Health Servants on 23rd February 2023 made an application to the Municipal Corporation seeking modification / amendment to the Rules of 2014 insofar as the mode of recruitment to the said post is concerned. The modification sought in the mode of recruitment from 75% posts through nomination and 25% posts through promotion to all the posts to be filled-

in through promotion. Thereafter, on 17th May 2023, the General Administration Department of the Municipal Corporation submitted a proposal in that regard to the Additional Municipal Commissioner for further steps to be taken. On 22nd May 2023, the Additional Municipal Commissioner made an endorsement on the proposal that the same be submitted after the recruitment process initiated on 6th March 2023 was completed. It is in this backdrop that the petitioners, by filing this Writ Petition on 20th June 2023, have sought to raise a challenge to the advertisement dated 6th March 2023.

4. On 26th June 2023, while issuing notice in the Writ Petition, an interim order was passed permitting the selection process that had been initiated vide advertisement dated 6th March 2023, to continue but a direction was issued that appointments should not be made till the next date of hearing. This interim direction continues to operate. In the order dated 29th August 2023, it has been noted that according to the Municipal Corporation, the entire recruitment process was almost complete and only the appointment orders had remained to be issued.

5. What we find from the record is that the request made by the petitioners and other similarly situated employees for modification of Clause 448 of the Rules of 2014, which prescribes recruitment to be made through nomination to the extent of 75% and by promotion to the extent

of 25% is still pending. The Municipal Corporation appears to be seized of the said matter, as is evident from the communication dated 17th May 2023 issued by its General Administration Department (page 78 of the Writ Petition). The proposal requires further consideration by the Municipal Commissioner and according to the endorsement dated 22nd May 2023, such process was required to be undertaken after the recruitment process was completed. Since we find that the Urban Development Department has at an earlier point of time considered a similar request for modification of the Rules of 2014 insofar as it related to recruitment on the post of “Telephone Operator” and has in fact, acceded to such request made by the Municipal Corporation, a similar course can be permitted to be undertaken. In view of the interim order passed in the present proceedings, the process of recruitment is not yet completed in the sense that appointment orders are yet to be issued. We find that a direction can be issued to the concerned respondents to complete the aforesaid exercise while at the same time protecting the interest of the petitioners. It is for this reason that we have not chosen to presently rule on the challenge raised to the power of the Urban Development Department to unilaterally modify Clause 448 of the draft Rules of 2011 as proposed by the Municipal Corporation. The said challenge can be gone into in case the need for the same arises. In that view of the matter, for the present, the following directions are issued :-

- (a) The respondent no.2-Municipal Corporation is permitted to complete the process of recruitment that was initiated pursuant to the advertisement dated 6th March 2023.

While issuing orders of appointment for the advertised posts of “Senior Sanitary Inspector”, the appointees be made aware of the pendency of the present proceedings as well as the rider that their appointment would be subject to outcome of the present Writ Petition.

Leave is granted to the petitioners to implead the Senior Sanitary Inspectors, who are issued orders of appointment and who would be affected by the adjudication of the present Writ Petition.

After such amendment is carried out, issue notice to the newly added respondents, returnable on 28th March 2024.

- (b) On completion of the process of recruitment insofar as the posts of “Senior Sanitary Inspector” is concerned, the Municipal Corporation shall take further steps in accordance with the endorsement dated 22nd May

2023 made by the Additional Municipal Commissioner
(page 81 of the Writ Petition).

- (c) On all formalities being completed, the Municipal Corporation is free to forward the request for modifying the mode of recruitment vide Clause 448 that relates to the post of “Senior Sanitary Inspector”, under the Rules of 2014 to the Urban Development Department.
- (d) The Urban Development Department shall within a period of eight weeks of receipt of such proposal, examine the same and consider the request for modification in accordance with law and especially the Act of 1949.

6. Put up for further consideration on 28th March 2024.

[FIRDOSH P POONIWALLA, J.]

[A.S. CHANDURKAR, J.]

7. At this stage, the learned counsel for the petitioners prays for continuation of the interim order dated 26th June 2023. This request is opposed by the learned counsel appearing for the Municipal Corporation. Considering the fact that liberty is granted to the Municipal Corporation to

proceed with the process of recruitment and the appointments have to be made subject to further orders, we do not deem it appropriate to continue the interim order. The said request is rejected.

[FIRDOSH P. POONIWALLA, J.]

[A.S. CHANDURKAR, J.]