

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 380 of 2022
WITH CIVIL APPLICATION No.245/2023 (D.B.)

- 1) Sandeep Ashok Gaikwad,
Aged about 33 years, Occupation : Service,
R/o Sajal Residency, Patipura near Ambika nagar,
Yavatmal. Tah. & Dist. Yavatmal.
- 2) Niteen Janrao Gaukhede,
Aged about 32 years, Occupation : Service,
R/o Near Mata Mandir, Ward No. 6, Mohpa, Nagpur.
- 3) Ashish Madhukarrao Pandilwar,
Aged about 36 years, Occupation : Service,
R/o H.N. 11J, Padmalaya nagar,
Ekarjuna, Tah. Warora, Dist. Chandrapur.

Applicants.

Versus

- 1) The State of Maharashtra,
through it's Principle Secretary,
Development Urban Department, Mantralaya, Mumbai-32.
- 2) The Commissioner/ Director,
Municipal Administration, Worli, Mumbai.
- 3) The, Additional Secretary,
Urban Department, Development, Mantralaya, Mumbai-32.
- 4) The Joint Director of Municipal Administration,
Worli, Mumbai.
- 5) Shri Sheshrao S/o Ramdas Choudhari,
Aged about 48 years, Occupation: Service,
R/o Yashwant Shrushti Apartment, Flat No. 5,
Tapovan Link road, Nashik, Dist. Nashik.

Respondents.

Shri S.N. Gaikwad, Ld. Advocate for the applicants.
Shri V.A. Kulkarni, Ld. P.O. for respondent nos.1 to 4.
Shri S.P. Palshikar, Ld. Advocate for respondent no.5 (Intervener).

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 14th June,2023.

Date of Pronouncement of Judgment : 27th June,2023.

JUDGMENT

(Delivered on this 27th day of June,2023)

The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

2. Heard Shri S.N. Gaikwad, learned counsel for the applicants, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 4 and Shri S.P. Palshikar, learned counsel for respondent no.5 (Intervener). The learned counsel for both the parties have consented for final disposal and argued the matter finally.

3. The case of the applicants in short is as under –

The applicants are working on the respective posts in Group-C. The applicant no.1 was appointed on 23/08/2013. The applicant no.2 was appointed on 25/11/2023. Both the applicants were posted in the establishment of the Maharashtra Municipal Water

Supply Sewage and Sanitation Engineering Services (Group-C). The applicant no.3 was appointed on 14/08/2014 on the post of Maharashtra Municipal Audit Accounts Services (Group-C). The applicants are qualified and eligible for getting the promotion in Group-B. The respondents have issued the Notification dated 06/03/1990, the amendment has been made in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act,1965 and introduced Limited Departmental Competitive Examination for getting promotion. The respondent no.2 has issued certain guidelines for conducting the competitive examination. As per the guidelines, a candidate who has completed regular service not less than five years in the cadre and his age is not more than 53 years, is entitled to appear in the competitive examination. As per the existing Government G.R., the examination will conduct through Maha Pariskha Portal.

4. On 23/11/2021, the respondent no.2 has published a list of persons who are eligible to appear in the Limited Departmental Competitive Examination, wherein, the name of applicants appeared being eligible candidates. The respondents have also issued communications dated 11/11/2021 and 25/11/2021 provided the syllabus of examination which was scheduled on 19/12/2021. The respondents have never change the stages of recruitment process.

Therefore, it is necessary on the part of respondents to complete the recruitment process in three stages, i.e., preliminary examination, main examination and interview. The respondent no.2 straight way issued the final result on 07/01/2022. In the said examination, applicant no.1 scored 253 marks, applicant no.2 scored 251 marks and applicant no.3 scored 256 marks. It is expected by the applicants and other candidates that respondent no.2 would complete second stage by conducting the Main examination. But after declaring the result, respondent no.2 neither conducted the main examination and nor conducted the interview. It is submitted that without conducting the *viva voce* examination, the marks were declared. Hence, they have challenged the process of examination with following reliefs –

“(i) allow the instant original application with costs;

(ii) be pleased to held and declared that the recruitment process for Limited Departmental Competitive Examination- 2019 for granting promotion to the post of Chief Officer, Group-B is illegal and bad in law and consequentially be pleased to quash and set aside the Govt. Order dated 16.03.2022 (Annexure-A8) issued by respondents as same is arbitrary and illegal;

(iii) be further pleased to direct the respondents to complete the recruitment process by conducting the main examination and interview and then publish the final merit list and selection list ”

5. The respondent nos.2 to 4 (department) have filed detailed reply. In para-8,9 and 10 they have stated that as per decision taken on 11/11/2021, the examination was to be conducted including four

papers which was decided on the basis of marks in four papers, then merit list will be published. It was decided not to take viva voce examination. For the clarity para nos.8,9 and 10 of the reply are reproduced as under –

“(8) It is submitted that, the answering Respondents have issued letters dated 4.11.2019 and 5.11.2019 in reference to conduct "the said examination" as per Notification dated 6.3.2019 issued by the Respondent no.1, Urban Development Department, State of Maharashtra and a list of eligible persons will be prepared as per the merit of the marks obtained in "the said examination" for promotion to 10% posts in "the said examination". Accordingly, applications were invited from the aspiring State Level Municipal Council cadre employees and thereafter "the said examination" was conducted successfully, wherein the present Applicants too have participated but not found qualified as the merit of the marks obtained in comparison to the successful candidates as per promotion order dated 16.3.2022 issued by the Respondent No.1, Urban Development Department, State of Maharashtra. It was very clear on 4.11.2019 and 5.11.2019, that the answering Respondent is going to conduct the "the said examination" and declare the result as per the merit of the marks obtained in the "the said examination". The cause of action arose to the present Applicants has begun on 4.11.2019 and 5.11.2019 and not on 16.3.2022 when the promotion order is issued by the Respondent No.1, Urban Development Department. The Present Applicants have filed the present complaint on 1.4.2022, so delay of almost two years has occasioned as per the provisions of Section-21 of the Administrative Tribunal Act, 1986.

(9) It is submitted that, the Applicants have failed to disclose before this Hon'ble Tribunal, that the Committee formed as per amended Rule-7 (A) of the Maharashtra State Municipal Chief Officers Service (Recruitment & Conditions of Service) Rules 1983 as per notification dated 6.3.2019 issued

by Urban Development Department, Government of Maharashtra, conducted "the said examination". The answering Respondent after declaration of the letter dated 21.9.2021, wherein it is mentioned that "the said examination" will be conducted in three stages., viz, preliminary, main and viva voce. The answering Respondent issued another letter dated 5.11.2019 which revised the Proforma of the application form for those who are willing to appear in "the said examination" and declaring that "the said examination" will be conducted as per Notification dated 6.3.2019 issued by the Respondent No.1, Urban Development Department, State of Maharashtra and a list of eligible persons as per the merit of the marks obtained in "the said examination" for promotion to 10% posts in "the said examination", accordingly applications were invited from the aspiring State Level Municipal Council cadre employees. The Applicants have failed to misinterpret the contents of the letter dated 4.11.2019 and 5.11.2019 issued by the answering Respondent.

(10) It is submitted that, the Committee took decision taking into consideration the amended Rule-4(b) and the minutes of the meeting dated 18.3.2021 and decided the eligibility criteria for the recruitment process of 29 posts in the first phase for "open category" was fixed as "the candidates who hold the graduation certificate and who have not completed 53 years of age and 5 years completion in the Municipal State Cadre service as on 30.11.2019. Again, vide meeting dated 6.9.2021 which was conducted through video conference, Committee decided to club all the papers covering four subjects relating to three stages, viz pre, main and viva voce which are covered under four papers, viz., Paper I-General Administration, Paper II-General Knowledge, Paper III-74th Amendment to the Constitution / Maharashtra Municipal Council Act, 1965 / Maharashtra Municipal Corporation Act 1949 / Maharashtra Regional Planning and Town Planning Act 1949 and Paper IV- Municipal Council Act and Rules / Bye-Laws / Standing Instructions / Other Acts/Rules relating to Municipal Council Functions as versed in the paragraph no.3(4) of the letter dated 21.9.2019

should be conducted on one specific date in the department (headquarters) in the department where the employees of State Level Municipal Council Cadre (Group-C) are working. The relevant portion of the paragraph no.3(4) is reproduced as under –

४. पूव परीक्षा व मुख्य वस्तुनिष्ठ (objective) स्वरूपाची राहिल. तसेच पूव व मुख्य पारक्षेसाठी सामान्य प्रशासन, सामान्य ज्ञान, नगरपालिका प्रशासन संबंधीत विविध कायदे तसेच नियम, लेख व लेखापरीक्षण, विविध विकास योजना तसेच आस्थापना विषयक बाबी इत्यादी असे सवसाधारण विषय राहतील.

Accordingly, letter dated 11.11.2021 was issued by the answering Respondent informing the said fact to all. A copy of the letter dated 11.11.2021 is annexed herewith and marked as Annexure-R-1.”

6. At last submitted that the applicants scored very less marks. The last candidates scored 258 marks, whereas, applicant no.1 scored 253 marks, applicant no.2 scored 251 marks and applicant no.3 scored 256, when they found unsuccessful in the examination, they have approached to this Tribunal. Hence, prayed to dismiss the O.A.

7. Intervener / respondent no.5, Shri Sheshrao S/o Ramdas Choudhari has submitted that he has scored 286 marks. He is in the merit list, but because of the pendency of this O.A. and interim order passed by this Tribunal, he could not get promotion order. It is submitted that the applicants are unsuccessful candidates, they are having very less marks, they have not made other meritorious candidates as a party in this O.A. It is submitted that the respondent / department has followed the Rules. The decision of conducting the

examination of four papers, were published and the applicants were very well aware, when they found unsuccessful, they have filed this O.A. Hence, the O.A. is liable to be dismissed.

8. Heard Shri S.N. Gaikwad, learned counsel for the applicants. He has pointed out the letter dated 21/09/2019. He has submitted that as per this letter, competitive examination was to be conducted in three stages, i.e., preliminary examination, main examination and *viva voce* examination, but the respondents have not conducted the examination as per this letter. There was no any *viva voce* examination. Hence, the result of the examination is liable to be quashed and set aside.

9. Heard Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 4 and Shri S.P. Palshikar, learned counsel for respondent no.5 (Intervener). As per submission of P.O., there was decision as to how the examination is to be conducted as per the Minutes of meeting dated **11/02/2021**. As per the decision, competitive examination of 10% posts was to be conducted of four papers. It was published on the website. The applicants have participated in the examination. When they have found unsuccessful, they approached to this Tribunal. Hence, the O.A. is liable to be dismissed.

10. Shri S.P. Palshikar, learned counsel for respondent no.5 (Intervener) submits that the respondent no.5 has obtained 286 marks. Last candidates obtained 258 marks. The names of applicant nos.1,2 and 3 did not appear in the merit list, because, they have scored 253,251 and 256 marks respectively. When they found unsuccessful, they have approached to this Tribunal.

11. The main contention of the applicants is based on the letter dated 21/09/2019. Para-3 of the letter reads as under –

०३. महाराष्ट्र शासन, सामान्य प्रशासन विभाग (माहिती व तंत्रज्ञान), शासन निणय, दिनांक १९ सप्टेंबर २०१७ नुसार सक्षर स्पर्धा परीक्षा महापरीक्षा पोटलद्वारे घेण्यात येणार आहे. सदर परीक्षेसाठी इच्छुक उमेदवारांना पूर्वतयारी करता यावी तसेच या स्पर्धा परीक्षेविषयी पूर्व कल्पना/माहिती मिळावी या उद्देशाने याबाबत खालील प्रमाणे सूचना देण्यात येत आहेत.

१. महाराष्ट्र राज्य नगरपरिषद मुख्याधिकारी सेवा (सेवा भरती व सेवेच्या शर्ती) (सुधारणा) नियम, २०१९ मधील तरतुदीनुसार ५३ वर्षापेक्षा अधिक वय नसलेल्या व संवगामध्ये किमान ५ वर्ष सेवा पुण केलेल्या कमचा-यांना या स्पर्धा परीक्षेसाठी पात्र समजण्यात येईल.

२. सदर मर्यादित परीक्षा प्रचलित शासन निणयानुसार महापरीक्षा पोटलद्वारे घेण्यात येईल.

३. सदर स्पर्धा परीक्षेचे तीन टप्पे राहणार असून पहिला टप्पा पूर्वपरीक्षा, दुसरा टप्पा-मुख्य परीक्षा व तिसरा टप्पा- तांडी परीक्षा (मुलाखत) असे राहतील.

12. The respondents / department had taken a decision as to how the examination is to be conducted. They have decided to conduct the examination of four papers. They have given the chart of papers and 100 marks to each paper. The eligible candidates appeared in the examination, nobody raised any objection. After the

valuation of papers, merit list was prepared of 44 candidates. Last candidate obtained 258 marks. The applicants have obtained very less marks and therefore they are not in the merit list. When they found unsuccessful, they approached to this Tribunal. This is not permissible. As per the submission of Id. P.O., / respondents all the decisions were published on the website. The applicants were well aware about the programme of the examination, they have not raised any objection, but when they could not find their names in the merit list, they have approached to this Tribunal. The applicants have not made other meritorious candidates as party respondents. The respondent no.5 himself appeared as an intervener and submitted that he obtained 286 marks. He is eligible to get promotion, but because of filing of present O.A. by the applicants and granting interim relief, he could not be promoted.

13. From the perusal of letter dated 21/09/2019 it cannot be said that it was a final decision. The department while conducting the examination has taken a decision to get examination of four papers only and on the basis of marks obtained by the candidates in four papers, the merit list was published. The applicants have approached to this Tribunal because they are unsuccessful candidates. Hence, the following order –

ORDER

- (i) The O.A. is dismissed.
- (ii) The C.A. is also disposed off accordingly.
- (iii) No order as to costs.

Dated :- 27/06/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/06/2023.