

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.909 OF 2021**

**AND**

**ORIGINAL APPLICATION NO.141 OF 2022**

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**ORIGINAL APPLICATION NO.909 OF 2021**

**DISTRICT : RAIGAD**

Shri Amol Machindra Chandanshiv, )  
Age 27 years, R/at A-805, Ashtavinayak Heights, )  
Sector 23, Phase-2, Taloja, Panvel, District Raigad )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai 400032 )
2. The Commissioner and Director, )  
Municipal Administration, GTS Building, )  
3<sup>rd</sup> Floor, Sir Pochkhanwala Building, Worli, )  
Mumbai 400030 )
3. The Chief Secretary, )  
General Administration Department (16-B), )  
Mantralaya, Mumbai 400032 )..Respondents

**AND**

**ORIGINAL APPLICATION NO.141 OF 2022****DISTRICT : PUNE**

Shri Vishal Sambhaji Tengale, )  
 Age 26 years, R/at Telewadi, Taluka Daund, )  
 District Pune )..Applicant

Versus

1. The State of Maharashtra, )  
 Through the Principal Secretary, )  
 Urban Development Department, )  
 Mantralaya, Mumbai 400032 )
2. The Commissioner and Director, )  
 Municipal Administration, GTS Building, )  
 3<sup>rd</sup> Floor, Sir Pochkhanwala Building, Worli, )  
 Mumbai 400030 )
3. The Chief Secretary, )  
 General Administration Department (16-B), )  
 Mantralaya, Mumbai 400032 )..Respondents

Shri S.S. Dere – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
 Smt. Medha Gadgil, Member (A)

DATE : 14<sup>th</sup> July, 2023

## **J U D G M E N T**

1. Heard Shri S.S. Dere, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Both the applicants seek directions to the respondents to include their names in the impugned order No.NaPa PraSan-2019/Samvarg Saralseva Bharti-2018/Pra.Kra.82/Kaksh-3/2245 dated 5.7.2021 issued by respondent no.2.

3. Both the applicants have appeared in the examination for the post of Accountant Auditor pursuant to advertisement dated 7.4.2018. After clearing the preliminary examination they appeared in the main examination dated 19.9.2018. Merit list was published on 19.11.2018. The names of the applicants did not appear in the merit list so applicant in OA No.909/2021 made representation dated 28.11.2018 to respondent no.2. The respondent no.2 issued appointment order dated 13.1.2019 to 281 candidates for the post of Accountant Auditor. However, the representation was not considered.

4. Ld. Advocate for the applicants has relied on the judgment and order dated 3.3.2020 passed by the Nagpur Bench of this Tribunal in OA No.1025/2018 in Avinash R. Rathod & Anr. Vs. The State of Maharashtra & Ors. and the order dated 24.6.2022 passed by this Tribunal in OA No.207 of 2022 Daulat Gutte Vs. State of Maharashtra & Ors. These two orders have bearing on the issues agitated by the Ld. Advocate. By order dated 3.2.2020 the Nagpur Bench of this Tribunal has changed the answer key of one question after appointment was given and there was a change in the revised list. Therefore, some persons became eligible on account of the order of the Nagpur Bench and they were declared as

selected and so they were required to be appointed. As a fallout of the said order, the candidates automatically went down because of the change. Some candidates who were appointed they went below the passing/cutoff marks. They were given show cause notice. They approached this Tribunal at Mumbai Bench by filing OA No.207/2022. The Tribunal took a view that as they have put in nearly 3 years service and their probation period was completed. They have also passed the departmental examination and therefore this Tribunal protected their services by order dated 24.6.2022.

5. In these two OAs. Ld. Advocate contended that candidates whose appointments were protected they are below in the revised merit list. Some of them have secured lesser marks than the applicants in their category. He submits that applicant in OA No.909/2021 Shri A.M. Chandanshiv has applied in SC category and applicant in OA No.141/2022 Shri V.S. Tengale has applied in NT-D category. He submits that Shri Chandanshiv has secured 67 and Shri Tangale has secured 66.25 marks. He argued that the candidates whose services are protected stand below in merit considering the marks scored by both the applicants in their category. He further submits that as on today 21 posts in SC category and 8 posts in NT-D category are still vacant and applicants can be appointed. Ld. Advocate for the applicants relied on the judgment and order dated 26.4.2014 passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.12835 of 2012 in Sahil Aggarwal Vs. State of Punjab & Ors. He submits that facts are same in the case of Sahil Aggarwal (supra) wherein result was revised on account of erroneous result declared earlier. He submits that Hon'ble High Court in the said case has taken a view that candidates who were earlier appointed not to be removed. However, it also gave direction to give same relief to the petitioner who has secured more marks than the appointed candidates and should be offered the appointment. Ld. Advocate for the applicant

submits that in view of clause 11 of the advertisement dated 30.7.2018 special powers regarding relaxing qualifying marks vests with the Government and Government is expected to take decision on this point on the representation made by the applicants.

6. Ld. CPO while opposing the case of the applicants has submitted that the ratio laid down in Sahil Aggarwal (supra) is not applicable because in that case 35% of the total marks was prescribed as qualifying marks and petitioners who were directed to be appointed have secured above 35%. 67.5 is the 45% of total 150 marks. Hence, it is not applicable in the present case in view of the fact that present applicants have secured less marks than 45%. Ld. CPO submits that the case of the present applicants is not considered because they have secured less marks than 45% which is prescribed qualifying marks.

7. Ld. CPO relied on letter dated 14.3.2022 written to the applicant Shri A.M. Chandanshiv by Dr. Kiran Kulkarni, (IAS) Commissioner & Director, Directorate of Municipal Administration, Mumbai. She pointed out that in clause 5 of the said letter the respondent-State has considered representation made by the applicants on the point of relaxation of percentage and refused it.

8. As we made clear above the candidates who have secured lesser marks but who are eligible as per first select list were already appointed and therefore the criterion if marks applied for the appointment as per second revised list cannot be made applicable to those who were already appointed. That fact was considered in the order passed by the Tribunal in the matter of Daulat Gutte (supra). In this case the Government has fixed the criterion of 45% marks. The 45% of 150 marks is 67.5. Applicant Shri Chandanshiv has secured 67 marks out of 150 and applicant Shri Tengale has secured 66.25 marks out of 150. Thus the

percentage of these marks comes below 45%. However, applicants have secured below 67.5 marks and therefore they cannot reach 45%. In the case of Sahil Aggarwal (supra) the 35% of the total marks was prescribed as qualifying marks and in the present case it is 45%. None of the petitioners in Sahil Aggarwal was below 35% and they were directed to be appointed. The petitioner in the said case has secured more than 35%. This point is distinguishable as both the applicants have secured lesser marks than 45%. Thus this ratio cannot be made applicable in the present case.

9. So far as clause 11 of the advertisement is regarding the power to relax the marks is concerned, the respondent-State has taken decision in the letter which was sent by Directorate of Municipal Administration. In para 5 this issue is considered and thus we cannot give further directions to consider this point.

10. We note that this letter dated 14.3.2022 giving reply to the representation of the applicant is very accurate and precise.

11. Thus, the applicants are not entitled to any relief. Hence, both the Original Applications are dismissed.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**14.7.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**14.7.2023**

Dictation taken by: S.G. Jawalkar.