

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

WRIT PETITION (ST)NO.2547 OF 2004

Sanjay Suresh Sawant and Ors. ..Petitioners

Vs.

Brihanmumbai Municipal Corpn. & Ors. ..Respondents

Mr.M.P.Vashi with Ms. B. D'Souza i/b. M.P.Vashi and
Assoc. for Petitioners
Mr.Vinod Mahadik for Respondent.

**CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.**
DATE: 3RD MAY, 2005.

P.C.

. The Petitioners herein have been employed as Security Guards with Respondent No.1. There was an interview held. A select list was prepared. The final selection of 382 candidates were published on 22nd June, 1999. The Petition was filed by the selected candidates on the ground that select list was not being implemented. The Respondents on 29th Septemeber, 2000 appointed Security Guards on the contract basis. The Petition being Writ Petition No.1251 of 2000 was disposed of by an order dated 12th February, 2002. The statement made on behalf of Corporation was recorded that they had agreed to consider the candidates whose names were appearing in the select list by relaxing the age condition. There was a further direction that as and when recruitment process was undertaken for appointment

of Security Guards the Corporation shall give priority to the candidates in the select list by relaxing the age, subject to they being medically fit and subject to reservation policy.

. Subsequent to that order, a meeting was held on 22nd August, 2002. This Petition was filed with a direction to the Respondents to regularise the Petitioners and other 255 persons similarly situated and to give them all consequential benefits including salary.

3. Mr. Ahmed Abdul Shaikh, Deputy Chief Security Officer has filed affidavit on behalf of the Corporation. It is set out that pursuant to the proposal for recruitment in the year 1997 for 400 security guards, the selection process for the recruitment was started in the month of April, 1998. A proposal was for the 300 vacant posts and 100 posts in waiting list. Proposal was sanction by the then Deputy Municipal Commissioner (P) vide order dated 30th May, 1997. Candidates were accordingly called and after the test and interview a list of 381 selected candidates was prepared and published. However, due to financial stringency, an administrative decision was taken by the Additional Municipal Commissioner (City) and Municipal Commissioner on 15th June, 2000 and 29th July, 2000

respectively not to implement the select list. Reference is then made of order passed in Writ Petition No.1251 of 2000. Reference is then made to an Organisation which started representing the case of the selected candidates. It is set out that about 255 candidates from the select list were working on contract basis at the rate of Rs.100/- per day and payment was made by the said registered organisation by cheque. This was continued till 4th November, 2003. Pursuant to direction of this Court in Writ Petition No.1251 of 2000 255 candidates out of 381 candidates were appointed as probationary candidates with effect from 5th November, 2003 by relaxing the age limit and subject to reservation policy. The case of 126 candidates was under consideration.

. It is then set out that due to financial stringency Corporation implements new recruitment policy. In terms of the policy the candidates to be recruited to fill up various categories of posts had to undergo three years probation period. In terms of the policy, clause IV provided that those who are appointed on probation shall be paid Rs.3,300/- per month during the first year. Rs.3,600/- per month in the second year and Rs.4000/- per month for third year with some other benefits. On completion of three years probation period, the candidates would

be absorbed in regular employment. In the affidavit of Shrikrishna Damodar Kulkarni it is set out that of the 255 Petitioners they are shown category wise against the vacancy and were absorbed. The 255 candidates belonging to the various categories have been set out. 126 Petitioners filed Writ Petition No.3389 of 2004 as then set out. We are really not concerned with that Petition today as that has been withdrawn.

. An additional affidavit was filed on 22nd March, 2005 by Mr. A.A. Shaikh, Deputy Chief Security Officer. It is set out therein that on the date of the Petitioner's appointment a ban on recruitment was imposed what was lifted only on 21st December, 2004. The revised recruitment policy was cancelled and all the concerned departments have been directed, hence forth to fill up the posts on regular basis. It is then set out that the Petitioners are not entitled to any arrears from the date of appointment till 31st March, 2005 and from April, 2005, the Petitioners will be paid the regular salary of the post.

4. Considering the above, what is clear is that the Petitioners will be paid regular salary from 1st April, 2005 in terms of the affidavit of Mr. A.A.A.Shaikh. The question is whether they are

entitled to the same salary from the date of appointment till 31st March, 2005. The Law is now well settled that in the same Body for the same post carrying same duties and functions there cannot be two pay scales unless there is a provision in the rules based on qualifications for two pay scales for those who possess the qualifications and for those who do not possess. In the instant case that is not so. The Petitioners and others similarly situated were selected against the post meant for regular candidates. In other words they would be entitled to the salary of the post. They were however, appointed according to new recruitment policy as there was ban on recruitment on account of financial stringency. The ban on recruitment was lifted on 24th December, 2004. In our opinion therefore as the Petitioners were doing the same or similar work like others holding the same posts, at least from 1st January, 2005 the Petitioners would be entitled to pay in the payscale of Security Guards by way of interim relief. The issue whether they are entitled from the date of the appointment till 31st December, 2004 is an issue which can be decided in the Petition or it will be open to the parties to negotiate and settle the matter. Considering the above discussion the following order:-

. Rule.

. In so far as interim relief is concerned the Petitioners and similarly situated security guards who were appointed will be paid in the regular pay scale of Security Guards from 1st January, 2005 instead of 1st April, 2005.

. The arrears from 1st January, 2005 till 31st March, 2005 will be paid at any rate before 1st August, 2005.

. The Respondents however, to pay the Petitioner the regular pay scales commencing from the salary of April, 2005 on its due date and continue to pay the same there after with all benefits.

. Respondents waives service.

(F. I. REBELLO, J.)

(S. P. KUKDAY, J.)