

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4146 OF 2014

Dattatray S/o Anandgir Giri
Age : 64 years, Occ : Service,
R/o 'Prayaganand Building',
Tanaji Chowk, Shivshankar Colony,
Aurangabad, Dist. Aurangabad. **..PETITIONER**

VERSUS

1. The Aurangabad Municipal Corporation,
Aurangabad
Through its Commissioner
2. The State of Maharashtra
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

RESPONDENTS

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Mr. Sagar Killarika Balaji L., Advocate for the Petitioner
Mr. G.R.Ingole, AGP for the Respondent – State
Mr. U.K. Patil, Advocate for Respondent No.1.

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 30th April, 2015
Pronounced on: 08th May, 2015

JUDGMENT: [Per S.S.Shinde, J.]:

Rule. Rule made returnable forthwith. By

consent of the learned counsel appearing for the respective parties, heard finally.

2. This Petition is filed with following prayer :-

“By issuing a writ of Mandamus or any other appropriate writ, order or directions respondent No.1- Municipal commissioner, Aurangabad, may please be required to pay full 'Pension' and other retrial (sic) benefits, in the light of 'Decision of Standing Committee (Resolution No. 106/09)' i.e. Appellate Authority, Dated 18th August 2009, within stipulated period, with interest.”

3. It is the case of the petitioner that, the petitioner was working as 'Ward Officer' of Municipal Corporation. There was some dispute regarding recovery of amounts from Contractors. With allegations of irregularities, the petitioner was suspended by order dated 7th August, 2006 by framing charges. By order dated 22nd September, 2006, the Inquiry Officer was appointed. It is the case of the petitioner that, without considering the submissions of the petitioner, the

petitioner was held guilty by the Inquiry Officer by his report dated 13th April, 2007. Therefore, by order dated 17th May, 2007, the Commissioner, Municipal Corporation, Aurangabad imposed major penalty, thereby withholding promotion and permanently debarred from promotional avenues, etc. Moreover, recovery was directed against the petitioner, and it was directed to be paid/reimbursed within 30 days and to be deducted from salary. Consequential official orders came to be issued on 28th March, 2008 and 30th April, 2008.

4. It is the case of the petitioner that, the petitioner preferred statutory appeal under Section 56(4) of the Maharashtra (Bombay) Provincial Municipal Corporation Act, 1949 (Hereinafter referred to as "the said Act") and challenged the legality, correctness and appropriateness of decision of Commissioner to the Standing Committee of Municipal Corporation, Aurangabad, in the form of

Representations dated 26th February, 2007, 16th June, 2007 and 8th April, 2008. It is the case of the petitioner that, with reference to Representation-cum-appeal filed by the petitioner on 20th February, 2007, 16th June, 2007 and 8th April, 2008, the then Chairman, Standing Committee, by letters dated 11th April, 2008 and 18th September, 2008, called for the reports from Administration of respondent No.1 – corporation. In response to directions of Chairman, Standing Committee, Municipal Corporation, the Chief Auditor, Municipal Corporation, Aurangabad, upon verifying concerned record and accounts, submitted detailed report on 9th July, 2009. It was also reported that, being appellate authority, the standing committee may pass appropriate order. It is the case of the petitioner that, ultimately, Standing Committee of Corporation, being appellate authority, by its resolution No. 106 of 2009, allowed the appeal in its meeting dated 18th September, 2009, and directed to pay salary, allowances and increments etc. It is the case of the

petitioner that, petitioner retired on 31st May, 2009 by superannuation (since completed 58 years of age); therefore, necessary order came to be passed on 28th May, 2009, thereby giving effect to superannuation. It is the case of the petitioner that, the petitioner applied for Leave Encashment by application dated 17th June, 2009, which came to be granted by order dated 1st October, 2009, with reference to Rule 68(1) of the MCS (Leave) Rules, 1981. It is the case of the petitioner that, by representation dated 12th October, 2009, the petitioner requested the Commissioner for implementation of decision of appellate authority i.e. Standing Committee of Municipal Corporation and for granting consequential benefits. Therefore, with necessary office noting, the file was placed before the Commissioner, on various occasions, but unfortunately, Commissioner failed to or avoided to respect and comply the decision of appellate authority. It is further case of the petitioner that, by order dated 26th July, 2010, a provisional pension of Rs. 10,695/-

came to be granted to the petitioner, with effect from 1st June, 2009. Though the Appellate Authority i.e. Standing Committee allowed appeal and its decision is binding on respondent No.1 – Corporation, instead of granting regular pension the provisional pension came to be granted, in utter disregard to decision of Appellate Authority. This is also an arbitrary action on behalf of respondent No.1 – Corporation.

5. The learned counsel appearing for the petitioner submits that, since 2009 to 2014, the petitioner is contentiously making representations to respondent No.1 – Corporation, however, the Commissioner and Administration of Corporation have not implemented the said decision, in as much as, the pensionary benefits are not released in favour of the petitioner. It is submitted that, there is no provision to withheld the pension. The Supreme Court in the case of **State of Jharkhand V. Jitendra Kumar Srivastava**¹ held that, a person cannot be deprived of his pension

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without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution of India. It is submitted that, the balance of convenience lies in favour of the petitioner. Respondents have already granted provisional pension to the petitioner, and therefore, he deserves to be granted all pensionary benefits. It is further submitted that, the Departmental enquiry was initiated for inquiry of alleged negligence and default in Recovery of Money, under various head, from Agent/Contractors appointed by Corporation, for a period from 2002-03, 2003-04 and 2004-05. There were no allegations of misappropriation or fraud against the petitioner. The petitioner was transferred from Estate & property Department to Ward No.C, in January, 2004. Therefore, inquiry was initiated against Mr. Shirish Ramteke and other employees. No legal steps to recover the amount from Agent/Contractor was taken by invoking powers under Section 128 of the Maharashtra (Bombay) Provincial Municipal Corporation Act, 1949. Moreover,

the Officers and Employees were held personally responsible in Departmental Inquiry. Along with petitioner, Mr. Shirish Ramteke (Deputy Engineer) was held responsible. He too preferred appeal before Standing Committee against Order of Commissioner. The Appeal came to be allowed by Resolution No. 225, in meeting dated 15th April, 2011. Respondent No.1 – Corporation upon consulting its Legal Department had accepted the decision of Standing Committee and finalized the issue. However, equal treatment is denied in case of petitioner, therefore, the act of respondent No.1 – Corporation is discriminatory and un-just, and therefore, violative of Article 14 of the Constitution of India.

6. It is submitted that, as per sub-section (1) of Section 4 of the said Act, Standing Committee is an Authority charged with carrying out the provisions of the Act. Standing Committee is higher authority than the Commissioner, under the said Act, as it is clear

from sub-section (1) of Section 4 of the said Act. It is submitted that, the petitioner has discharged his duty as Ward Officer, a substantive post in Municipal Corporation. His appointing authority is/was Municipal Corporation, Aurangabad, in view of section 53 of the said Act. It is submitted that, all the decisions either to make inquiry, appoint any Inquiry Officer, and taking action (imposing punishment), if any, against petitioner, are vested in Municipal Corporation, being appointing authority. By law these powers have been conferred on appointing authority and certainly not on Commissioner, since he is not appointing authority. In Municipal Corporation, the Commissioner is subordinate to Municipal Corporation. It is submitted that, in present case, Municipal Corporation neither decided to hold inquiry, nor appointed any Inquiry Officer. Moreover, the purported decision to impose penalty is not of appointing authority i.e. Municipal Corporation. Even otherwise, the inquiry, report of inquiry and decision to impose penalty are

unsustainable and therefore, unenforceable in law. It is submitted that, the petitioner's case is covered by the law declared by Principal Seat of this Court in the case of **Prabhakar Shrirang Jagdale V/s Kalyan-Dombivli Municipal Corporation and anr.**² It is submitted that, the decision of the Standing Committee attained finality. The Respondent – Commissioner has waived his right to raise issue of jurisdiction and participated in the enquiry by the Standing Committee in case of the petitioner, and therefore, at belated stage now, it is not open for respondent Commissioner to say that, the appeal was not maintainable. Therefore, relying upon the pleadings/grounds taken in the Petition, annexures thereto, relevant provisions of the said Act and the judgment of the Principal Seat of this Court in the case of **Prabhakar Shrirang Jagdale (supra)** and judgment of the Hon'ble Apex Court in the case of **State of Jharkhand (supra)**, the learned counsel appearing for the petitioner submits that, the Petition deserves to be

2 2003(4)All MR 46

allowed.

7. On the other hand, the learned counsel appearing for Respondent No.1 invited our attention to the affidavit in reply filed by Respondent No.1 on 26th August, 2014, 15th September, 2014 and 26th March, 2015 by Respondent No.2 and submits that, so far accepting decision of the Standing Committee in respect of one Shri. Ramteke (Deputy Engineer) who was held responsible in the departmental enquiry is concerned, the decision of the Standing Committee was without referring to the provisions, as contemplated under Section 56(4) of the said Act. The Commissioner has accepted the opinion of Law Department in view of the fact that, the provisions of section 54(4) of the said Act, was not brought to the notice of the Commissioner. It is further stated that, the decision of the Commissioner dated 3rd September, 2004, is to be modified. So respondent had stopped implementation of the said decision. In view of Section 56(4) of the said

Act, the answering respondent has not implemented the decision of the Standing Committee i.e. Resolution No. 225 dated 15th April, 2011. It is submitted that, the Standing Committee has passed the resolution on 15th April, 2011. The Deputy Commissioner (Revenue) has issued letter to the Chief Accounts Officer on 21st August, 2010 directing to recover the amount from Shri. Shirish Ramteke from the monthly payments in equal installments. The other letters also issued from time to time for the said recovery. Earlier decision of Municipal Commissioner dated 3rd September, 2014, can not be acted upon and the said decision is now reviewed by the present Commissioner.

8. On 28th April, 2015, Shri. Prakash Maharu Mahajan, the Commissioner, Aurangabad Municipal Corporation, Aurangabad has filed additional affidavit. It is stated in the said affidavit that, total 3 different enquiries were conducted for different cause of action by the enquiry officers in the year 2001, 2007 and 2008

respectively against the petitioner. His predecessor commissioner has imposed the penalties against the petitioner from time to time. The petitioner challenged the penalties as imposed by the commissioner by filing an appeal before the Standing Committee of the Municipal Corporation. The Standing Committee in its meeting dated 18th August, 2009 at subject no. 106 allowed the appeal as per Section 56(4) of Maharashtra Municipal Corporation Act, 1949, without giving any reason. The petitioner is requesting for service benefits as per the standing committee order. The petitioner has retired from the service on attaining age of superannuation on 31st May, 2009. The petitioner is given provisional pension by the Corporation on 26th July, 2010.

In the earlier reply dated 7th August, 2014, it was a stand of the corporation that, the petitioner's appeal before the Standing Committee under section 56(4) of the said Act, is not tenable in view of the fact

that, as per Clause (d) of the proviso to sub-section (1) and sub-section (4) of section 56, the petitioner is not reduced, removed or dismissed by any authority and as such commissioner is empowered to impose a penalty after the enquiry as per section 56(2) of the said Act.

9. After filing the reply on 7th August, 2014 by Respondent No.1, the petitioner has amended the petition as per Court's order dated 26th March, 2015, and pointed out that, along with the petitioner Mr. Shirish Ramteke (Deputy Engineer) was also held responsible by the enquiry committee. Mr. Shirish Ramteke filed an appeal before the Standing Committee, and the Standing Committee by its resolution no. 225 in its meeting dated 15th April, 2011 allowed appeal of Mr. Ramteke. In case of Mr. Ramteke the Standing Committee's decision is accepted by the then Commissioner on 3rd September, 2014. However, the petitioner is directed to refund the amount for the losses caused to the corporation amounting to

Rs. 7,77,526/- and as such he is discriminated vis-a-vis the similarly situated other employees, and therefore, the respondent no.1 was directed to file further reply by an order dated 20th April, 2015.

10. It is stated in the affidavit in reply that, though the Standing Committee allowed the appeal of Shri. Ramteke and further the then Commissioner has accepted the order of standing committee, the same order is not yet implemented by the Administration of the Corporation. When the matter was placed before answering respondent in respect of the petitioner and Shri. Ramteke, it is found that, probably section 56(4) of the said Act, was not brought to the notice of the then Commissioner and in view of that, the standing Committee's decision was accepted by the then Commissioner. However, when answering respondent realized that, the petitioner and Shri. Ramteke being employees of the Corporation and enquiry was initiated against both the employees, the earlier decision taken

by the then Commissioner dated 3rd September, 2014, needs to be cancelled, and accordingly the answering respondent cancelled the earlier decision dated 3rd September, 2014, taken in favour of Shri. Ramteke, and also directed the office of Municipal Corporation to request the Government to quash and set aside the decision of Standing Committee dated 15th April, 2011, bearing resolution No. 225, and also to accept the change in decision taken by answering respondent in respect of Shri. Ramteke dated 24th April, 2015, under section 451 of the said Act. The answering respondent at the cost of repetition submitted that, though the order has been passed by the Standing Committee in favour of Mr. Ramteke, the decision of standing committee and commissioner is not implemented till today. The resolution passed in favour of petitioner by the standing committee in its meeting dated 18th August, 2009, bearing resolution No. 106 and the resolution passed in favour of Shri. Shirish Ramteke (Deputy Engineer) standing committee bearing

resolution no. 225 of 15th April, 2011, will be sent to the State Government immediately under Section 451 for cancellation.

11. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. With their able assistance we have perused the pleadings/grounds taken in the Petition, annexures thereto, relevant provisions of the said Act, also the replies filed by the respondents and the judgments cited by the petitioner across bar. It is admitted position that, the petitioner preferred statutory appeal before the Standing Committee, taking recourse to the provisions of Section 54(4) of the said Act. The Standing Committee called a report from the Corporation and after taking into consideration the rival contentions, ultimately, the Standing Committee of Corporation, being appellate authority by resolution no. 106 of 2009 allowed the

said appeal in its meeting dated 18th September, 2009 and directed to pay salary, allowances and increments etc. to the petitioner. It is also not in dispute that, on superannuation, the petitioner retired on 31st May, 2009 and the Corporation has granted him provisional pension by order dated 26th July, 2010 of Rs. 10,695/- w.e.f. 1st June, 2009. It is also admitted position that, the decision taken by the appellate authority i.e. Standing Committee has attained finality and there is no specific challenge to the said decision by the Corporation or Commissioner. It is also not in dispute that, the Standing Committee stands on higher footing in hierarchy. The status of Standing Committee is on higher pedestal compared to the Municipal Commissioner and it is higher authority recognized under the Act. Belated attempt of respondents, that too by way of filing reply in this Court to contend that, the appeal filed by the petitioner was not competent, in as much as, there was no cause of action as contemplated under the relevant provisions in the said Act, cannot be

countenanced. It is also not in dispute that, the respondent – Commissioner subjected to the jurisdiction of the appellate Authority in an appeal filed by the petitioner and after considering the case on merits, the appellate authority has granted relief to the petitioner. Therefore, it was only Corporation who could have reversed/varied/set aside the decision of the Standing Committee and certainly the Commissioner is not competent to sit over the decision of the appellate authority. The scheme of the provisions of the said Act contemplates that, the Standing Committee stands on higher footing compared to the Commissioner. As it appears from the perusal of the documents, in case of Ramteke that, the decision of the appellate authority was accepted by the respondents and as a matter of fact, the then Commissioner of Municipal Corporation has endorsed the said decision of the appellate authority in case of Ramteke. It is not in dispute that, the said fact is also not disputed by the present Commissioner. It appears that, the earlier

Commissioner, who have endorsed the said decision of the standing committee is transferred and in his place new incumbent has joined and he wants to review/reverse the decision of granting approval by the earlier Commissioner.

As already observed, upon considering the scheme of the said Act, it is only the Corporation, who is appointing authority of the petitioner, can take appropriate decision either to upset/set aside/cancel the decision taken by the Standing Committee. So far contention of Respondent No.1 that, appeal was not maintainable cannot be considered in the Writ Petition, filed by the petitioner, to his disadvantage, when the decision of the standing committee has attained finality and there is no challenge to the said decision from the year 2009 till 2015.

The stand taken by the Municipal Commissioner that, the appeal filed by the petitioner

under Section 56(4) of the said Act was not maintainable is concerned, the appellate authority i.e. Standing Committee has taken decision in the year 2009. As already observed, there is no specific challenge to the said decision by the Respondent – Corporation before the appropriate Forum. The said decision has attained finality. The Supreme Court in the case of **Santoshkumar Shivgonda Patil & ors V/s Balasaheb Tukaram Shevale and ors**³ while interpreting the provisions of Section 247 of the Maharashtra Land Revenue Code, meant for filing revision, observed that, in absence of any limitation provided for filing such revision, the reasonable period would be of three years from the date of cause of actions. Applying the said parameters in the present case, if the respondents were said to have been aggrieved by the said decision of the Standing Committee, they ought to have challenged the said decision within three years from passing of such decision. Even as on today, there is no specific

3 2009(6)Bom.C.R. 664

challenge to the said decision and only by way of filing reply in the present Petition which is filed by the petitioner, the stand is taken by the respondent no.1 that, such appeal was not maintainable. Therefore, the belated attempt of the respondents to say that, the appeal is not maintainable cannot be countenanced in the peculiar facts and circumstances of the present case.

It is the contention of respondent no.1 that, as per Clause (d) of the proviso to sub-section (1) and sub-section (4) of section 56, the petitioner is not reduced, removed or dismissed by any authority and as such commissioner is empowered to impose a penalty after the enquiry as per section 56(2) of the said Act is concerned, the Division bench of the Bombay High Court at Principal Seat, in the case of **Prabhakar Shrirang Jagdale (supra)** held that, the Corporation is competent authority under Section 56 of the said Act. It is only the Corporation, which can impose one of the

penalties specified in Section 56. Since the proceedings have been initiated applying the Civil Services rules, the procedure laid down in those rules was required to be followed. It is only the Competent authority which may impose any of the penalties specified in sub-section (2) on a municipal officer or servant. We find considerable force in the arguments of the learned counsel appearing for the petitioner that, the appointing authority of the petitioner is/was corporation. To this submission, there is no reply by the Respondent – Corporation that, whether only appointing authority is competent to initiate enquiry or even Commissioner, Municipal Corporation is authorized/empowered to initiate enquiry, and impose the penalties on the petitioner.

12. We find considerable force in the arguments of the petitioner that, right to receive pension is recognized under Article 300 A of the Constitution of India, by the Supreme Court. The Supreme Court in the case of **State of Jharkhand (supra)** has held thus :-

“14. Article 300 A of the Constitution of India reads as under:

“300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

13. It is not necessary for us to go beyond the prayers of the petitioner. Suffice it to say that, the Corporation has already granted provisional pension to

the petitioner and as already observed, the petitioner's right to receive pension has been recognized under the relevant statute, and as rightly contended by the learned counsel appearing for the petitioner under the Constitution, and therefore, we direct respondent – Corporation to sanction and process the proposal of the petitioner, to pay him full pension and other retirement benefits, in the light of decision of Standing Committee (Resolution No. 106/09) i.e. Appellate Authority dated 18th August, 2009 and ensure disbursement of said amount/benefits, as expeditiously as possible, preferably within four months from today.

14. Writ Petition is accordingly allowed to the above extent. Rule made absolute in above terms.

Sd/-

(**P.R. BORA, J.**)

Sd/-

(**S.S. SHINDE, J.**)

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SGA/-