

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

WRIT PETITION NO.9462 OF 2014

Jabir Hussain Munwarali Puthawala,
Aged 58 years, Occu: Retired
R/o. 2115, Ramchandra Khunt,
Ahmednagar, Taluka and District
Ahmednagar

PETITIONER

VERSUS

- 1] The State of Maharashtra
Urban Development Department,
Mantralaya, Mumbai
[Through the Government Pleader,
High Court, Bombay, Bench at
Aurangabad]
- 2] Municipal Corporation, Ahmednagar,
Through its Commissioner
- 3] The Collector, Ahmednagar,
Collectorate, Ahmednagar
- 4] The Director of Municipal
Administration, State of
Maharashtra, Mumbai

RESPONDENTS

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Mr. M.V.Deshpande, Advocate holding for
Mr. K.M. Chandaliya, Advocate for the Petitioner
Mr. M.M.Nerlikar, AGP for the Respondent – State
Mr. V.S.Bedre, Advocate for the Respondent No.2.

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

Date: 09.04.2015

PER COURT: [Per S.S.Shinde, J.]:

1] Heard.

2] This Petition is filed with following prayer:

B] By issuing writ of mandamus and any other writ in the nature of mandamus or any directions in the nature of mandamus, respondent No.2 – Municipal Corporation, Ahmednagar may kindly be directed to regularize the leave period and with all consequential benefits.

3] The learned counsel appearing for the petitioner invited our attention to the Judgment and Order passed by this Court in Writ Petition No. 5101/1995 [Jabir Hussain Munwarali Puthawala Vs. The State of Maharashtra] decided on 28th April, 2011 and in particular para 6 thereof and submits that, though this Court directed the Municipal Corporation, Ahmednagar, to take appropriate decision about the study period, regularize it and pass appropriate orders in that connection. However, respondent No.2 by letter dated 12th July, 2011 communicated that, prayer of the petitioner for regularization of study period and also amount spent for education and bonus cannot be considered. The learned counsel appearing for the

petitioner submits that, petitioner with prior permission of the respondent No.2 went on study leave and to that effect even the Resolution was passed by the Municipal Council, and therefore, Petition may be allowed.

4] Respondent No.2 relying on the affidavit in reply and reasons assigned in the impugned communication and submits that, Petition is devoid of merits and same may be dismissed.

5] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for the Respondent – State, and the learned counsel appearing for the respondent No.2. We have perused the pleadings in the Petition, annexure thereto, and the impugned communication issued by the respondent No.2, and we are of the opinion that, Petition deserves no consideration for the reasons set out herein below. It is true that, Resolution was passed by the respondent No.2, at the relevant time, granting permission to the petitioner to go on the study leave. It is not in dispute that, the District Collector, Ahmednagar, who had power to suspend the Resolution,

did pass order suspending the said Resolution passed by the Municipal Council, and the said decision of the Collector was not challenged by the petitioner or by the Municipal Council. While deciding Writ Petition No. 5101/1995, Bench presided over by the learned Single Judge in para 6 of the order observed that, there is nothing wrong with the application of mind by Collector and order passed by the Collector, can not be faulted with because of discussion in para 26 and 44 of the Full Bench Judgment of the Bombay High Court reported in **2003 [3] BCR 550** [Sanjay Govind Sapkal Vs. Collector of Dhule]. It is not necessary for us to elaborate the reasons for rejection of the present Petition, suffice it to say that, in view of the decision of the Collector to suspend the Resolution passed by the Municipal Council, the Municipal Council can not take any decision allowing the prayer of the petitioner for regularizing the study period and other benefits. As already observed, there was no challenge to the order of the Collector suspending the Resolution, either by the petitioner or by the Municipal Council, and therefore, said decision attained finality.

6] On careful perusal of the impugned communication, legally sustainable and justifiable reasons

are assigned in the said communication keeping in view the record maintained by the respondent No.2 about the case of the petitioner. In that view of the matter, Petition sans merit and hence rejected.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC