

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11934 OF 2014
with
REVIEW APPLICATION STAMP NO. 31972 OF 2014.

Aurangabad Municipal Corporation and another
versus
Jayant Sarvottamrao Kharwadkar and another.

Mr. A.M. Karad, Advocate for review applicant.
Mr. V.J. Dixit, Senior Counsel i/b. Mr. L.V. Sangit for original petitioner in
W.P.

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CORAM : S.V. GANGAPURWALA & A.M. BADAR, JJ.
DATE : 13th FEBRUARY, 2015.

PER COURT:-

1] We have heard the review application on merits. Learned counsel for the Review Applicant and non applicant No.1 i.e. original writ petitioner have canvassed their submissions at length. Learned counsel for the review applicant has also filed written notes of arguments.

2] Mr. Karad, learned counsel for the review applicant states that the review applicant herein seeks review of the judgment and order passed by this court dated 12th June, 2014, thereby setting aside the order passed by the present applicant dated 28.5.2002, promoting the petitioner as a Sectional Engineer.

3] Mr. Karad for the review applicant strenuously contended that the claim of the petitioner is based on purported option given by him for

posting in Town Planning Department. According to learned counsel, except the averments made in the petition in para.2 no supporting material in respect of the option is placed on record. After judgment under review is delivered by this court, the Corporation vide letter dated 28.11.2014, called upon the petitioner to place on record details of option given by him for shifting from Engineering Department to the Planning Department. The non applicant replied the same on 28.11.2014 by saying that he does not possess any such document. Upon inspection of the record of the Corporation, it was found that there are no documents available regarding calling upon option of the employee at the relevant time. In written arguments it is further contended that the Engineering Department and Town Planning Department are not separate. The Sectional Engineers as well as Deputy Engineers are appointed in Town Planning Department. The claim of the petitioner regarding option has no basis and is not supported by any documentary evidence.

4] According to learned counsel, the authorities of the Corporation committed a mistake and the non applicant cannot take advantage of the said mistake. In W.P. No. 2156 of 1988, vide order dated 3.8.2001, this Court had directed to reconstitute the Selection Committee and prepare seniority list afresh. As per the said order the names of Sectional/Junior Engineers as in 1989 were to be considered for preparation of such seniority list. According to learned counsel, the petitioner joined in 1985. He was confirmed as Sectional Engineer in 1986. On the date he was relieved to join

on deputation as Personal Assistant to Honourable Minister, his post in the relieving letter was mentioned as Sectional Engineer.

5] The claim of the petitioner regarding his appointment in the Town Planning Department is baseless. The order of 1997 is issued by the applicant Corporation on incorrect perception of the authorities of the Aurangabad Municipal Corporation. However, the order passed by this Court in W.P. No. 2156 of 1988 is subsequent i.e. 3rd August, 2001. As such, the order issued in favour of the petitioner in the year 1997, conferring post of Assistant Town Planner will not survive.

6] The learned counsel further submits that challenge of the petitioner to his transfer order from the post of Junior Engineer Town Planning Department, to Water Supply Department also failed, as his W.P. No. 2594 of 1995 was dismissed on 4.6.2003 with certain observations and W.P. No. 3527 of 2002 filed before this Court challenging the same order which is impugned in Writ Petition No. 1082 of 2003, was withdrawn. The learned counsel submits that paras. 4 to 6, 9 and 10 of the affidavit in reply filed in writ petition No. 1082 of 2003 have not been considered while passing the order under review.

7] This court observed that the petitioner gave option, but there is no record available with the petitioner as well as Corporation of the said alleged option given by the petitioner. The order dated 11.5.2008 appointing

the petitioner as Assistant Town Planner, is on temporary basis and it is a practice to appoint Junior Engineer in other Engineering Departments as Assistant Planner. In the year 1989, the petitioner was Sectional Engineer. Therefore, entire claim of the petitioner regarding change of his cadre or Department has no meaning as well as there are no supportive documents. The petitioner was also not qualified for the post of Town Planner at the relevant time. The petitioner was only a Diploma Holder in 1998 and for the post of Town Planner, a person has to possess a Degree of Engineering or Diploma in Architecture.

8] The petitioner could not have been promoted as Town Planner. The Selection Committee considered the entire record and recommended to revert the petitioner to the post of Sectional Engineer. The Government Resolution dated 7.7.1997 relied upon by this court while passing the judgment is inapplicable. Same is not applicable to the employees of the Corporation.

9] The requisite professional departmental examination was also not passed by the present non applicant No.1. The learned counsel relied on the judgment of the ***“Board of Control for Cricket Vs. Netaji Cricket Club” reported in (2005)4 SCC 741***, to contend that the application for review would be maintainable when there exists an error apparent on the face of the record, so also, on discovery of new and important piece of evidence and is necessitated on account of some mistake or for any other

sufficient reasons, depending upon the facts and circumstances of each case. The learned counsel submits that the order may be reviewed.

10] Mr. Dixit, learned senior counsel for the non-applicant submits that the fact that option was given by the present non applicant, opting to the cadre of Planning Assistant w.e.f. 11.5.1988 is writ large from the provisional seniority list maintained by present review applicant. In the seniority list dated 1.1.1992 and 1.1.1989, it has been clearly stated that the present non applicant has opted for the cadre of Planning Assistant w.e.f. 11.5.1988. This court, considered the said aspect and also the fact that applicant itself appointed the present petitioner as Assistant Town Planner so also gave the benefit of Government Resolution dated 7.7.1997, petitioner was considered from the Planning Department right since 11.5.1988. In the year 2010 also, present applicant appointed present non applicant in the Town Planning Department vide letter dated 31.8.2010, i.e. during pendency of the writ petition and the same was considered by the duly constituted Selection Committee.

11] Learned Senior Counsel submits that the scope of review is in a narrow compass. Learned counsel relied upon the judgment in the case of Meerabhanja vs. Nirmala Kumari Choudhary reported in (1995)1 SCC 170 and another judgment of this court in Rajkumar Ramavtar Chourasia vs. Mathew Charian Christian reported in 1984 Mh.L.J. 898.

12] We have considered the submissions canvassed by learned

counsel for the respective parties. There cannot be any dispute that review petition cannot be entertained as an appeal in disguise. Same can be entertained if there is an error apparent on the face of the record. While passing the order under review and considering the case of the non applicant as a person in the Planning Department, this court had considered the following aspects :-

“1] The petitioner is appointed on 27.1.1985 as a Junior Engineer.

2] Option was solicited from the employees if they want to shift their channel of employment.

3] The petitioner opted to shift his channel to the Planning Department.

4] On 11.5.1988, the petitioner was appointed as an Assistant Planner

5] On 7.7.1997, the Government resolution was issued, which states that a person, who completes 5 years service in planning department, should be given post of Assistant Town Planner.

6] On 25.9.1997, the petitioner was given benefit of the said Government Resolution and was appointed as an Assistant Town Planner with effect from 1993.

7] The petitioner was promoted as Town Planner on 29.6.1998. The same was on probation.

8] Thereafter, vide order dated 24.5.1999, the period of

probation culminated as the work of the petitioner was found satisfactory and the petitioner continued as a Town Planner.”

13] The bone of contention of Mr. Karad, the learned counsel for the review applicant is that, there is no record to show that the present non applicant had any material to point out that he had given option to be considered from the Planning Department. This court, while considering the said fact, had considered the seniority list maintained by the present review applicant/Corporation, in which, it was clearly stated that the present non applicant is officiating in the present post as Planning Assistant from 11.5.1988 and in the remark column it is stated that he has opted for the cadre of Planning Assistant w.e.f. 11.5.1988. So also, the seniority list of the year 1992 , as on 1.1.1992, also repeats the same thing. The said documents are the documents prepared and maintained by present review applicant itself. The said documents were considered and on that basis this court came to the conclusion that petitioner opted to shift his channel to the Planning Department and vide order dated 1.5.1988, present non applicant was appointed as Assistant Planner. On 7.7.1997, The Government Resolution was issued stating that a person who completes 5 years service in Planning Department should be given the post of Assistant Town Planner. On 25.9.1997 the petitioner was given benefit of said Government Resolution and was appointed as Assistant Town Planner, w.e.f. 1993. The petitioner was promoted as Town Planner on 29.6.1998 on probation. Thereafter, order was issued on 24.5.1999 stating that the period of probation has culminated

as the work of the petitioner was found satisfactory and he is continued as Town Planner. All these orders were relied while passing the said judgment. In the present review application, the review applicant has claimed that the Government Resolution dated 7.7.1997 is not applicable. But perusal of orders passed from time to time, as is referred in the judgment under review, it would be seen that the review applicant itself gave the benefit of the said Government Resolution to the non applicant No.1. Not only this, even in the year 2010, after report of the Selection Committee the review applicant itself gave order to the present non applicant No.1 as Assistant Town Planner. The said order dated 31.8.2010 is issued by the present review applicant itself thereby directing him to take charge as Assistant Town Planner in the pay scale of Rs.9300-34800. In the light of that also, the applicant cannot be now heard to say that the non applicant was not qualified. The said order dated 31.8.2010 is at Exhibit R-2 page 155 of the present review application.

14] The orders which are referred to hereinabove are also matter of record. In the interregnum the petitioner was transferred as Sectional Engineer. The said order is challenged. However, Writ Petition was disposed of with observations that the claim of the petitioner from the Town Planning Department or otherwise can be considered by the respondent. No finding was given by this court in the said writ petition.

15] Considering the aforesaid aspects of the matter, we do not find

that the order dated 12th June, 2014 is required to be reviewed. We have also heard the learned counsel for the applicant on the application for condonation of delay. The application for condonation of delay in filing review (C.A. No. 11934 of 2014) is allowed for the reasons stated in the said application. However, review application (Review Application Stamp No. 31972 of 2014 in W.P. No. 1082 of 2003) stands rejected. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-