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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9597 OF 2013

Vilas Kisanrao Isal
R/at Row House, Plot No.659,
Sector-12, Kharghar, Navi Mumbai

..Petitioner.

Vs.

1. The State of Maharashtra
through its Principal/Secretary,
General Administration Department,
Mantralaya, Mumbai.
2. The State of Maharashtra,
through its Principal/Secretary,
Urban Development Department,
Mantralaya, Mumbai.
3. The City Industrial Development Corpn
(CIDCO) through its Managing Director
Having registered office at Nirmal, 2nd floor,
Nariman Point, Mumbai-400 020.
4. The Manager Personnel
The City and Industrial Development Corpn
of Maharashtra, CIDCO Bhavan,
CBD Belapur, Navi Mumbai.
5. Vilas Dnyaneshwar Bankar
Executive Engineer (Kamothe),
CIDCO Office, Sewage Treatment,
Sector 32, Kamiothe, Navi Mumbai.

..Respondents.

Mr. Mahindra Deshmukh for Petitioner.
Mr. P.P. Kakade, AGP for Respondent Nos.1 and 2.
Mr. B.B. Sharma, for Respondent Nos.3 and 4.
Mr. Tanaji V. Jadhav i/b R.K. Mendadkar for Respondent No.5.

**CORAM: NARESH H. PATIL &
A.S. GADKARI, JJ.**

DATE : 2nd March 2015.

P.C.:

1 The Petitioner by this Petition filed under Article 226 of the Constitution of India, has prayed for writ of certiorari or any other appropriate writ, order or direction for quashing and setting aside the impugned order dated 23rd April 2013 issued by the Respondent No.4 thereby the Petitioner has been reverted from the post of Executive Engineer (Civil) to the post of Assistant Executive Engineer. The Petitioner has also prayed for a writ of mandamus or any other appropriate writ or order thereby directing the Respondent Nos.3 and 4 to restore the services of Petitioner as Executive Engineer (Civil) with immediate effect with all consequential benefits to the post of Executive Engineer (Civil) as he was holding on 23rd April 2013.

2 It is the case of the Petitioner that the Petitioner came to be appointed as Sub-Engineer with the services of the Respondent No.3-CIDCO on 18th February 1985 in the category of Other Backward Class. Thereafter, the Petitioner was re-designated to the post of Assistant

Engineer on 1st April 1990 and subsequently was promoted to the post of Assistant Executive Engineer on 14th February 2002. The Petitioner belongs to the Dhangar Caste which came to be included in the category of Nomadic Tribe 'C' by the Government Resolution dated 25th May 1990. The Petitioner thereafter submitted his caste certificate and also caste validity certificate with respect to his caste to his employer i.e. the Respondent No.3. It is the further case of the Petitioner that the on 25th May 1990, the Petitioner was claiming to be from the category of Nomadic Tribe 'C' and accordingly seniority list of the cadre of the Assistant Executive Engineer came to be prepared on 22nd January 2008. In the said seniority list, the Petitioner was shown senior to all the other candidate from the Nomadic Tribe 'C' category. That in pursuance of the seniority list and after taking into consideration the merit-cum-seniority, the Petitioner came to be promoted to the post of Executive Engineer as per the Minutes of the Meeting of Departmental Promotion Committee ('DPC' for short) which was held on 5th June 2008.

3 The Petitioner further contended that the Respondent No.5 joined the services with the Respondent No.3 on 30th August 1989 as an Assistant Engineer in the category of Scheduled Tribe. It is further contended by the Petitioner that the Respondent No.5 thereafter projected

himself as belonged to the Scheduled Tribe Category and secured promotion to the post of Assistant Executive Engineer on 12th July 1993, which was reserved for Scheduled Tribe Category. It is the further case of the Petitioner that in the seniority list dated 22nd January 2008, the name of the Respondent No.5 was shown in the category of Scheduled Tribe, as the candidate belonged to the Scheduled Tribe Category. It is further contended that since 1989 i.e. from the date of joining of service with the Respondent No.3 till the year 2008, the Respondent No.5 always projected himself as belonging to the Scheduled Tribe Category. That the Petitioner since beginning claiming to be from the Nomadic Tribe 'C' category and since the Petitioner was senior-most in the Nomadic Tribe Category, the Petitioner was promoted to the post of Executive Engineer in Nomadic Tribe 'C' category. It is the case of the Petitioner that the Departmental Promotion Committee has considered the representation of the Respondent No.5, however, after considering the qualification, experience, gradation recorded in the Annual Confidential Report, suitability and capability of the candidate and the misleading and false claim of the Respondent No.5, the Departmental Promotion Committee pleased to give promotion to the Petitioner in the post of Executive Engineer.

4 At this stage, it may be noted here that the educational qualification of the Respondent No.5 is B.E. (Civil), whereas the educational qualification of the Petitioner is Diploma in Civil Engineering and the record discloses that even in the panel report dated 5th June 2008 prepared by Departmental Promotion Committee, the name of the Respondent No.5 is shown at serial no.1 in the Nomadic Tribe 'C' category and the name of the Petitioner is shown at serial no.2. It is further to be noted here that the experience of the Respondent No.5 has been shown as 14.10 years, whereas the experience of the Petitioner is shown as 6.3 years as of 5th June 2008.

5 It is further the case of the Petitioner that the Respondent No.5 thereafter made several representations to the Respondent Nos.3 and 4 and requested them to take decision after taking into consideration the Government Resolution dated 30th April 2004. That the Respondent No.5 after substantial period took advantage of the Government Resolution dated 25th May 1990 and claimed his caste i.e. Dhanvar/Dhangar from Nomadic Tribe Category and got the caste validity certificate for the same and claimed benefit for the promotion under Nomadic Tribe 'C' Category in the employment of the Respondent No.3.

6 The Petitioner has further contended that taking into consideration various representations of the Respondent No.5, the Departmental Promotion Committee by its Panel Report dated 21st August 2012 had come to the conclusion that the promotion which was granted to the Petitioner was erroneous and the Respondent No.5 in fact is entitled and eligible for the promotion to the post of Executive Engineer as per seniority in the Nomadic Tribe category. The said Committee further came to the conclusion that the promotion which was granted to the Petitioner was erroneous and the Petitioner is required to be demoted to the post of Assistant Executive Engineer with immediate effect. The Petitioner has contended that he was served with the order dated 23rd April 2013 whereby it was informed to him that in view of the Government Resolution dated 30th June 2004, and in view of the decision taken in the meeting of Departmental Promotion Committee dated 17th August 2012, the Petitioner has been reverted from the post of Executive Engineer (Civil) to the post of Assistant Executive Engineer (Civil). The Petitioner has impugned the said order dated 23rd April 2013 passed by the Respondent No.4 in the present petition.

7 The Respondent Nos.3 and 4, through Shri Tulsidas Laxman Parab, Manager (Personnel) of the Respondent No.3 have filed a detailed affidavit along with compilation of documents thereby opposing the claim and reliefs prayed for by the Petitioner. It is stated in the said affidavit that the Petitioner joined the Respondent No.3 as Sub-Engineer in the engineering section at Nasik on 18th February 1985. That the Petitioner has Diploma in Civil Engineering. That the Petitioner belongs to Dhangar caste and the said caste falls under Nomadic Tribe 'C' category as per Government Resolution dated 25th May 1990. The Petitioner was further promoted to the post of Assistant Executive Engineer on 14th February 2002. That the Respondent No.5 joined the Corporation as Assistant Engineer (Civil) on 30th August 1989 in the post reserved in the category of Scheduled Tribe. That the Respondent No.5 has a degree in Civil Engineering. That the Respondent No.5 was promoted to the post of Assistant Executive Engineer on 12th July 1993. It has been further stated in the said affidavit that the Government of Maharashtra by its Resolution dated 25th May 2004 made applicable reservations to all posts at the level of class-I and above at promotional side which was not applicable earlier. That by the Government Resolution dated 30th June 2004, the protection

was granted to the Non-Adivasi who have been appointed or promoted to the post reserved for scheduled tribe. As per the said Resolution such Non-Adivasi's should not be removed from the services and they should be treated in their category and their seniority should be fixed as on 15th June 1995 and they will be entitled to get the advantage of reservation of their category. It is further stated in the said affidavit that though the Respondent No.5 obtained employment in the category of Scheduled Tribe, since he belonged to Nomadic Tribe 'C' and having caste validity certificate, he was entitled to avail the benefit of his caste in promotion in accordance with the said Government Resolution dated 30th June 2004.

8 The Respondent Nos.3 and 4 have further stated in the said affidavit that the meeting of the Departmental Promotion Committee was held on 5th June 2008 to consider the promotion of candidate's inter alia under the Nomadic Tribe 'C' category wherein one post of Executive Engineer (Civil) was vacant. That as per the CIDCO Recruitment, Seniority and Promotion Rules 1997, the promotion is to be made on the basis of seniority cum merit. It is further stated that the Respondent No.5 was ranked no.1 and the Petitioner was ranked at no.2 by the said Departmental Promotion Committee. It is further stated, however, the Departmental Promotion Committee recommended the name of the

Petitioner for promotion to the post of Executive Engineer (Civil) with immediate effect instead of recommending the name of Respondent No.5 who was ranked higher, without giving any reasons. That accordingly the Petitioner was promoted to the post of Executive Engineer (Civil) on 9th June 2008. It is further stated that being aggrieved by the promotion denied to him, the Respondent No.5 made a complaint and representation to the Respondent No.3 as well as to the Respondent Nos.1 and 2 for redressal . That after considering the representations of the Respondent No.5 the Government vide its letter dated 21st June 2011 informed CIDCO to take a decision as per Government Resolution dated 30th June 2004.

9 The Respondent Nos.3 and 4 in their affidavit have further stated that the Departmental Promotion Committee was constituted and held its meeting on 17th August 2012 to consider the case of the Petitioner and the Respondent No.5. The said Departmental Promotion Committee recommended to promote the Respondent No.5 to the post of Executive Engineer (Civil) under Nomadic Tribe 'C' category and giving him the benefit of deemed seniority, without any monetary benefit from the date on which the Petitioner was promoted i.e. June 2008 onwards. The said Committee also made recommendations with respect to the Petitioner. That the Government vide its letter dated 26th February 2013 directed the

Respondent No.3 to take decision as per Government Resolution dated 21st June 2011 which was very clear. That the said letter dated 26th February 2013 issued by that State of Maharashtra is a detailed communication and the said decision is binding on the Respondent Nos.3 and 4. It is further stated that on 12th March 2013, the Manager (Personnel) of the Respondent No.3 put up a proposal setting out full facts and particulars of the case before the Management of the Respondent No.3 for appropriate decision. That accordingly an office order dated 23rd April 2013 was issued, giving effect to the said decision, which is impugned in the present petition. It is further stated that the order dated 23rd April 2013, is merely rectification of erroneous decision taken earlier whereby the Respondent No.5 was denied promotion though he was senior-most and ranked no.1 in the same category and instead of taking cognizance of the said merits, the Petitioner was promoted. Earlier decision dated 5th June 2008 by the Departmental Promotion Committee and the promotion given to the Petitioner was contrary to the Government Resolution in force. It is further submitted that in the facts and circumstances of the present case, reverting the Petitioner to his earlier post is a necessary consequence of correcting an erroneous decision. It is further stated that no vested right is created in Petitioner to continue to occupy the higher post of Executive Engineer (Civil) to which

he was erroneously promoted and therefore the Petitioner was not entitled to any reliefs in the present petition.

10 The Respondent No.5 has also filed an affidavit dated 7th January 2015 thereby opposing the grant of any reliefs to the Petitioner. The Respondent No.5 has admitted that he joined the services of the Respondent Nos.3 and 4 on 30th August 1989 in the post of Assistant Engineer and was promoted to the post of Assistant Executive Engineer under the reserved category of Scheduled Tribe on 12th July 1993. That the Petitioner was promoted to the post of Assistant Executive Engineer in N.T. Category on 14th February 2002. The Respondent No.5 has further stated that in terms of Government Resolution dated 30th June 2004, he had given up his caste claim as belonging to Dhanwar, Scheduled Tribe and obtained fresh caste certificate as belonging to Dhargar, Nomadic Tribe. That in view of the said fact, his seniority in the category of Assistant Executive Engineer has been counted with effect from 15th June 1995. That on 15th June 1995, admittedly the Respondent No.5 was holding the post of Assistant Executive Engineer and the Petitioner was holding the post of Assistant Engineer. It is contended that he obtained fresh caste certificate as belonging to Dhargar, Nomadic Tribe which was legally permissible and the same was in terms of Government Resolution dated 30th June 2004.

It is further stated that though the Respondent No.5 was senior to the Petitioner even on 5th June 2008, the Departmental Promotion Committee considered the case of the Petitioner and denied the promotion to the Respondent No.5, he made representation to the Respondent No.1 i.e. the State of Maharashtra and after taking into consideration various aspects of the present case, the Respondent Nos.3 and 4 have now corrected the error committed by the Departmental Promotion Committee vide its Panel Report dated 5th June 2008. The said correction has been effected by the Departmental Promotion Committee by its Panel Report dated 23rd August 2012. The Respondent No.5 has lastly stated that his name has been rightly considered for the post Executive Engineer under Nomadic Tribe 'C' category giving him deemed seniority without any monetary benefits from the date on which the Petitioner was promoted i.e. June 2008 onwards. The Respondent No.5 finally submitted that this Court may not entertain the Petition and the same may be dismissed.

11 Mr. Mahindra Deshmukh, the learned Counsel appearing for the Petitioner submitted that the Departmental Promotion Committee while considering the case of the Respondent No.5 and while submitting a Panel Report dated 23.8.2012 has violated the principles of natural justice thereby denying the opportunity of being heard to the Petitioner. He further

submitted that once the Petitioner is promoted to the post of Executive Engineer (Civil) by the Departmental Promotion Committee by its Panel Report dated 5th June 2008, he now cannot be reverted or demoted to his earlier post. He further submitted that the Departmental Promotion Committee has taken into consideration in its meeting held on 5th June 2008 the Petitioner's 17 years of service with the Respondent No.3, and the Respondent No.5 did not submit his caste validity certificate belonging to Nomadic Tribe 'C' category. He further submitted that while joining the service, the Respondent No.5 projected himself a person belonging to Scheduled Tribe category and availed promotion in the said post under Scheduled Tribe category. He further contended that the Respondent No.5 is trying to take promotion under both the categories suited to him, whereas the Petitioner projecting himself belonging to Nomadic Tribe Category only. He submits that the Petitioner came to be promoted on the basis of his caste claim from Nomadic Tribe 'C' category. The learned Counsel for the Petitioner further contended that the reversion of the Petitioner to the post of Assistant Executive Engineer is unjustifiable and has no rational behind it. He further submitted that the impugned order dated 23rd April 2013 thereby demoting the Petitioner to the post of Assistant Executive Engineer is bad in law and deserves to be quashed and set aside.

12 Mr. B.B. Sharma, the learned Counsel appearing for the Respondent Nos.3 and 4 in his arguments has justified the decision taken by the Respondent Nos.3 and 4 thereby reverting the Petitioner to the post of Assistant Executive Engineer. He submitted that after realising the fact that the Petitioner was erroneously promoted to the post of Executive Engineer (Civil) by the Departmental Promotion Committee vide its Panel Report dated 5th June 2008, freshly constituted Departmental Promotion Committee has now submitted a Panel Report dated 23rd August 2012 thereby recommending the Petitioner for demotion to the post of Assistant Executive Engineer. He further submitted that the Respondent Nos.3 and 4 are supporting the decision taken by the Departmental Promotion Committee by its Panel Report dated 23rd August 2012.

13 Mr. Tanaji Jadhav, learned Counsel appearing for the Respondent No.5 has supported the decision of the Respondent Nos.3 and 4 and reiterated the contents of the affidavit filed by the Respondent No.5.

14 We have considered the rival submissions advanced by the learned Counsel for the parties. We have also perused the record produced before us by the learned Counsel for the parties.

15 As stated in paragraph no.4 above, a Panel Report dated 5th June 2008 prepared by the Departmental Promotion Committee clearly mentions the fact that the Respondent No.5 was ranked at serial no.1 and the Petitioner was ranked at serial no.2 in the Nomadic Tribe 'C' Category. It is to be noted here that the Respondent No.5 though initially got appointment in the establishment of the Respondent No.3 in the category of Scheduled Tribe (Dhanwar), was subsequently promoted to the post of Assistant Executive Engineer (Civil) reserved for the Scheduled Tribe Category on 12th July 1993. Subsequently he relinquished his caste claim as belonging to Dhanwar, Scheduled Tribe in view of the Government Resolution dated 30th June 2004 and obtained fresh caste certificate as belonging to Dhangar, Nomadic Tribe Category. The said caste certificate of the Respondent No.5 has been validated by the Caste Scrutiny Committee. The Petitioner has nowhere challenged the legality and validity of the said caste certificate issued in favour of the Respondent No.5. It appears from the record that the said validation has reached finality. In view of the said fact, the seniority of the Respondent No.5 has to be taken into consideration as belonging from Nomadic Tribe 'C' category and which was rightly mentioned in the Panel Report dated 5th

June 2008. It further appears from the record that the Respondent No.4 while denying the promotion to the Respondent No.5 in the year 2008, has erroneously granted promotion to the Petitioner. The Departmental Promotion Committee while submitting a Panel Report dated 23rd August 2012 has taken into consideration various aspects of the present case. The said Committee has by its report dated 23rd August 2012 has come to the conclusion that the Petitioner was not entitled for promotion in the year 2008 for the post of Executive Engineer (Civil) and he was wrongly promoted to the said post. The said Committee has further come to the conclusion that the Petitioner needs to be reverted in the cadre of Assistant Executive Engineer (Civil), and accordingly an order dated 23rd April 2013 has been passed which is impugned in this petition.

16 After taking into consideration the documents available on record, we are of the considered opinion that the Petitioner was wrongly promoted for the post of Executive Engineer (Civil) by the Respondent Nos.3 and 4 in the year 2008 though in its Panel Report dated 5th June 2008 the Respondent No.5 was at serial no.1 in Nomadic Tribe 'C' category. As stated earlier, the Respondent No.5 is having much higher qualification i.e. B.E. (Civil) than the Petitioner who is having Diploma in Civil Engineering. As per Panel Report dated 5th June 2008, the Respondent No.5

had put in service for 14.10 years whereas the Petitioner had put in service 6.3 years as Assistant Executive Engineer.

17 After taking into consideration the facts and circumstances of the case, we are of the considered view that the Respondent No.4 while passing the impugned order dated 23rd April 2013 has not committed any error and the impugned order dated 23rd April 2013 is rightly passed by the Respondent No.4. The said impugned order does not suffer from any legal infirmity. In view of the same, we are not inclined to entertain the Petition.

18 The Writ Petition is accordingly dismissed.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)