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

WRIT PETITION NO. 6 OF 2013

Shri Narendra Shahu Pagare

..Petitioner

Vs.

Municipal Corporation of Gr. Mumbai
& Ors.

..Respondents.

Mr. Vineet Naik, Senior Counsel a/w S.A. Sawant with Sachin Kadam
for Petitioner.

Mr. A.Y. Sakhare, Senior Counsel a/w M.M. Malvankar with Joel
Carlos for Respondents.

Mr. P.R. Kadam, City Engineer present.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 29th April 2015.

P.C.:

1 The Petitioner was required to approach this Court twice
thereby challenging the policy of the Respondent-Corporation which
provided for promotion to higher category, B.E. Civil qualification should
be obtained while in service. The Petitioner had already obtained higher
qualification prior to entry in the service.

2 The Division Bench of this Court vide judgment and order dated 20th December 2005 in Writ Petition No.1762 of 1994, quashed and set aside the policy of the Respondent-Corporation and directed the Respondent to consider the claim of the Petitioner ignoring the said policy. The Petitioner was again required to approach this Court by way of Writ Petition (Lodg) No.2608 of 2007. The Division Bench vide order dated 6th February 2008 disposed of the said petition by observing that the Petitioner was already promoted and only question remains regarding consequential financial benefits and seniority which was directed to be considered by the Corporation. Prior to that the Petitioner was required to take out a Notice of Motion bearing No.29 of 2009 in Writ Petition No.1075 of 2008 seeking direction to the Respondent-Corporation to dispose of the representation made by him. It appears that the Municipal Corporation vide order dated 24th March 2009 decided the representation of the Petitioner and directed to give deemed date of the promotion to the post of Sub-Engineer with effect from 1993 and was directed to be placed at appropriate point.

3 The Petitioner has approached this Court contending therein that the Additional Municipal Commissioner had passed an order in favour of the Petitioner, however, the same was not being given effect. On the last

date, Shri Sakhare, the learned Senior Counsel on behalf of the Respondent-Corporation had sought time till today to take instructions. Today an affidavit dated 29th April 2015 has been filed which is signed by Shri Prakash Kadam, City Engineer. In the said affidavit, it is stated that there is no impediment in implementing the order passed by the Additional Municipal Commissioner dated 30th March 2009 except orders passed by the Hon'ble Apex Court. It is stated that in view of the orders passed by the Apex Court, it would not be possible for the Corporation to promote the Petitioner.

4 Per contra, Mr. Naik, the learned Senior Counsel appearing for the Petitioner submits that there is no conflict between the Petitioner and the Shri A.M. Satav. It is submitted that the said Shri Satav belongs to Other Back-Ward Class category and the Petitioner belongs to Scheduled Caste category. It is submitted that only if some candidates belong to O.B.C. Category supersede said Shri Satav, there would be violation of orders passed by this Court. The learned Senior Counsel submits that very recently the Respondent-Corporation issued order on 6th September 2014 in favour of five employees. Shri Sakhare on instructions submit that none of the promotional orders affected the seniority of said Shri Satav.

5 Shri Sakhare, the learned Senior Counsel fairly placed on record the comparative chart of both Shri Satav and the Petitioner. The initial entry of Shri Satav from O.B.C. category is of 8.3.1990 whereas that of the Petitioner is 26.3.1991. However, the promotion of the said Shri Satav as Sub-Engineer is 2.1.1999, whereas that of the Petitioner is 11.11.2003. The promotion of the Petitioner as Assistant Engineer from S.C. Category is of 17.7.2009 and that of Shri Satav from O.B. C. category is of 14.12.2011. It could thus be seen that much prior to the order passed by the Apex Court on 23.8.2012 the Petitioner was already senior to said Shri Satav in the category of Assistant Engineer. In any case, it is to be noted here that said Shri Satav and the Petitioner belong to two different category and in view of rota-quota system which is followed by the Corporation, seniority of neither the Petitioner nor said Shri Satav would be affected interse on account of promotion to either of them.

6 In that view of the matter, we find that since the Petitioner was already senior to said Shri Satav in the category of Assistant Engineer much prior to the order passed by the Hon'ble Supreme Court and since the promotional challenge is available to both Shri Satav and Petitioner who are from very different categories, there would be no impediment in giving

effect to the order passed by the Additional Municipal Commissioner dated 30th March 2009.

7 At this stage, Shri Sakhare, the learned Senior Counsel states that the Respondent-Corporation will give effect to the order of the Additional Municipal Commissioner dated 30th March 2009 within a period of four weeks from today. In view of the said statement on behalf of the Respondent-Corporation, the Writ Petition is disposed of.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)