

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4876 OF 2014

Ravikumar Hiranman Kawale

-VS-

The Directorate, Municipal Administration, Mumbai and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.P.R.Puri, counsel for the petitioner.
None for the respondent No.1.
Mr.K.L.Dharmadhikari, AGP for the respondent No.2.
Mr.S.K.Charde, counsel for the respondent No.3.

**CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ.**

DATE : 23.03.2015.

By this petition, the petitioner seeks a direction to the respondents to issue an order of up-gradation of the petitioner from the post of Safai Daroga to the post of Sanitary Inspector. The petitioner seeks all the consequential benefits flowing from the up-gradation.

The petitioner was appointed as a Safai Daroga on 07/01/1991. It is the case of the petitioner that in the year 1997 the post of Safai Daroga and the post of Safai Nirikshik were equated. According to the petitioner, the petitioner is entitled to the post of Sanitary Inspector as he was qualified to hold the said post. It is the case of the petitioner that the Nagar Parishad had also resolved to upgrade the post of petitioner from Safai Daroga to Sanitary Inspector and the proposal in that regard was sent to the Collector and the State Government. It is stated that though the petitioner was entitled to be upgraded on the post of Sanitary Inspector, the respondent-Nagar Parishad has refused to upgrade the petitioner from the post of Safai Daroga to the post of Sanitary Inspector despite the directions by the Commissioner of

Municipal Administration dated 29/05/2014 issued to the Chief Officer of the Nagar Parishad.

On the other hand, It is stated on behalf of the Nagar Parishad that the petitioner cannot seek up-gradation from the post of Safai Daroga to the post of Sanitary Inspector. It is stated that with a view to upgrade the post, a notice was published in the Nagar Parishad calling applications from the interested employees of the Nagar Parishad for appointment on the post of Sanitary Inspector. It is stated that only the petitioner applied in pursuance of that notice, but the petitioner could not be appointed on the post of Sanitary Inspector as he does not possess the necessary qualification. It is stated that it was necessary for a candidate to possess a degree and a certificate from MS-CIT or equivalent certificate. It is stated that the petitioner does not possess the requisite qualification for appointment/absorption on the post of Sanitary Inspector.

On hearing the learned counsel for the parties, it appears that the petition is liable to be dismissed for more reasons than one. The petitioner having applied for appointment on the post of Sanitary Inspector in pursuance of the notice/advertisement issued by the Nagar Parishad in 2014, the petitioner cannot seek the up-gradation on the basis of a recommendation made in the year 1999-2000. It is well settled that a person participating in the selection process cannot subsequently challenge the process and seek the absorption by ignoring the process in which he has participated. It would be necessary to refer to the judgments reported in (2009) 3 SCC 227 (Amlan Jyoti Borooah v. State of Assam), (2008) 4 SCC 171 (Dhananjay Malik v. State of Uttaranchal) and (2011) 1 SCC 150 (Vijendra Kumar Verma v. Public Service Commission) in this regard. Also, the petitioner cannot seek his up-gradation from the post of Safai Daroga to the post of Sanitary Inspector as the criteria

for appointment or up-gradation would be the same. A person, who is not eligible for being appointed on a particular post, cannot seek the up-gradation on that post.

In view of the aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

KHUNTE