

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

WRIT PETITION NO.7096 OF 2014

[Arun s/o Anturam Piprude .vs. Nagpur Municipal Corporation, through its Commissioner, Civil Lines,
Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Neeta Jog, counsel for the petitioner,
Shri S.M. Puranik, counsel for the respondent.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATED : JULY 13, 2015.

By this petition, the petitioner challenges the order of the respondent-Corporation, dated 10.7.2014, informing the petitioner that the petitioner was not eligible for promotion to the post of Octroi Superintendent (LBT), Special Desk Officer and Tax Assessor & Collector, on the ground that the petitioner has not actually put in 3 years of service on the post of Superintendent.

It is not in dispute that as per the rules framed by the Corporation, a Superintendent is entitled to be considered for promotion on the post of Octroi Superintendent (LBT), Special Desk Officer and Tax Assessor & Collector, if he or she has rendered 10 years of service in the Municipal Corporation. Since the petitioner has not put in actual service of 3 years on the post of the Superintendent, according to the respondent-Corporation, in view of the Government Resolution, dated 25.8.1988, the petitioner would not be eligible for promotion to the aforesaid three posts, as the petitioner has not put in actual service of 3 years on the post of Superintendent. It is stated that actual service of 3 years would be necessary for seeking promotion to the higher post in pursuance of the Government Resolution, dated 25.8.1988.

We find, on hearing the learned counsel for the parties,

that the issue involved in this case stands answered in favour of the petitioner by the various judgments rendered by the Hon'ble Supreme Court and this court. It appears that the issue stands answered in favour of the petitioner by the Judgments reported in AIR 2000 SC 1819 (Union of India and others .vs. K.B. Rajoria), AIR 2013 SC 2533 (P. Sudhakar Rao and others .vs. Govinda Rao and others), AIR 1988 SC 902 (R. Prabha Devi and others .vs. Government of India and others), AIR 1987 SC 2291 (K. Madhavan and another .vs. Union of India and others) and a judgment of the learned Single Judge of this court, dated 29.6.2010 in Writ Petition No.5437/2010 (Aurangabad Bench). Admittedly, the writ petition filed by the petitioner bearing Writ Petition No.2780/2011 was allowed by the Division Bench of this court by the judgment, dated 30.8.2013 and the court directed the respondent-Municipal Corporation to promote the petitioner on the post of Superintendent with effect from 21.6.1999, within a period of two weeks. It is observed by this court in the said judgment that the petitioner would be entitled to continuity in the cadre of Superintendent from 21.6.1999 for all purposes including seniority and promotional and terminal benefits. The judgment of this court has attained finality and the respondent-Corporation has also implemented the judgment by promoting the petitioner on the post of Superintendent with effect from 21.6.1999. If that be so, the respondent-Corporation cannot take recourse to the Government Resolution dated 25.8.1988 to canvass that the petitioner would not be entitled to the next promotional post as he has not actually rendered service for a period of 3 years on the post of Superintendent. This issue was considered by the Hon'ble Supreme Court in the judgment reported in AIR 2000 SC 1819 and the same has been answered against the Corporation. Even otherwise, we do not find, from a reading of the Government Resolution dated 25.8.1988, that the Government Resolution speaks of actual service, in the post. Also, it is necessary to note that in the judgment, dated 30.8.2013, it is held by this court that the petitioner would be entitled to seniority and promotional benefits on the basis of his deemed date promotion, dated 21.6.1999 and the said judgment has not been assailed by the respondent-

Corporation.

In view of the aforesaid, the writ petition is partly allowed. The respondent-Corporation is directed to consider the claim of the petitioner for promotion on the post of Octroi Superintendent (LBT), Special Desk Officer and Tax Assessor & Collector, in accordance with law. Order accordingly. No costs.

JUDGE

JUDGE

Gulande