

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

WRIT PETITION NO.529 OF 2016

[Nasir Khan s/o Ali Sher Khan .vs. Nagpur Municipal Corporation and others]

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

Court's or Judge's orders

Shri M.V. Samarth, counsel for the petitioner,
Shri S.M. Puranik, counsel for respondent nos.1 and 2,
Shri A.M. Balpande, AGP for respondent no.3.
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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 14, 2016.

By this writ petition, the petitioner seeks a direction to the respondents to implement resolution no.38, dated 20.1.2015 and reinstate the petitioner to the post of Traffic Engineer with effect from 30.9.2013, till he attains the age of superannuation on 15.9.2016. The petitioner has challenged the order of the Municipal Commissioner, dated 29.5.2014 seeking to recover the salary wrongly paid to the petitioner.

According to the petitioner, the date of birth of the petitioner is 19.5.1958 and the same was wrongly recorded in the municipal records as 15.9.1955. The respondent-Corporation served the notice of retirement on the petitioner retiring the petitioner from service on 15.9.2013. It is the case of the petitioner that the petitioner filed an appeal against the said order before the Standing Committee, but the Standing Committee did not decide the appeal. It is further stated that on a representation made by the petitioner, the respondent-Corporation passed a resolution in its General Body Meeting that the petitioner should be reinstated in service. According to the petitioner, the said resolution of the Corporation is not being

implemented by the Municipal Commissioner though it is the bounden duty of the Municipal Commissioner to implement the same.

The submissions made on behalf of the petitioner are strongly denied by the respondent no.1. It is disputed that the date of birth of the petitioner is 15.9.1958. It is stated that the petitioner was born on 15.9.1955 and was, therefore, rightly retired on attaining the age of superannuation on 15.9.2013. It is stated that no appeal was filed by the petitioner before the Standing Committee against his retirement and there was no question of deciding the same. It is further stated that by the resolution of the Corporation the reinstatement of the petitioner was not decided and hence the Municipal Commissioner has not implemented the same.

On hearing the learned counsel for the parties, it appears that a direction cannot be issued against the Municipal Commissioner to implement the resolution of the Municipal Corporation. We have perused the copy of the resolution annexed at Annexure-F to the petition. The said resolution does not speak of unconditional reinstatement of the petitioner. It is only resolved that the claim of the petitioner for reinstatement could be considered in accordance with law. It is the case of the respondent no.1 that the petitioner cannot be reinstated as the petitioner has attained the age of superannuation on 15.9.2013 itself. It is stated that it would, therefore, be illegal to reinstate the petitioner after he has attained the age of superannuation. It appears from the resolution that there is no decision to reinstate the petitioner on the post of Traffic Engineer. The resolution is as vague as it could be. The resolution does not specifically refer to the date of birth of the petitioner and does not speak about unconditional reinstatement. In the circumstances of the case, the relief sought by the petitioner cannot be granted. The age

row cannot be decided in exercise of the writ jurisdiction. It is stated on behalf of the parties that the order challenged by the second prayer made in the writ petition is a matter of challenge in yet another writ petition filed by the petitioner and the said writ petition is pending. The second prayer should not have been made in the instant writ petition. It would not be necessary to decide or consider the second prayer.

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

JUDGE

JUDGE

Gulande