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

WRIT PETITION No.6142 OF 2015

Bandopanth s/o Dhonopanth Chintawar

-Vrs.-

Director, Municipal Administration, Worli, Mumbai and one.

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

Court's or Judge's orders.

Mr. K.S. Narwade, counsel for petitioner.
 Mrs. K.S. Joshi, AGP for respondent no.1.
 Mr. Deshmukh, counsel for respondent no.2.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 21st March, 2016

Petitioner, now a 72 years old person, has filed writ petition in August, 2015 for implementation of resolution dated 7.5.2003. The General body as per resolution passed on 27.6.2002 found one Manjoor Ahmedkhan suitable for promotion as Octroi Superintendent as he was elder to petitioner. Therefore, the promotion given to Shri Ahmedkhan as Octroi Inspector was confirmed. It appears that this promotion was given effect to in 1981.

On 1.10.1994 two employees namely R.M. Digalwar and V.D. Deshpande and on 11.11.1994 two more employees namely G.S. Salve and S.B. Kandkurwar were given promotion. It is observed that though petitioner was elder to them, he was not considered. On 21.1.1999 resolution was passed and accordingly on 6.5.1999 petitioner was promoted

as Fire Brigade Superintendent. The General Body on 7.5.2003 held that injustice was done to petitioner in 1994. It has, therefore, further considered the matter and directed that petitioner be promoted on a post becoming vacant after superannuation of Shri Khan on 31.12.2002.

The petitioner thereafter made number of representations and those representations have remained pending. The Chief Executive Officer, Nagar Parishad, Pusad, District Yavatmal has also written a letter to Director, Municipal Council Administration, Warli, Mumbai on 26.5.2015.

In this background, according to Shri Narwade, it is continuing cause of action as it affects the retirement benefits and pension of petitioner. He relies on a judgment in the case of Asger Ibrahim Amin Vs. Life Insurance Corporation of India reported in **2015 ALL SCR 3692**.

The said judgment shows that employee worked for 23 years and 7 months before tendering resignation on 28.1.1991. His request for waiver of the stipulated three months notice was favourably considered by the Corporation and he was allowed to resign. The appellant made inquiry from the respondents whether he was entitled to pension under the Pension Rules and respondents replied that his request could not be granted. Again in 2000 the appellant requested the respondent to reconsider and that representation was not answered. In 2011 he gave legal notice. These facts, therefore, show that there dispute was about entitlement to pension.

Here, petitioner was already superseded in 1994

and thereafter in 1999 he was given promotion as Fire Brigade Superintendent which he accepted.

In this situation, a resolution has been passed by respondents on 7.5.2003 and against a post which had become vacant, it was decided to promote the petitioner. The said resolution has not been implemented.

Thus, the grievance in present petition is about a stale supercession and a promotion. No court was approached to get the resolution executed when petitioner was in service. This grievance is filed belatedly as he retired on 30.4.2004 and therefore cannot be concluded as giving rise to continuous cause of action. In any case, this is not a matter relating to grant of pension. The supercession (alleged) of petitioner has not been set aside legally and by promoting him on the strength of such a resolution all the consequential benefits can not be given to him. He cannot claim such benefits in public employment without working on post. Octroi itself was abolished w.e.f. 1.5.1999 and no post of Octroi Superintendent becomes available on 31.12.2002. The grievance of petitioner has come to this Court almost after 12 years. As such, no cognizance thereof can be taken. Petition is disposed of. No costs.

JUDGE

JUDGE