

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 02309 of 2006

District : Nandurbar

Shyamkumar s/o. Gorakh Karanje,
Age : 39 years,
Occupation : Service,
R/o. 58, Krishna-Kripa,
Kalpana Nagar, Mohida Road,
Shahada, Taluka Shahada,
District Nandurbar.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Secretary,
Urban Development,
Mantralaya, Mumbai.
2. The Director of Municipal
Administration, 3rd Floor,
Government Transport, Service
Building,
Sir Pochkhanwala Marg,
Warli, Mumbai - 400 025.
3. The Hon'ble State Minister,
Ministry of Urban Development,
Mantralaya, Mumbai.

.. Respondents.

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Mr. C.R. Deshpande, Advocate, for the petitioner.

*Mr. A.R. Kale, Asst. Government Pleader, for
respondent nos.01 to 03.*

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 15TH DECEMBER 2017

ORAL JUDGMENT *[Per R.M. Borde, J.]* :

01. The petitioner is praying for quashment of Government Resolution dated 16.07.2005, thereby setting aside order passed by the Hon'ble Minister of State for Urban Development, Mumbai, on 29.10.2003.

02. The petitioner is an employee of Shahada Municipal Council. He was appointed as an Octroi Clerk initially and by passage of time, he was promoted to the post of Planning Assistant. The petitioner was functioning as Planning Assistant since 01.04.1993. The petitioner contends that he holds qualification as Diploma in Civil Engineering (D.C.E.). The State of Maharashtra passed a resolution on 07.07.1997, thereby absorbing the persons working on the post of Planning Assistant to the post of Assistant Town Planner Class-II in the pay scale of Rs. 600-30-750-40-950 (unrevised) from 01.04.1981 and in the pay scale of Rs. 2000-60-2300-75-3200 with effect from 01.01.1986. The qualifying condition prescribed under the Government Resolution is that the employee shall possess Diploma in Civil Engineering and shall have experience of five years continuous service from the date of appointment on the post of Planning Assistant.

03. The petitioner contends that he holds the necessary qualification. As such, a proposal was moved to the State Government for effecting change in the designation of the petitioner. Resolution no.34

of 1998 was adopted by the Municipal Council on 03.10.1998 deciding to confer upon the petitioner, designation as Assistant Town Planner (Gazetted Officer Class-II Lower Grade) and confer upon him, pay scale of Rs. 2000-60-2300-75-3200 with effect from 01.04.1998 in view of the Government Resolution dated 07.07.1997.

04. The Collector forwarded the proposal with no objection to the Division Commissioner, Nashik Division, Nashik. The proposal tendered by the Collector was further forwarded by the Divisional Commissioner, Nashik Division, Nashik, to the State Government on 31.03.2000. Initially, the Director of Municipal Administration, Mumbai, rejected the proposal and the decision was communicated to the petitioner on 25th September 2001.

05. The petitioner raised challenge to the decision taken by the Director of Municipal Administration by preferring revision application under Section 318 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 [**For short, "Act of 1965"**]. The revision application tendered by the petitioner came to be allowed by the Hon'ble Minister of State for Urban Development in view of the order dated 29.10.2003. Since the order passed by the State Government was not enforced, the petitioner was required to approach this Court by presenting writ petition bearing no. 06012 of 2004. The writ petition was decided by the

Division Bench of this Court and by order dated 06th June 2005, the Division Bench directed respondent - State to implement the order subject to decision on review application. It was pointed out to the Court during hearing of the writ petition, that a review application has been preferred on 09th March 2005, raising exception to the order passed by the Hon'ble Minister of State for Urban Development. The review application tendered by the State Government came to be allowed and a resolution was issued on 16th July 2005, directing quashment of the decision rendered by the Hon'ble Minister of State for Urban Development, dated 29.10.2003. The petitioner has raised challenge to the Government Resolution dated 16th July 2005, whereby decision of the Hon'ble Minister of State for Urban Development, rendered in exercise of powers under Section 318 of the Act of 1965 has been quashed.

06. It is the contention of the petitioner, that it was impermissible for the State Government to issue resolution thereby quashing the decision rendered by the State Government in exercise of powers under Section 318 of the Act of 1965. It is further contended that even if assuming that the State Government does have power and has exercised the same in view of Section 320 of the Act of 1965, the petitioner contends that he has not been extended an opportunity of hearing before taking such decision. The petitioner, thus, contends that the decision taken by the State Government under

Government Resolution dated 16th July 2005, being unsustainable in law and violative of the provisions of the Act of 1965, deserves to be quashed and set aside.

07. It has been pointed out by the learned Assistant Government Pleader appearing for the respondents, that during the pendency of the instant petition, the matter was taken up for consideration by the State Government in exercise of powers under Section 320 of the Act of 1965 and after extending opportunity of hearing to the petitioner, the Hon'ble Minister of State for Urban Development has rejected the prayer of the petitioner and has also confirmed the Government Resolution dated 16.07.2005. It is pointed out that the review application tendered in exercise of powers under Section 320 was placed for consideration before the Hon'ble Minister of State for Urban Development. The petitioner was given an opportunity of hearing and he tendered his written submission on 31.01.2008 before the Hon'ble Minister of State for Urban Development. The petitioner prayed for confirmation of the order dated 29.10.2003 passed by the State Government and also requested that he may be extended revised pay scale and the designation. It was pointed out by the petitioner, that he has already tendered a writ petition for redressal of his grievance challenging the Government Resolution dated 16.07.2005. The petitioner also prays for quashment of the said Government Resolution. The Hon'ble Minister after considering

the contentions raised by the petitioner and the Urban Development Department, rejected the prayers of the petitioner made during the course of hearing in his written submission dated 31.08.2008 and confirmed the decision taken by the State Government declared under the Government Resolution dated 16.07.2005.

08. The petitioner contends that during the pendency of writ petition before this Court, challenging the Government Resolution, it was impermissible for the State Government to take any decision and direct confirmation of the said Government Resolution. It is further contended that it was incumbent upon the State Government to implement the decision taken on 29.10.2003 allowing the request of the petitioner for grant of pay scale and the designation.

09. On perusal of Section 320 of the Act of 1965, it is evident that the State Government is vested with the powers to review the order passed by itself either on its own motion or on application of any party interested and to pass such order as it deems fit. It has been provided that no order shall be varied or reversed or no sanction or approval reviewed unless notice has been given to the parties interested to appear and be heard. The contention of the petitioner, that issuance of the Government Resolution setting aside the earlier order dated 29.10.2003, without extending an opportunity of hearing to the petitioner is bad and issuance of such

Government Resolution for varying the decision of the State Government is not within contemplation of Section 320 of the Act of 1965, is *prima facie* acceptable. The fact, however, remains that the State Government has adopted the procedure subsequently, extended opportunity of hearing to the petitioner and re-considered its decision, also cannot be lost sight of.

10. During the pendency of the petition, the matter was taken up for consideration by the State Government and merits of the contentions have been examined. The petitioner also is justified in contending that it was impermissible for the State Government to deal with the Government Resolution and confirm the same during the pendency of writ petition before this Court. Since the matter was under consideration of the High Court, propriety required that the State Government should have moved the High Court and sought leave of the Court to re-consider the issue. It does appear that the respondent - State moved civil application bearing no. 05652 of 2011 to this Court, requesting to vacate the stay to the execution and operation of the Government Resolution dated 16th July 2005 passed earlier in the writ petition in view of the decision taken by the State Government. The Court while disposing of the civil application, has observed that '*when the writ petition was pending in this court, without seeking appropriate permission from this court, the State Government had no authority to re-hear the entire*

matter and confirm the order, which is subject matter of challenge in the writ petition.' The High Court, as such, refused to vacate the interim order passed in the writ petition.

11. It has been pointed out that, in fact, it is the petitioner who has moved the State Government by tendering an application on 23.08.2007, requesting the State to implement the order passed by the Hon'ble Minister of State for Urban Development on 29.10.2003 and to grant revised pay scale. It was also communicated by the petitioner to the State Government, that in the event of failure, he would be constrained to file contempt application. Considering the request made by the petitioner, it appears that the State Government has taken up the matter for consideration.

12. At this stage, since the writ petition is pending for consideration since 2006, it is desirable to consider the aspects highlighted by the State Government in the order dated 07.05.2008. It is one of the reasons for refusing to accord approval to the earlier decision of the year 2003, that according to the State Government, the post claimed by the petitioner was not admissible in "C" class Municipal Council. Shahada Municipal Council prior to 2001 census was awarded "C" class and as per the census figures of 2001, the Council became eligible for "B" class. It is, thus, contended that there is no post of Assistant Town Planner in the prescribed pay scale

admissible for "C" class Municipal Council. The date on which the proposal was moved by the Municipal Council and the request was made by the petitioner for grant of pay scale, there was no post in the said pay scale and of Class-II grade admissible in the Municipal Council. It is also further recorded in the order, that the initial appointment of the petitioner on 01.04.1993 is not legal since the said post of Building Inspector was not sanctioned. Reference is also made to the subsequent resolution adopted by the Municipal Council which is prejudicial to the interest of the petitioner.

13. Even if assuming that the contention of the State Government, that the post of Assistant Town Planner having pay scale claimed by the petitioner is not admissible in "C" class Municipal Council on the date of submission of proposal, it is a matter of record that Shahada Municipal Council came to be converted in "B" class on subsequent date. It also may not be controverted that the post of Assistant Town Planner in the prescribed pay scale is admissible for "B" class Municipal Council. The petitioner does possess the necessary qualification required for the said post. It was open for the respondent - State and the department to consider the claim of the petitioner after the post became admissible for the Municipal Council. If at all the concerned department or the State Government requires fresh proposal from the Municipal Council, same could have been called. The claim of the petitioner could

not have been totally disregarded.

14. It is also required to be taken into account that the petitioner is litigating since long. He is in employment since 1988 and even as per the admitted position, the post claimed by the petitioner in the prescribed pay scale would be admissible on conversion of Shahada Municipal Council in "B" class. In this view of the matter, we deem it appropriate to direct the State Government to re-consider the claim of the petitioner for the post of Assistant Town Planner in the prescribed pay scale.

15. In the result, the writ petition is partly allowed.

We direct respondent no.02 - Director of Municipal Administration to re-consider the claim of the petitioner for the post of Assistant Town Planner in the prescribed pay scale from the date on which the post becomes admissible for Shahada Municipal Council. The Director of Municipal Administration shall re-consider the claim of the petitioner and pass appropriate orders. If deem necessary, the Director of Municipal Administration shall call proposal from the Municipal Council and take appropriate decision. The resolution adopted by the State Government as well as the order passed by the Hon'ble Minister of State for Urban Development on 07.05.2008 shall not be an impediment for re-considering the claim of the petitioner. The claim

of the petitioner shall be considered in accordance with the prescribed norms considering his qualification, experience and other relevant aspects. Appropriate decision in the matter shall be taken by the Director of Municipal Administration after extending an opportunity of hearing to the petitioner, as expeditiously as possible, preferable within a period of four months from today.

16. Rule made absolute to the extent as specified above. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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