

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

WRIT PETITION NO. 5108 OF 2005

Pramod S/o Kalicharan Khobragade,
Age : 46 Years, Occu. : Sr. Stenographer,
AMC, R/o Aurangabad Municipal
Corporation, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
2. The Principal Secretary,
The Ministry of Urban Development,
Mantralaya, Mumbai,
3. The Commissioner,
Municipal Corporation,
Aurangabad.
4. Sri H. R. Baheti,
Age : 47, Occu. : Lower Grade
Stenographer, AMC, R/o- Municipal
Corporation, Aurangabad. .. Respondents

Shri Rajendra S. Deshmukh, Advocate for the Petitioner.
Shri R. V. Dasalkar, A.G.P. for Respondent Nos. 1 and 2.
Shri Deelip Bankar Patil, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 10TH AUGUST, 2017.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioner assails the order of the Government rescinding the resolution passed by the Standing Committee allowing the appeal of the petitioner.

2. Mr. Deshmukh, the learned counsel submits that, the petitioner was imposed penalty of treating the suspension period as earned leave and also bringing the petitioner on the basic pay. The petitioner assailed the said order before the Standing Committee U/Sec. 56(4) of the Bombay Provincial Municipal Corporation Act (now the Maharashtra Municipal Corporation Act) (for short "Said Act"). The appeal of the petitioner was allowed and resolution came to be passed by the Standing committee on 03.10.1997 allowing the appeal and setting aside the punishment. The learned counsel further submits that, after seven years the Commissioner, Municipal Corporation, Aurangabad moved the Government for rescinding the said resolution. The Government on 15.03.2005 rescinded the resolution dated 03.10.1997. This Court admitted the writ petition and stayed the order of the Government. The petitioner stood retired on attaining age of superannuation on 30.06.2017. According to the learned counsel, the impugned order of the Government is without adhering to the principles of natural justice. No notice was issued to the petitioner before taking such decision by the Government. The order of the Government is

prejudicial to the petitioner. The appeal of the petitioner was allowed by the Standing Committee and the order of the Standing Committee by way of resolution was sought to be set aside, the Government was expected to hear the petitioner. The learned counsel submits that, the order is bad in law.

3. Mr. Bankar Patil, the learned counsel for the respondent No. 3/Municipal Corporation submits that, the charges against the petitioner were proved. Considering all these aspects and to maintain discipline, the Commissioner had forwarded the proposal to the Government to rescind the resolution of the Standing Committee setting aside punishment imposed upon the petitioner.

4. The learned Assistant Government Pleader submits that, it was in public interest to rescind the said resolution. The powers have been validly exercised by the Government.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is a matter of record that, the petitioner was punished with penalty of treating the suspension period as earned leave and bringing the petitioner on basic pay. The said punishment was challenged by the petitioner by filing an appeal before the

Standing Committee U/Sec. 56(4) of the said Act. The said appeal was allowed by the Standing Committee and resolution to that effect was passed on 03.10.1997. The said resolution, it appears, was also implemented as the same was in force till the order is passed by the Government on 15.03.2005.

7. The Commissioner for the first time, on or about 30th December, 2004 moved the Government for rescinding the resolution of the Standing Committee dated 03.10.1997. The said resolution was in fact an order of the Standing Committee setting aside the punishment imposed upon the petitioner. The Government while rescinding the said resolution did not even issue notice to the petitioner. Almost after about eight years of the petitioner's appeal being allowed, the Government set aside the order of the Standing Committee that too without following principles of natural justice. The cardinal and fundamental principles of natural justice were transgressed.

8. The said order of the Government was stayed by this Court while admitting the writ petition.

9. Considering aforesaid aspects of the matter, the impugned order passed by the Government is quashed and set aside. If the Government desires to reconsider the resolution of the Standing Committee dated 03.10.1997 thereby setting aside the

punishment imposed upon the petitioner, then the Government shall take decision upon the validity of the said resolution only upon hearing the petitioner. In that case contentions of respective parties are kept open.

Rule accordingly is made absolute in above terms. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 17