

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

WRIT PETITION NO. 5961 OF 2016

Shirish s/o. Deodas Ramteke .. Petitioner
Age. 56 years, Occ. Service,
R/o. C-17, Akruti Enclave,
Khadkeshwar, Aurangabad,
Dist. Aurangabad.

Versus

1. The Chief Minister & .. Respondents
Minister for Urban Development
Department,
State of Maharashtra,
Mantralaya, Mumbai – 32.
2. The State of Maharashtra
through the Secretary (II)
Department of Urban Development,
Mantralaya, Fort, Mumbai – 32.
3. The Aurangabad Municipal Corporation,
Aurangabad, through its Commissioner,
Aurangabad.

Mr.B.L. Sagar-Killarikar, Advocate for the petitioner.
Mr.P.S. Patil, AGP for respondent/State.
Mr.S.B. Deshpande, Advocate for respondent No.3.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 23.11.2017

ORAL JUDGMENT [PER : S.V. GANGAPURWALA,J.] :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. The petitioner assails the order dated 28.04.2016 passed by respondent No.1, thereby setting aside order of the Standing Committee in favour of the petitioner.

3. The departmental inquiry was initiated against the petitioner and one Mr. Dattatray Anand Giri. The disciplinary authority upon receipt of inquiry report, held both of them guilty and imposed major punishment of stoppage of increments, withholding of further promotions and recovery. The petitioner preferred appeal before the Standing Committee. The Standing Committee allowed the appeal of the petitioner so also of Mr. Giri. Said Mr. Giri had retired. He filed petition before this Court

bearing Writ Petition No. 4146 of 2014 seeking directions against the respondents to pay full pension and other retiral benefits in the light of decision of the Standing Committee. This Court allowed the said writ petition, directing the respondent to sanction his proposal and pay his full pension and other retiral benefits.

4. In case of present petitioner, the Corporation on 24.04.2015 moved under section 451 of the Maharashtra Municipal Corporations Act to the Government. Under the impugned order, the Government allowed the said application and set aside the order of the Standing Committee.

5. Mr. Killarikar, learned advocate for the petitioner submits that a common inquiry was initiated against the petitioner and Mr. Giri. Punishment imposed was also same by the disciplinary authority. Both of them preferred appeals before the Standing Committee. The Standing Committee allowed the appeals. After the

appeal was allowed by the Standing Committee, the then Commissioner accepted the order of the Standing Committee and directed to proceed further as per order of the Standing Committee. A noting to that effect has also been made by the then Commissioner. After the new Commissioner came and four years after the Standing Committee's order was passed, he moved under 451 of the Maharashtra Municipal Corporation Act. Said proceeding was not maintainable after such a long period. Even if no period of limitation is provided, three years is the reasonable period. Learned counsel submitted that the petitioner could not have been treated differently than other delinquents. Even as per section 128 of the Maharashtra Provincial Municipal Corporation Act, the amount is to be recovered from the Contractor, but the Corporation did not take such steps. The charges were proved to be false as against petitioner by the Standing Committee. In spite of these aspects, respondent No.1 passed the impugned order. In-fact, the impugned order tantamounts to contempt of order of Division Bench of this Court in

Writ Petition No. 4146 of 2014 dated 08.05.2015. In the said judgment, this Court has observed that if action is to be taken against resolution, same ought to have been at-least within three years. The Corporation cannot treat the employees differently. According to the learned advocate, the order of the Government is bereft of any reason. On that count also it is required to be set aside.

6. Mr. Deshpande, learned advocate for respondent No.3 submits that departmental inquiry proceeding was initiated against the petitioner as per the charge-sheet. The inquiry officer upon conclusion of the inquiry, found the charges levelled against the petitioner to be partially proved and recommended various penalties. The Chief Auditor was directed to calculate the loss and he calculated it to the tune of Rs.11,06,993/-. Accordingly, by order dated 28.03.2008, it is directed to recover the amount from his salary. The Standing Committee allowed the appeal under resolution No.225

dated 15.04.2011. However, though the appeal was allowed in the year 2011, the petitioner did not take any step for implementation of it and it is only on 02.08.2014, the petitioner filed application requesting to give him annual increments. While processing said application, it was opined that the order passed by the Standing Committee is contrary to the provisions of section 56(4) of the Maharashtra Municipal Corporation Act and on that basis it was decided to send resolution under the provisions of section 451 of the Maharashtra Municipal Corporation Act to the State. The delay was caused as the petitioner himself had not approached the Corporation earlier for the benefits. The petitioner cannot place its reliance on the judgment of this Court in the case of Mr. Giri as the same is distinguishable on facts. The loss caused to the Corporation is to be recovered from the petitioner.

7. Learned AGP also supports the impugned order.

8. It is a matter of record that common departmental inquiry was initiated against the petitioner and Mr.Giri on similar charges. The Inquiry Officer in his report held charges to be partially proved. The punishment was proposed against the petitioner. The petitioner filed an appeal before the Standing Committee. The Standing Committee allowed the appeal under resolution No.225 dated 15.04.2011.

9. The said decision of the Standing Committee was accepted by the then Commissioner and noting to that effect has also been made by him. In the meantime, Mr. Giri retired and his benefits were withheld. He had filed petition in this Court bearing Writ Petition No.4146 of 2014. This Court allowed the said writ petition. The basis of the said writ petition was that in case of present petitioner, Corporation has accepted decision of the standing committee and though similarly situated, he is being discriminated and the benefits are not being released. This Court allowed the said writ

petition giving reference of the case of present petitioner. The Division Bench of this Court in the said judgment had observed that if the Corporation had to file proceedings under section 451 of the Maharashtra Municipal Corporation Act, it ought to have been done at least within three years. It is also not disputed that the judgment of this Court in Writ Petition No. 4146 of 2014 in case of Mr.Giri has been accepted by the Corporation and the same is not assailed by the Corporation before the Apex Court.

10. Be that as it may, in the present matter, the Corporation had accepted the decision of the Standing Committee and noting to that effect is made by the Commissioner, which is at page No.44-A, subsequently after the transfer of the said Commissioner, new Commissioner has taken another view and took the decision to forward it under 451 of the Maharashtra Municipal Corporation Act, that too after four years of the order of the Standing Committee. The delinquent against whom

same charges were levelled and common inquiry has been conducted, cannot be treated differently. The decision has already been taken by the Corporation to implement and accept the order of the Standing Committee. Moreover, no steps are taken by the Corporation for three years as has been observed by the Division Bench of this Court in Writ Petition No. 4146 of 2014.

11. Apart from the aforesaid, perusal of the impugned order passed by respondent No.1, it is manifest that the said order is bereft of any reason. No reasons are given for not accepting the resolution of the Standing Committee. When the resolution is not accepted, some reasons ought to have been given more particularly when statutory appeal provided by the Statute was filed by the petitioner and the same was allowed. There are absolutely no reasons, much less any discussions of any grounds upon which respondent No.1 came to the conclusion to set aside the resolution of the Standing Committee. Said order also suffers from lack of reasons. On that

count also it cannot be sustained.

12. Considering the aforesaid, the writ petition is allowed. The order dated 28.04.2016 [Exh."C"] and order dated 11.08.2016 [Exh."E"] are quashed and set aside. Rule made absolute accordingly. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]