

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7117 OF 2015

Shri. Bhimrao Ambaji Chaudhari	}	Petitioner
versus		
The Pimpri Chinchwad Municipal Corporation and Ors.	} } }	Respondents

Mr. Vasant D. Raut for the petitioner.

Mr. G. H. Keluskar for respondent nos. 1
and 2.

Mr. Bhushan V. Samant-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
DATED :- NOVEMBER 20, 2017**

P.C. :-

1. The petitioner claims that his case is identical to the other employees in whose case this court had passed an order. It is conceded that the petitioner before us was appointed in the services of the Pimpri Chinchwad Municipal Corporation. He was appointed against a sanctioned post by an order dated 14th September, 1990. This appointment was on temporary basis, but the second respondent, by an order dated 3rd April, 1991, confirmed the appointment. Then, the further order dated 20th August, 1994, recognising the post, in which the petitioner was appointed as Civil Engineering Assistant, was passed. Then, In-

service Assured Progression Scheme came to be made applicable on account of the Government Resolution dated 20th July, 2001. That is applicable to such persons to whom a promotional post cannot be offered or there is no promotional avenue. There was a condition imposed of clearing an examination, but since the petitioner had completed 45 years of age, he was exempted from that condition.

2. Then, the petitioner relies upon the orders passed from 10th April, 2013 to 31st December, 2013 granting promotion to the employees, but the petitioner could not be considered for such promotion.

3. In these circumstances, the petitioner was continuously representing and seeking benefits of the above scheme, since he has completed the qualifying service of more than 12 years.

4. The petitioner and six other employees made such representations and it is common ground that such representations of the other employees have been considered favourably. The affidavit filed by the Pimpri Chinchwad Municipal Corporation from page 52 to 56 of the paper book does not dispute a single averment in the petition and particularly the factual statements.

5. By the rejoinder affidavit filed at page 65 of the paper book, the petitioner points out as to how these benefits accrue to him and that they should be granted. Though the petitioner belongs to Scheduled Tribe category and his claim has been forwarded to the competent scrutiny committee for scrutiny and verification in terms of the applicable law on 15th May, 2013, that committee is still to pass its final orders. It does not mean that the petitioner's case cannot be considered and favourably.

6. On the earlier occasion, this court called upon the Municipal Corporation to clarify as to why the petitioner is being not considered for the benefits. An affidavit is filed in compliance with the court's query and at pages 134 and 135 of the paper book, in parar 2, the affidavit states as under:-

“2. I say that the Petitioner applied on 9.10.2017 for getting Assured Progressive Scheme for the post of “Junior Engineer” from the deemed date of completion of 12 years service by the Petitioner on the post of the “Civil Engineer Assistant”. Hereto annexed and marked as **Exhibit “1”** is a copy of the said application. I further say that the office of the Municipal Corporation scrutinized the Application made by the Petitioner. He was eligible for getting promotional benefit as prayed. But as per Government of Maharashtra Resolution he has not submitted caste validity certificate, inspite that repeated request made by the Corporation. I further say that the Petitioner till today not submitted his caste validity certificate as required by the rules. Hence, he is not entitled in view of government decision dated 01.7.2011. In the said government decision/explanation clearly stated that for the purpose giving benefit of 12 years service caste validity certificate is necessary. Hereto annexed and marked as **Exhibit “2”** is a copy of the Government Decision along with explanation given by the Government of Maharashtra. I

further say that the Municipal Corporation given benefit to the other employees as per abovesaid government decision, because they are completing all requirements as per guidelines.”

7. With the assistance of Mr. Keluskar, we have perused Exhibit - 1 to this affidavit as also the clarification, which has been issued by the Government Resolution dated 1st July, 2011. We do not find that the petitioner is to be blamed for the pendency of the proceedings and in any event, the clarification says that it is advisable to obtain the caste validity certificate from such persons/employees like the petitioner, who have been appointed against a reserved post. To our mind, somebody who is working from 1990 has not been granted any promotional benefits. The petitioner has served the Pimpri Chinchwad Municipal Corporation for the past 27 years satisfactorily. If no promotional avenues are available to be offered, then, it is not the fault of the petitioner.

8. In these circumstances, we direct that on or before 31st March, 2018, the petitioner's case be considered for grant of the above benefits on par with other employees and if he is found to be eligible, the benefits be extended to him. The benefits shall be extended on the condition that in the event the competent scrutiny committee invalidates his claim as belonging to Scheduled Tribe, then, apart from forfeiting his right to continue

in the employment, the petitioner shall also be obliged to return the monetary benefits which he has obtained in terms of the higher pay scale, which is applicable to the promotional post. Since this condition is imposed by the order passed by this court, we have no doubt in our mind that in the event the claim is invalidated, in addition to the contempt proceedings and for breach of this order, the petitioner shall also be liable to all consequences under the Maharashtra Act 23 of 2001. If the amount is not returned by the petitioner, then, it will be open for the Municipal Corporation to recover it in accordance with the law.

9. With the aforesaid directions, the writ petition is disposed off. No costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)