

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12900 OF 2016

Shri Rajendra Babugao Pangal
and Another

..Petitioners

Vs.

Mira Bhayandar Municipal Corporation
and Another

..Respondents

Mr. R. S. APte, Senior Counsel i/b Mr. Ashutosh R. Gole, for
the Petitioners.

Mr. Mayuresh Lagu i/b Mr. N. R. Bubna, for the Respondent
No.1.

Ms. Sushma Bhende, AGP, for Respondent No.2.

CORAM :- **S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

DATE :- **MARCH 1, 2017.**

P. C.:

In this Petition, the two Petitioners while
challenging the impugned order dated 23rd June, 2016 have
submitted that in paragraph 8 of this Writ Petition, they have
urged that they completed 45 years of their age on 1st April,
2016 and 8th February, 2016 respectively. They are not

liable to clear the said examination and that is why the impugned order is illegal and invalid. In any event, the Petitioners have been deprived of their increments without any hearing or without a reasoned order duly communicated and addressed to them. Their representations on the point project these two grievances.

2 Having heard both sides and perusing the Writ Petition and its Annexures so also the affidavits placed on the record, we are of the opinion that the Writ Petition can be disposed off with the direction to the Commissioner of Mira Bhayandar Municipal Corporation to grant a post decisional hearing to the Petitioners in which they would be able to point out that there is no requirement to take and pass the examination styled as the inter departmental test / examinations under the service regulations. The Petitioners were duly qualified to be appointed as Junior Engineers and were appointed as such regularly in the year 2004. Hence, there was no need to deprive them of the increments as done in the impugned order.

3 We express no opinion on the rival contentions particularly on the requirement of taking and passing examination but direct that the Municipal Commissioner shall consider all the contentions and based on the ground in this Writ Petition and pass a fresh reasoned order within a period of eight weeks from the date of receipt of a copy of this direction. The Municipal Commissioner shall not be influenced by any earlier observation or finding. He must allow the Petitioners to raise all contentions in regard to legality and validity of the requirement to pass the examination. The Writ Petition stands disposed off with the above directions.

4 Needless therefore to clarify that the increments as withdrawn by the impugned order shall not be taken away nor shall the impugned order will have effect till the decision as directed above is rendered by the Municipal Commissioner and for a period of eight weeks thereafter in the event that decision is adverse to the Petitioners.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)