

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.833 of 2012.

Dr Ninad S. Gaikwad Petitioner
V/s.
Mumbai Municipal Corporation & Ors Respondents.

Mr Narendra V. Bandiwadkar for the Petitioner.

Mr A.A. Kumbhakoni, Senior Counsel a/with Mr H.C.Pimple for
Respondent Nos. 1 and 2 – B.M.C.

Mr Anukul Seth i/by Mr V.M. Thorat for Respondent No. 3.

Mr S.R.Nargolkar for Respondent No.4.

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

DATE : 10th January, 2017.

P.C. :

1. By this petition under Article 226 of the Constitution of India, the Petitioner seeks quashing and setting aside of a communication styled by him as an order i.e. dated 7th February, 2012. The Petitioner claims that he is removed from the post of the Head of the Department, E.N.T, T.N. Medical College, Mumbai. The Petitioner prays for issuance of a writ of mandamus or any other appropriate writ, order direction directing the

Respondents to place him as an Head of the Department (HOD) and with all consequential benefits.

2. We have heard Mr Bandiwadekar appearing for the Petitioner. We have also heard Mr Kumbhakoni, learned Senior Counsel appearing on behalf of Respondent Nos. 1 and 2.

3. We have perused the writ petition and all the annexures thereto, so also the speaking order passed in pursuance of the directions of this Court.

4. From this entire record, the petitioner's Counsel was unable to point out that there exists a post on the establishment of the Mumbai Municipal Corporation and styled as Head of the Department. It is stated that this is a designation and those Senior Professors working in the Department concerned, are designated as such, based on the administrative and other exigencies. There is nothing like a substantive appointment as Head of the Department (HOD). This substantive appointment is that of a professor and in the hierarchy it is a promotional post. Admittedly, the petitioner is appointed and serving as a professor. None is disturbing that status and appointment. The Petitioner desire that he should be designated as a Head of the Department but in the absence of any legal right and which can be termed as established or pre-existing a writ of mandamus as claimed cannot be issued. All the more in the light of

the clarification in paragraph 3 and 4 of the affidavit of the then Director in the employment of the municipal services. This affidavit filed in this Court, in reply to the writ petition by them on 16th July, 2012 in the above paragraphs clarifies this position.

5. The petitioner may dispute this by filing the rejoinder but on perusal of that rejoinder as well we do not see how the Petitioner can be granted any relief. The Petitioner is conceding the position in paragraph 4 and 5 of his rejoinder. He admits that he has never claimed that there is a post of Head of the Department but it is his submission that his status/designation given to the Senior most officer working in that particular Department. It is in these circumstances and when neither the Petitioner's posting nor his placement in the seniority list or otherwise is disturbed that we are unable to agree with Mr Bandiwadekar, when he submits that the reliefs as claimed be granted.

6. As a result of the above discussion, the writ petition fails and it is dismissed.

[B.P. COLABAWALLA, J.]

[S.C. DHARMADHIKARI, J.]