IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8035 OF 2018

Yuvraj Dhondu Bhadane : Petitioner.
Versus
State of Maharashtra
Urban Development Department
Mantralaya, Mumbai and ors. : Respondents.

Mr. A V Anturkar, Senior Advocate i/by Mr. M S Topkar for the Petitioner.
Mr. B V Samant, AGP, for the Respondent No.1/State.
Mr. S M Gorwadkar, Senior Advocate i/by Mr. S M Kamble for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.
DATE : 23rd AUGUST 2018

P.C.

1 The above Writ Petition has been filed questioning the suspension order dated 09/07/2018 issued by the Respondent No.2 i.e. the Commissioner of the Ulhasnagar Municipal Corporation. The said order disclosed that a decision has taken to suspend the Petitioner pending the Departmental Enquiry which is decided to be held against him.

2 The Petitioner herein claims to be working as an Assistant Municipal Corporation with the Ulhasnagar Municipal Corporation. It seems that the Petitioner was on leave between 15/05/2018 and 30/05/2018. The chamber of the Petitioner, it seems, was inspected on 30/05/2018, 31/05/2018 and 02/06/2018 in which inspection it seems files of some other

departments of the Municipal Corporation, cheques which were to be deposited with the Tax Department of the Municipal Corporation, seals of the other departments with which the Petitioner did not have any concern, unsigned identity cards issued by the Urban Development Department, Government of Maharashtra and blank signed bills of the contractors of the Education Department were found. The suspension of the Petitioner and the decision to conduct Departmental Enquiry is therefore founded on the aforesaid fact.

3 The suspension of the Petitioner is challenged on the ground that the Petitioner could have been suspended only by the Appointing Authority which in the case of the Petitioner is the Corporation, and secondly that initiation of the departmental proceedings could also be only by the Appointing Authority. The aforesaid points were the thrust of the submissions of the learned Senior Counsel Shri A V Anturkar appearing for the Petitioner.

4 On behalf of the Ulhasnagar Municipal Corporation the learned Senior Counsel Shri S M Gorwadkar would submit that the reference in the impugned order to Section 56 (2)(f) of the Maharashtra Municipal Corporation Act is an inadvertent mistake and the said mistake has been corrected by the corrigendum dated 01/08/2018. By the said corrigendum a reference is now made to Section 56(1) of the said Act. It is on the touchstone of the said

provision that the action of the Respondent No.2 of suspending the Petitioner would therefore have to be tested.

5 The said Section 56(1) up to Proviso (b) and Subsection (5) along with Explanation are reproduced herein under for the sake of ready reference :-

> **56 Imposition of penalties on municipal officers and servants.**
>
> (1) A competent authority may subject to the provisions of this Act impose any of the penalties specified in sub-section (2) on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent:
>
> Provided that—
>
> (a) no municipal officer or servant 1[holding the post equivalent to or higher in rank than the post of the Assistant Commissioner] shall be dismissed by the Commissioner without the previous approval of the 3[Corporation];
>
> [(b) any officer or servant whether appointed by the Corporation or any other competent authority, except Transport Manager being a Government officer on deputation, may be suspended by the Commissioner pending an order of the Corporation and when the officer so suspended is the Transport Manager or an officer appointed under section 45, such suspension with reasons therefor, shall, forthwith be reported by the Commissioner to the Corporation, and such suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension :
>
> (emphasis supplied)

Provided that, such suspension of an officer or servant pending inquiry into the allegation against such officer or servant shall not be deemed to be a penalty.]

(c) the Commissioner may impose any of the penalties specified in clauses (a), (b) 1[*] 2 [(e) and (f)] of sub-section (2) on any officer appointed by the Corporation 3[other than the Transport Manager if he is a Government officer on deputation];

(d) the Municipal Chief Auditor and the Municipal Secretary may impose any of the penalties specified in clauses (a), (b),(c),(d) and (e) of sub-section (2) on any officer or servant immediately subordinate to them 4[* * * * *] subject to a right of appeal to the Standing Committee and the Standing Committee may impose any other penalty on any such officer or servant and may also impose any penalty on any other officer or servant immediately subordinate to the Municipal Chief Auditor or the Municipal Secretary;

5[Explanation.—For the purposes of this section and section 53, a post shall be deemed to be a rank equivalent to another post if the minimum and maximum pay in the pay scale of both the posts are same. A post shall be deemed to be of a rank higher than another post, if the minimum pay in pay scale of former is at least equivalent to the later, but the maximum is higher than the later. In respect of the pay structure, a post shall be deemed to be of a rank equivalent to, or higher than another post, if the grade pay in pay structure of the former is equivalent to or higher than the later, respectively.].

(2) The penalties which may be imposed under this section are the following, namely :—

(a) censure ;

(b) with-holding of increments or promotion including stoppage at an efficiency bar ;

(c) reduction to a lower post or time-scale, or to a lower

stage in a time-scale ;

(d) fine ;

(e) recovery from salary of the whole or part of any pecuniary loss caused to the Corporation ;

(f) suspension ;

(g) removal from municipal service which does not disqualify from future employment ;

(h) dismissal from municipal service which ordinarily disqualifies from future employment.

(3) No officer or servant shall be reduced to a lower post or removed or dismissed from service under this section unless he has been given a reasonable opportunity of showing cause against such reduction, removal or dismissal :

Provided that this sub-section shall not apply—

(a) where a person is reduced, removed or dismissed on the ground of conduct which has led to his conviction on a criminal charge ; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing by such authority, it is reasonably practicable to give that person an opportunity of showing cause.

(4) Subject to the provisions of clause (d) of the proviso to sub-section (1), any municipal officer or servant who is reduced, removed or dismissed by any authority other than the Corporation may, within one month of the communication to him of the order of reduction, removal or dismissal, appeal to the authority immediately superior to the authority which imposed the penalty and the appellate authority may, after obtaining the remarks of the authority which imposed the penalty, either confirm the order passed or substitute for it such order as it considers just, including an order for the imposition of some lesser penalty, and effect shall forthwith be

given to any order passed by the appellate authority which shall be conclusive :

Provided that for the purposes of this sub-section the Standing Committee shall be deemed to be the authority immediately superior to the Commissioner and the Corporation shall be deemed to be the authority immediately superior to the Standing Committee.

(5) With reference to officers and servants appointed under Chapter XX the provisions of this section shall apply as if for the word " Commissioner " the words "Transport Manager" and for the words "Standing Committee" the words "Transport Committee" had been substituted.

Explanation.—(1) For the purposes of this section a competent authority is the authority which under the provisions of this Act is competent to make the appointment to the post held by the particular municipal officer or servant.

(6) The monthly salary which would ordinarily be admissible to a municipal officer or servant on the date immediately preceding the date of the order imposing a penalty shall be deemed to be his salary for the purposes of the proviso to sub-section (1)."

A reading of Section 56 therefore discloses that the same confers the power on the Competent Authority to impose penalties specified in sub-section (2) if the Competent Authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent. By Proviso (b) of the said Section 56(1) it is provided that any officer or servant whether appointed by the Corporation or any other competent authority, except Transport Manager being a Government officer on deputation, may be suspended by the Commissioner pending an

order of the Corporation. By the second Proviso it is provided that such suspension would not be deemed to be a penalty within the meaning of subsection (2) of Section 56. Hence the aforesaid provisions therefore disclose that there is a power vested in the Commissioner to suspend pending an order of the Corporation.

6 Now coming to subsection (5) and the Explanation thereto. The said Explanation exposits that for the purpose of the said Section the competent authority is the authority which under the provisions of this Act is competent to make the appointment. Hence it would have to be seen as to who is the appointing authority of the Petitioner, who claims to be an Assistant Municipal Commissioner. The answer to the same is found in Section 53 of the said Act. Subsection (1) of Section 53 of the said Act reads thus :-

> **53. Power of appointment in whom to vest.**
>
> (1) The power of appointing municipal officers, whether temporary or permanent, 1[to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner] shall vest in the Corporation:
>
> Provided that temporary appointments for loan works 1[to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner]; may be made for a period of not more than six months by the Commissioner with the previous sanction of the Standing Committee on condition that every such appointment shall forthwith be reported by the Commissioner to the Corporation and no such appointment shall be renewed on the expiry of the said period of six months without the previous sanction of the Corporation."

Hence the power to appoint a municipal officer to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner shall be vested in the Corporation, meaning thereby that it is the General Body of the Corporation which can be said to be an appointing authority of the Petitioner. However, clause (b) of Section 56 of the said Act can be said to be carving out an exception in so far as the suspension of an officer whose appointing authority is the Corporation is concerned.

7 As indicated above, by the said proviso (b) of Section 56 of the said Act an officer can be suspended by the Commissioner pending an order of the Corporation. In the instant case, the Petitioner has been suspended by the Respondent No.2 which suspension as the impugned order discloses is pending the enquiry. In our view, therefore, there is no substance in the first contention of the Petitioner.

8 Now coming to the second contention of the Petitioner viz. Whether the departmental proceeding can be initiated by the Respondent No.2. No doubt a reading of the impugned order discloses that a decision has already been taken to proceed departmentally against the Petitioner, however, having regard to the scheme encompassed in the said Act, it is only the Corporation which is the appointing authority which can take a decision as

regards holding departmentally against the Petitioner or not. Hence as mandated by Section 56(1) of the said Act and Proviso (b) thereof the Commissioner would have to place the matter before the Corporation within the time stipulated by the said Proviso (b). The same would therefore be notwithstanding what has been stated in the impugned order dated 09/07/2018. It would only be on the Corporation taking a decision to proceed against the Petitioner departmentally that the departmental proceedings can thereafter commence against the Petitioner.

9 The aforesaid procedure would undoubtedly apply if the Petitioner belongs to the cadre of Assistant Commissioner of the Municipal Corporation. It would be otherwise if the Petitioner does not belong to the said cadre and belongs to any other cadre where the appointing authority is the Respondent No.2. It is however not necessary for us at this stage to go into the said aspect. We therefore do not find any merit in the second contention of the learned Senior Counsel for the Petitioner.

10 The reliance placed on the judgment of a Division Bench of this Court reported in ***2003(4) Mh. LJ 423*** in the matter of ***Prabhakar Shrirang Jagdale v/s. Kalyan Dombivli Municipal Corporation and another*** is misplaced. In our view, the said judgment would not further the case of the Petitioner as in the said case the issue before the Division Bench was whether

the penalty could be imposed by the authority other than the appointing authority and it is on the said premise that the matter proceeded before the Division Bench.

11 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J] **[R.M.SAVANT, J]**

Laxmikant
Gopal
Chandan

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by Laxmikant
Gopal Chandan
Date: 2018.08.28
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