

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

WRIT PETITION NO.13365 OF 2017

Municipal Corporation of Gr. Mumbai & Ors. ... Petitioners
Versus
Subhash Sonu Bhosale ... Respondent

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Mr. Vinod Mahadik for the petitioners.
Mr. J.R. Parad, Head Supervisor, Solid Waste Management
Department is present.

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CORAM : M. S. KARNIK, J.

DATE : 11th APRIL, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. By this petition filed under Articles 226 and 227 of the Constitution of India, the judgment and order dated 12.12.2014 passed by the Industrial Court, Mumbai is under challenge.
3. The Petition is filed by the Municipal Corporation of Greater Mumbai being aggrieved by the direction of the Industrial Court granting seniority to the respondent with his promotion to the post of Junior Overseer w.e.f. 03.11.2011 and further to pay him the difference of wages, allowances by fixation of his pay and other consequential benefits. Learned counsel for the petitioner submits that respondent was working as a Mukadam with the

petitioner Corporation w.e.f. 28.10.1997 and he became permanent employee w.e.f. 07.12.2004. On 03.09.2010 the Corporation invited applications from labour and those working on allied posts of Solid Waste Management for 170 vacant posts by circulating Circular dated 03.09.2010. The appointment were to be made by way of selection to the post of Junior Overseer. When the list of selected candidates which is at Exhibit C-24 to the complaint was prepared by the Corporation, the name of the respondent was not included for the reason that a departmental enquiry was pending against him. It is the stand of the respondent that had it not been for the departmental enquiry, as per the Rules and Regulation of the Corporation, he would have been appointed as Junior Overseer from 03.11.2011. The petitioners do not controvert this position. Their contention is that as a result of the pending departmental proceeding, the respondent was ineligible to be considered for the selection.

4. Learned counsel for the petitioners assailing the order of the Tribunal submits that the Industrial Court has wrongly understood 'selection' to the post of Junior Overseer as promotion and applied principles applicable for promotion. He would submit that the Industrial Court was not justified in granting the benefit of seniority to the respondent in the post of Junior Overseer w.e.f.

03.11.2011. According to learned counsel, admittedly there was a departmental enquiry pending against the respondent as on the date of selection. In these circumstances, the respondent was not entitled to be appointed as such w.e.f. 03.11.2011.

5. Learned counsel on instructions of the officer present in the court would further submit that immediately after the respondent was exonerated of the charges levelled against him, he was appointed as Overseer. He would further submit that in such circumstances, the Industrial Court was not justified in granting promotion to the respondent as Junior Overseer w.e.f 03.11.2011 as the departmental enquiry was pending. Learned counsel invites my attention to the operative order passed by the Tribunal to contend that the Tribunal has confused itself between selection and promotion.

6. I have heard the learned counsel for the petitioners. There is no dispute that the respondent was working as Mukadam and is a permanent employee of the petitioner Corporation. The Corporation invited applications from the labour and those working in allied post in Solid Waste Management Department for 170 vacant posts by vide circular dated 30.09.2010 by way of selection. There is no dispute that but for the pending departmental enquiry, the respondent would have been

appointed w.e.f. 03.11.2011 as a Junior Overseer. The departmental enquiry resulted in the respondent's exoneration. It may be that the Industrial Court has referred to the selection of the respondent as a promotion. This will hardly make a difference in the peculiar facts of the present case. The respondent being a permanent employee, though selected and found eligible was deprived of and not appointed to the said post, which selection was within the department itself, only as a result of pending departmental enquiry. The respondent later on came to be exonerated. In these circumstances if the Industrial Court has granted the relief to the respondent as a Overseer w.e.f. 03.11.2011 from the date on which he was otherwise eligible, I do not find the view taken by the Industrial Court so perverse so as to warrant interference in the exercise of the writ jurisdiction. I therefore, do not find any merit in the petition.

7. Learned counsel for the petitioners on instructions submitted that after the respondent was exonerated of the charges levelled against him, he has since been appointed as Junior Overseer.

8. Writ Petition is, therefore dismissed.

(M. S. KARNIK, J.)