

Pradnya Bhogale

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

WRIT PETITION NO. 11268 OF 2019

Malgonda Balgonda Nagonda and Ors. ... Petitioners

Vs.

Mira Bhayandar Municipal Corporation and Anr. ... Respondents

Shri A.V. Bukhari, Senior Advocate a/w Burhan Bukhari I/b. Fauzia T. Bukhari for petitioners.

Shri N.R. Bubna for respondent Nos.1 and 2.

**CORAM : RANJIT MORE &
M. S. KARNIK, JJ.**

DATE : 8th NOVEMBER, 2019.

P. C. :

Heard Shri Bukhari, the learned Senior Counsel for the petitioners and Shri N.R. Bubna, the learned counsel for the respondent Nos.1 and 2.

2. In Writ Petition No.9444 of 2019, on 20th September 2019, after hearing both sides, we passed the following order :-

“2. The petitioners were appointed on the establishment of respondent - Corporation as Fireman, Leading Fireman and Driver Operator in the year 2010. They are appointed in pursuance of advertisement issued by the respondent -Corporation dated 26th August, 2009. The qualifications for the post on which the petitioners were appointed, were two fold, namely, (i) SSC passed and (ii) must have undergone Firefighting Training, either from the State Fire fighting Training Centre or any Government recognized Training Centre.

3. The petitioners have undergone the above mentioned training from Parmanand Firefighting and Safety Management College, Aurangabad. Subsequent to the appointment of the petitioners, the respondent raised an issue whether the course undergone by the petitioners has been sanctioned by Maharashtra State Board of Technical Education ("MSBTE"), and when the respondent learnt that this course undergone by the petitioners was not recognized by the Government, respondent no.1 terminated the services of the petitioners.

4. Eventually, the petitioners approached the Standing Committee challenging the order of termination of their services by way of statutory appeals under Section 56(4) of the Maharashtra Municipal Corporations Act, 1949 ("the Act, 1949"). The appeals were disposed of by order dated 14th June, 2017. The Standing Committee of the Corporation allowed the appeals of the petitioners and quashed and set aside the petitioners termination order. The petitioners, however, were directed to complete the firefighting training from the Government recognized institution within a period of one year.

5. The contention of Mr. Bukhari is that firstly the petitioners have taken firefighting training from an institution recognized by the Government. He submits that the stipulation in the advertisement in pursuance of which petitioners were appointed to the various posts, did not contemplate that the institution imparting firefighting training must have approval of MSBTE. Mr. Bukhari, in the alternative, also submits that the petitioners are ready and willing to comply with the order of the Standing Committee stipulating a condition that the petitioners should complete the firefighting training, and accordingly the petitioners will complete the requisite training within the stipulated period.

6. Mr. Bubna, the learned Counsel for the respondents, on instructions, submits that respondent no.2 – Commissioner has approached the Government seeking some guidance whether the training obtained by the petitioners from Parmanand Fire Engineering and Safety Management College, Aurangabad, is a Government recognized course or not. He submits, that once reply is received from the Government, appropriate action will be taken.

7. We fail to understand the approach of respondent no.2 – Municipal Commissioner towards the orders of the Standing Committee. Section 56 of the Act, 1949, speaks about imposition of penalty on Municipal Officers and servants and Section 56(4) deals with the appeal, against the penalty imposed on Municipal Officers or servants, to the authority immediately superior to the authority which imposed the penalty. As stated above, the Standing Committee admittedly allowed the petitioners appeal and quashed and set aside the petitioners termination order. The General Body of respondent no.1, thereafter, approved above decision of the Standing Committee in the General Body Meeting dated 5th September, 2018.

8. In our considered view, respondent no.2 – Municipal Commissioner, is duty bound to comply with the order of the Standing Committee passed in exercise of the statutory powers under Section 56(4). Respondent no.2, however, has not filed Affidavit-in-Reply.

9. We direct respondent no.2 to file Affidavit-in-Reply with advance copy to the other side, within a week from today, showing cause as to why he has not complied with the statutory orders of the Standing Committee and the directions of the General Body.

10. Stand over to 1st October, 2019.

11. To be heard along with Writ Petition No.9447 of 2019 and Writ Petition (ST) No.10074 of 2019.”

3. In pursuance of the directions contained in paragraph 9 of the said order, one Balaji Namdeorao Khatgaonkar, the respondent No.2-Commissioner of the respondent No.1-Corporation has filed an affidavit-in-reply, dated 30th September 2019 in the said Writ Petition No.9444 of 2019. In paragraph 8 of the said affidavit, the following averments are made :

“8. I say that municipal administration will implement the order passed by Standing Committee dated 14/06/2017. I say that Petitioners may be directed to complete “Certificate Course in Fire Safety Training” from “National Institute of Fire Safety Engineering, Nagpur”, within period of one year as directed by Standing Committee and as stated by Petitioners in this Hon’ble Court, I say that those Petitioners, who complete the course within period of one year, as directed by Standing Committee, will be reinstated and regularized on their respective posts in Fire and Engineering Department of Respondent No.1 Corporation and will be granted all service benefits from the date of receipt of intimation of completion of aforesaid course.”

4. Shri Bukhari, the learned Senior Counsel for the petitioners makes a reference to the statement made by him on the last date of hearing, of the Writ Petition No.9444 of 2019, which we have recorded in paragraph 5 of the order dated 20th September 2019, to the effect that the

petitioners are ready and willing to comply with the order of the Standing Committee stipulating a condition that the petitioners should complete the firefighting training and states that accordingly the petitioners are completing the requisite training within the stipulated period.

5. In paragraph 8 of the affidavit-in-reply filed by the respondent No.2 in Writ Petition No.9444 of 2019, which is reproduced above, it is stated that in the event the petitioners complete the course namely Certificate Course in Fire Safety Training from National Institute of Fire Safety Engineering, Nagpur within period of one year, as directed by Standing Committee, they would be reinstated and regularized on their respective posts in Fire and Engineering Department of Respondent No.1 Corporation and will be granted all service benefits from the date of receipt of intimation of completion of aforesaid course.

6. Shri Bubna, the counsel for the respondent Nos.1 and 2, at this stage, stated while hearing of the Writ Petition No.9444 of 2019 that the petitioners must complete the said training and thereafter, they will be reinstated. This would, however, be contrary to the resolution of the Standing Committee dated 10th February 2017 and 14th June 2017 of the respondent No.1-Corporation, under which the petitioners were directed to be reinstated with further directions to them to complete the course namely Certificate Course in Fire Safety Training from National Institute of Fire Safety Engineering, Nagpur within one year.

7. It is pertinent to note that the resolution of the Standing Committee dated 14th June 2017 has been confirmed by the General Body of the respondent No.1 on 5.9.2018. It is further pertinent to note that though initially, it was the stand of the respondent No.1 that they have approached the Government seeking some guidance, however, it is an admitted fact that the Commissioner has not taken any action as per the provisions of Section 451 of the Maharashtra Municipal Corporation Act, 1949.

8. In the light of the above, we pass the following order :

(i) The petition is allowed in terms of prayer clause (a), subject to the conditions that :

(a) The petitioners shall complete the course, namely, Certificate Course in Fire Safety Training from National Institute of Fire Safety Engineering, Nagpur, within a period of one year from the date of their reinstatement.

(b) The respondent Nos.1 and 2 shall sponsor the petitioners for the said training and render necessary assistance to the petitioners to enable the petitioners to complete the said course.

(c) In the event, the petitioners fail to complete the said course within the stipulated period, the respondent Nos.1 and 2 are at liberty to take appropriate action against them.

(d) The petition accordingly stands disposed of.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]