

Pradnya Bhogale

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

WRIT PETITION NO. 12020 OF 2019

Dinesh Kailas Kangude	... Petitioner
Vs.	
Mira Bhayander Municipal Corporation and Anr.	... Respondents

Mr. N.V. Bandiwadekar for the petitioner.
Mr. N.R. Bubna for the respondents.

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

DATE : 22nd NOVEMBER, 2019.

P. C. :

. Heard Mr. Bandiwadekar, learned counsel for the petitioner and Mr. Bubna, learned counsel for the respondents.

2. The date of birth of the petitioner is 02.07.1980. The petitioner admittedly is Project Affected Person and therefore, entitled for preference in the matter of recruitment in the public service. On 07.08.1997 when the petitioner came to know that a post of Clerk is vacant with the respondent No.1 and there was reservation for Project Affected Person, the petitioner made an application for the said post. There is no dispute that the petitioner was educationally qualified for the post of Clerk. In the light of above by the order dated 21.04.1998 the petitioner was appointed

to the post of the Clerk with direction to resume duty within 15 days. The petitioner accordingly joined the duty on 02.05.1998. After the petitioner joined the service, the Municipal Council opened his Service Book where the birth date was shown as 02.07.1980.

3. On the complaint of one Mr. Rajiv Deshpande departmental enquiry was initiated against the petitioner. The sole charge against the petitioner is that his date of birth being 02.07.1980, on the date of appointment, he did not complete age of majority i.e. 18 years which is minimum age required for the post of Clerk. In Departmental Enquiry it was held that charge against the petitioner was proved and in pursuance of this impugned notice dated 14.11.2019 is issued by respondent No.2 directing the petitioner to show cause as to why he should not be removed from the service.

4. Mr. Bandiwadekar, learned counsel for the petitioner submits that at the time of his initial appointment, he furnished all documents which were placed for perusal of respondent No.1. The petitioner has not suppressed anything. At the time of appointment to the post of Clerk, the petitioner was 17 years 10 months of age. He also submits that the petitioner thereafter was continued in the service till today and he has completed approximately 21 years in service. The punishment imposed on the petitioner is very harsh. He also relied upon the decision of the Division Bench of this Court at Aurangabad on 09.06.2015 in Writ Petition No.583 of 2015 in support of his submissions.

5. Mr. Bubna, learned counsel for the respondents does not dispute the facts mentioned above. He also does not dispute the observations of the Division Bench of this Court at Aurangabad in Writ Petition No.583 of 2015. He however submits that the petitioner was not eligible to be appointed as he did not complete age of majority at the time of initial appointment.

6. Similar issue as raised in the present petition was also involved in Writ Petition No.583 of 2015. In that case also the petitioner therein at the time of appointment was minor. The petitioner in that case was appointed on 06.09.2000. He attained the majority on 06.09.2002 and he was continued in service for a period of 15 years. The Division Bench has taken note of this fact and held that since the petitioner was allowed to continue for the period of 15 years, no action need be taken against him. However, any monetary benefit derived by the petitioner during the period of minority shall be returned to the management.

7. Reverting back to the facts of the present case, the petitioner was two months short of age to attain the majority. Thereafter the petitioner was continued in service for a period of 21 years. Therefore, in our opinion, it would be very harsh to terminate the services of the petitioner on that count. In this view of the matter, we are inclined to allow

the petition as we find that there is no fault on the part of the petitioner in as much as at the time of appointment he submitted all the documents including School Leaving Certificate. In our opinion, though the petitioner was appointed when he was minor, in the facts of the present case, the petitioner can not be held responsible for this. We are, therefore, inclined to take similar view as taken by the Division Bench of this Court at Aurangabad in Writ Petition No.583 of 2015 and protect the services of the petitioner.

8. Writ Petition is accordingly disposed of by passing the following order :-

ORDER

(1) The impugned show cause notice dated 14.11.2019 issued by the Municipal Commissioner of respondent No.1 asking the petitioner to show cause as to why his services should not be terminated is quashed and set aside. Consequently, the departmental enquiry against the petitioner is also quashed and set aside.

(2) The monetary benefits derived by the petitioner during the period of minority from 02.05.1998 to 01.07.1998 shall be returned to the respondent No.1.

(3) Respondent No.1 shall inform the monetary benefits which are derived by the petitioner during the period of minority and the petitioner within a period of 15 days shall return the same to the respondent No.1.

(4) The service of the petitioner shall be counted from 02.07.1998.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]