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

WRIT PETITION NO. 966 OF 2017

Rajaram Babaji Patil.

...Petitioner.

Versus

The Municipal Commissioner and Others. ..Respondents.

Mr. A. V. Anturkar, Senior Advocate with Vidya Khatu and Sachin A. Mhatre for the Petitioner.

Mr. A. V. Bukhari, Senior Advocate with Mr. B. V. Bukhari and Triupti Puranik for the respondent-MCGM.

Coram : RANJIT MORE &
M. S. KARNIK, JJ.

Date : **November 26, 2019.**

P. C. :

1. Heard. By filing this writ petition under Article 226 of Constitution of India, the Petitioner has sought following reliefs :

“(b) this Hon'ble Court be pleased to issue a writ of mandamus or any other proper writ, order or a direction under Article 226 of Constitution of India, to Respondent No. 3 for passing order for fixing the consequential retrospective promotions deemed date for the post of Assistant Engineer from 22.03.2012 for the Petitioner as confirmed by Respondent No. 3 in the Exhibit-F of this petition and it is prayed accordingly.

(c) this Hon'ble Court be pleased to issue a writ of mandamus or any other proper writ, order or a direction under Article 226 of Constitution of India, to Respondent No. 3 for re-conducting the examination by allowing the Petitioner for writing the exam with other candidates who have already given the exam which was held on 24.09.2019 for the post of Transfer of Assistant Engineer (Civil) to Building Proposal (City, Western Suburb, Easter Suburb, MHADA special Cell) and vigilance and it is prayed accordingly.

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or any other proper writ, order or a direction under Article 226 of Constitution of India, directing and ordering restrain the Respondents from declaring the result for the exam held on 24.09.2016 for the post of Transfer of Assistant Engineer (Civil) to Building Proposal (City, Western Suburb, Easter Suburb, MHADA special Cell) and vigilance and it is prayed accordingly."

2. The main grievance of the Petitioner is that the order of the Additional Municipal Commissioner [which is at page no.51 of the petition] under which the Petitioner was given deemed promotion with retrospective effect, has not been implemented.

3. Mr. Bukhari, learned senior counsel appearing on behalf of the Respondents submitted that the Petitioner has been promoted to the post of Assistant Engineer by the order dated 21st February 2019 with effect from 10th December 2012. He submitted that thus the deemed date of promotion is given to the Petitioner and the order of the Additional Municipal Commissioner [which is at page 51] stands complied with and therefore relief sought by prayer clause (b) would not survive for consideration.

4. Mr. Anturkar, the learned senior counsel appearing

on behalf of the Petitioner does not dispute above statements of Mr. Bhukari. In that view of the matter, the relief claimed in prayer clause (b) will not survive for consideration.

5. So far as the reliefs claimed in prayer clauses (c) and (d), are concerned, it is the contention of the Petitioner that he was eligible to appear for the examination which was taken for posting in A-Group departments within the period of two years from the deemed date of promotion. Mr. Anturkar, the learned senior counsel for the Petitioner submitted that in the year 2016, the Petitioner was allowed to appear for the examination, however, when it was found that the Petitioner was not eligible he was not allowed to complete the said examination. Mr Anturkar submitted that had the Petitioner been allowed to complete the said examination, he would have passed the same.

. Be that as it may, Mr. Anturkar submitted that in the year 2018, the Petitioner has passed the examination conducted for the purpose of posting in A-Group departments and, therefore, the Petitioner should be appointed in A-Group departments immediately.

6. Mr. Bukhari, the learned senior counsel for the Respondent-Corporation submitted that there were 22 vacancies in A-Group Departments and the Petitioner's number in merit was 34, therefore he could not be appointed to the post in A-Group departments. Mr. Bukhari further makes a statement that in the event vacancy occurs in A-Group departments within the period of two years, the candidates who have been successful in the examination would be appointed according to their merit. The statement accepted as an undertaking to this Court.

7. Mr. Anturkar's argument that the Petitioner is deemed to have appeared and passed the examination which is conducted for the purpose of posting in A-Group department in the year 2016 cannot be accepted inasmuch as as a matter of fact for whatever reason in the year 2016 the Petitioner did not complete the examination.

8. In the light of above, we are not inclined to grant prayer clauses (c) and (d).

9. Mr. Anturkar lastly argued that since the deemed

date of promotion is given to the Petitioner, his pay fixation ought to have been done accordingly. He also contended that the Petitioner is entitled for the arrears of salary and his pay fixation should be done accordingly. However, on perusal of the prayers sought in the petition we find that the Petitioner has not challenged the order of the Additional Municipal Commissioner regarding the arrears and pay fixation. We are, therefore, unable to consider the Petitioner's prayer in this regard. The Petitioner is at liberty to challenge the order of the Additional Municipal Commissioner by filing fresh proceeding if so advised.

10. Subject to above, writ petition is dismissed.

11. In view of the disposal of the main writ petition, all pending notices of motion and chamber summons taken out in this writ petition do not survive and the same are accordingly disposed of.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]