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

WRIT PETITION NO. 2860 OF 2016

Medical Professor's Welfare Association ...Petitioner

vs.

The Municipal Corporation of Greater
Mumbai & ors. ...Respondents

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Ms. Anjali Purav Yajurvedi for petitioner.

Mr. Anil Sakhare, Senior Counsel a/w. Mr. Suresh Pakale a/w. Ms.
Trupti Puranik for BMC.

Mr. G.W. Mattos, AGP a/w. Mr. S.B. Gore, AGP for respondent
No.4.

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CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 7 FEBRUARY 2020

P.C.:-

This Petition is filed by the Medical Professors Welfare Association of medical teachers employed in Medical College of Municipal Corporation of Greater Mumbai. The Petition was filed in October 2016 wherein following prayers were made :

- "a) *This Hon'ble Court be pleased to issue a Writ of Certiorari or in a Writ in the nature of Certiorari or any other appropriate Writ, Order direction, calling for records of the Respondents No.1 and 2 pertaining to the stagnation of doctors in the cadre of Assistant Professor for 7 years to 19 years due to faculty Time*

Bound promotion scheme applied by the Respondents and after considering its legality, validity & propriety be pleased to quash and set aside the same.

- b) This Hon'ble Court be pleased to issue a Writ of Mandamus or in a Writ in the nature of Mandamus or in any Writ, Order or Direction, directing the Respondents No.1 to 3 to forthwith withdraw and cancel the existing Time Bound promotion scheme and grant promotions to eligible doctors to higher cadre on functional basis.*
- d) That to direct the Respondents No.1 to 3 to grant promotions to eligible doctors on functional basis and not on vacancy basis.*
- e) That to direct the Respondents No.1 to 3 to grant/fix the salary of teaching doctors who have completed 8 years of continuous service in MCGM in grade pay of Rs.9000/- in pay Band IV.*
- f) That to direct the Respondents to give promotional designations to eligible doctors when they complete 5 years continuous service in cadre of Asst. Professor and 4 years continuous service in cadre of Associate Professor.*

2. The Petition was essentially filed with a grievance that the Respondent – Corporation is not redressing the issue of stagnation of doctors in teaching cadre due to refusal to implement the DACP Scheme. The Petitioners in the Petition had referred the scheme framed by the Central Government and had called upon the Court to issue necessary directions to the Respondent – Corporation to

have a scheme in line of scheme framed by the Central Government.

3. When the Petition came up on Board on 6 October 2017, Division Bench passed the following order :

“P.C:

- 1. Heard both sides. We have perused the affidavit of the Municipal Corporation.*
- 2. At more places than one this affidavit says that if the Government of Maharashtra has introduced or is implementing any Policy/scheme so as to grant an incentive (Dynamic Assured Career Progression Scheme) in the event promotional avenues are not available the Municipal Corporation of Greater Mumbai (“MCGM” for short) will frame and implement it. It means that even if the Assistant Professors in the Municipal Corporation of Greater Mumbai's Medical Institutions are stagnating, the MCGM will await the State's Policy decision. Let the Additional Municipal Commissioner (Health) of the Mumbai Municipal Corporation frame a scheme and implement it for its own Assistant Professors in its Medical Institutions because it is nobody's case that the MCGM has to wait for the State's decision in law. It is then for the Court to ensure as to how the State Government, in the absence of any express prohibition, obstructs framing and implementation of such a scheme. We would expect the State Government to play a positive role and not obstruct the implementation of such scheme when it is not shown to us that the State Government is not implementing it for its own staff and personnel in its Hospitals. Even if the State Government has not done anything on this line till date, we do not think that it should thwart or obstruct any such measures if contemplated by the Municipal Corporation of Greater Mumbai. If not anything, the State should take a clue and*

consider granting such incentives and benefits for that would promote efficiency and then encourage those who are working honestly and diligently to put in extra hours or exert themselves more for better results.

3. Stand over to 6-11-2017”

Thereafter, the Petition came on Board on 13 June 2018 and following order was passed :

“P.C.

In pursuance to the directions issued by this Court, the Commissioner and the Director, Municipal Corporation of Greater Mumbai are present in person.

2 The learned Senior Counsel Mr. Sakhare as also the Commissioner have assured to the Court that, as directed by this Court vide order dated 06/10/2017, the scheme as per the order dated 06/10/2017 shall be framed and shall be filed before this Court along with an affidavit which will be sworn by the Commissioner.

3 It is not in dispute that the order dated 06/10/2017 has attained finality, since the challenge to it before the Supreme Court, at the instance of Municipal Corporation, has failed.

4 Let the scheme along with an affidavit as aforesaid be submitted before the next date of hearing. List the matter on 04/07/2018.”

The statement of the learned Senior Advocate for the Respondent – Corporation was recorded that the issue will be examined and the scheme will be framed. Thereafter, the scheme has been framed by the Respondent – Corporation on 29 August 2019.

4. By an amendment to the Petition, this scheme dated 29 August 2019 is challenged.

5. We have heard learned counsel for the parties.

6. The Petitioners submit that the contention that the Scheme dated 29 August 2019 does not address the issue of stagnation due to non availability of the vacancy, was accepted by this Court in the earlier order. It was submitted that the Scheme dated 29 August 2019 now framed has various lacunas and creates discrimination between the various categories. It is also contended that the scheme framed by the Respondent – Corporation need not be in the exact term as the Central Government, but the principles laid down in the scheme framed by the Central Government ought to have been given deference and adopted. The Petitioner sought to demonstrate that as to how working of the scheme would create anomalies and how it will affect the members of the Petitioner's association.

7. Learned Senior Advocate for the Respondent- Corporation has placed before us the report of the Committee and submitted that after considering all aspects and studying the schemes framed by the State Government and Central Government, Municipal Corporation had adopted the Scheme. He submitted that this Court never directed the Respondent – Corporation to adopt the Central Government Scheme, in toto. Learned Senior Advocate for Respondent – Corporation submitted that as regard working of

the Scheme, the challenge by the Petitioner is in abstract and should not be entertained by this Court.

8. We have perused the interim orders passed in this Petition. It is clear that this Court had not issued a direction to the Respondent – Corporation to adopt the Scheme of the Central Government. The Court had voiced certain expectations for removal of stagnation of the doctors working as a teaching faculty. However, this issue was left to the Municipal Corporation to address.

9. From the report of the Committee and the affidavit-in-reply, we find that the Respondent – Corporation has applied its mind to the issue. An Inquiry Committee was appointed to study the issue, which consisted of a Director and two Deputy Municipal Commissioners. The Committee looked into existing schemes of the Corporation, scheme of the Central Government and other relevant material. Various meetings were held with the officers. The suggestions of the Petitioners were heard. Comparative statements were drawn. The issue of parity was examined in detailed. Comparative statements in respect of the Central Government, State Government and other States, were also considered. Revenue Capital Budget and estimates of the actual expenditure was done. Thereafter, the Committee recommended

as under :

“11. Final Recommendations :

After all deliberations the Committee is of opinion that :

The Committee feels that the MCGM status promotion policy and DACP has few benefits of their own and hence cannot be compared on the same platform as has different pros and cons of implementing different policies. The entry point as Assistant Professor in MCGM is different from that of Central Government medical institutions. However Committee also felt that the period of dynamic promotion of assistant professor to associate professor is longer in MCGM as compared to many states in India as well as Central Govt. Therefore, to bring parity, committee felt that there is need to reduce the initial periods of dynamic promotion for assistant professor. It is advisable not to change the base structure of Assistant, Associate Professor as well as Professor as it would cause injustice to already promoted faculty. Considering this, we have established this new policy, which would definitely benefit of Assistant Professors.”

After this report was received, a Scheme of Accelerated promotion was drawn.

10. Merely because the Petitioner has a different opinion as to how the scheme should be framed, it alone cannot be a ground to set aside the Scheme. According to Respondent – Corporation, within well defined parameters, the issue of stagnating has been addressed. Therefore, we are not inclined to entertain an omnibus challenge by the Association to the Scheme.

11. As regards the contention regarding working of the Scheme, the anomalies and discrimination is concerned, it can be considered, if raised by an individual when denied the benefits under the Scheme. Learned Senior Advocate for the Corporation is right in contending that on hypothetical grounds the Scheme cannot be set aside. Each case would be different.

12. No interference is warranted. Keeping the challenge to the Scheme dated 29 August 2019 open in the cases of individual challenges, we dispose of this Petition.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)

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Rane

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Diksha Rane
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