

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.981 OF 2020

Mr. Arun Sonaji Tayade .. Petitioner.
v/s.

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

WITH

WRIT PETITION NO.9714 OF 2019

Municipal Corporation of Greater
Mumbai & Others .. Petitioners.
v/s.

Mr. Bhimrao Bajirao Pawar
(since deceased) through LR
1(a) Smt. Meena Bhimrao Pawar
& Others .. Respondents.

WITH

INTERIM APPLICATION NO.19252 OF 2022

IN

WRIT PETITION NO.9714 OF 2019

Municipal Corporation of Greater
Mumbai .. Applicant

In the matter between
Municipal Corporation of Greater
Mumbai & Others .. Petitioners.
v/s.

Mr. Bhimrao Bajirao Pawar
(since deceased) through LR
1(a) Smt. Meena Bhimrao Pawar
& Others .. Respondents.

Mr. Ravindra Vishnu Laxmi Sankpal i/b. R. V. Sankpal & Associates, for
the Petitioner in W. P. No.981 of 2020 and for the Respondents in W. P.
No. 9714 of 2019.

Mr. Suresh Pakale with Mr. Santosh Parad, for the Respondent-MCGM in
W.P. No. 981 of 2020 and for the Petitioner in W. P. No.9714 of 2019.

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Mr. Siddhesh A. Pilankar, for Respondent No.1 in W. P No.9714 of 2019.
Mr. Trishul Humbe, Officer from Hydrolic Engineer Dept. 'N' Ward present.

CORAM:- M. S. KARNIK,J.
DATE :- 18th OCTOBER, 2022.

P.C.:

These Petitions challenge the same judgment and order of the Industrial Court and hence, disposed of by a common order.

2 Writ Petition No.9714 of 2019 is filed by the Municipal Corporation of Greater Mumbai (for short 'MCGM'), challenging the judgment and order of the Industrial Court dated 11th April, 2019. The Petitioner in Writ Petition No.981 of 2020 – Arun S. Tayade has filed the Petition, challenging the same judgment and order of the Industrial Court.

3 The facts of the case in brief are as under:-

- (a) On 3rd July, 2013, MCGM issued a circular to fill up the vacant post of Fitter Grade-I. The Complainant before the Industrial Court – Mr. Bhimrao B. Pawar applied for the post with necessary documents on 20th July, 2013.
- (b) As there was no response from the workers, MCGM issued another circular on 24th July, 2013. The written examination was conducted for the promotional post of Fitter Grade-I on 30th August, 2013. In the selection process, pursuant to the circular dated 24th July, 2013, Mr. Arun Tayade was selected. Mr. Bhimrao B. Pawar approached the Industrial Court by filing a complaint (ULP) No. 314 of 2014, alleging the unfair labour practice.
- (c) It was the grievance of Mr. Bhimrao B. Pawar before the Industrial

Court that having once applied pursuant to the circular dated 3rd July, 2013, he was under the impression that his candidature would be duly considered in the selection process pursuant to the issuance of the circular dated 24th July, 2013.

- (d) The Industrial Court for the detailed reasons recorded in the impugned order, observed that Bhimrao B. Pawar's candidature should have been considered by the MCGM and that, Bhimrao B. Pawar was entitled to stake his claim to the promotional post of Fitter Grade- I .
- (e) The Industrial Court found the action of MCGM in not considering the candidature of Bhimrao B. Pawar, contrary to law and directed that he be promoted as Fitter Grade-I.

4 Mr. Pakale, learned Counsel for the MCGM assails the order of the Industrial Court. He submitted that Shri Bhimrao B. Pawar had never applied pursuant to the circular dated 24th July, 2013 and that it was on the basis of the recommendation of the SC and ST Commission that the Industrial Court allowed the complaint and directed that Shri Bhimrao B. Pawar should be promoted as Fitter Grade-I. Mr. Pakale, learned Counsel submitted that Industrial Court has committed an error in directing the MCGM to promote Mr. Bhimrao B. Pawar. According to him, at the highest, what the Industrial Court could have done is to have issued directions to the MCGM for considering the candidature of Shri Bhimrao B. Pawar for promotion along with others. In the submission of Mr. Pakale, the Industrial Court has assumed the role of selection committee which is not within its domain.

5 Mr. Pilankar, learned Counsel for Respondent No.1- Shri Bhimrao B. Pawar, supported the order of the Industrial Court. It is

submitted by him that there was no necessity of making an application for the purpose of offering his candidature for promotion. In his submission, it was for the MCGM to consider the candidates who are eligible for promotion.

6 So far as Mr. Arun Tayade is concerned, Counsel submitted that, factually it is correct to state that the selection committee had recommended the case of the Mr. Arun Tayade for promotion. It is submitted by Shri Pakale that such a recommendation does not confer any rights on Mr. Arun Tayade to be promoted. In his submission, the Corporation has not taken a final decision on the candidature of Shri Arun Tayade, as according to the Corporation, Arun Tayade also did not fill up the application form and he was not part of the selection process.

7 It is pertinent to note that, after the Petition was filed by the MCGM, an unfortunate incident happened. Shri Bhimrao B. Pawar died on 26th April, 2021. Shri Bhimrao B. Pawar was never promoted to the post of Fitter Grade-I as the order passed by the Industrial Court was not complied with in view of the pending Petition and the statement made by learned Counsel for Mr. Bhimrao B. Tayade that the order of the Industrial Court will not be enforced till the Petition is heard for admission.

8 During the course of hearing, some suggestions were made in view of the unfortunate demise of Shri Bhimrao B. Pawar. Shri Bhimrao B. Pawar succeed before the Industrial Court. In my opinion, there is some justification in Shri Pakale, contending that the Industrial Court could have directed the selection committee of the MCGM to consider Shri Bhimrao B. Pawar's case for promotion where after it was

for the MCGM to process the matter further.

9 Learned Counsel for Mr. Arun Tayade submits on instructions that, in any case, though he is recommended by the selection committee, he will not stake a claim for the promotional post till the date of death of Bhimrao B. Pawar i.e. 26th April, 2021 at-least. Statement is accepted.

10 Obviously, the recommendation of the selection committee recommending the name of Mr. Arun Tayade will have to be taken to its logical conclusion by the MCGM in accordance with law. It is open for the MCGM to consider the recommendation of the selection committee in respect of Shri Arun Tayade in accordance with law and I am not expressing any opinion on the merits of the claim of Shri Arun Tayade. In the event, the decision of the MCGM is adverse to Shri Arun Tayade, it would be open for Mr. Arun Tayade to explore his remedies, by challenging the action of the MCGM in accordance with law.

11 Learned Counsel for Shri Bhimrao Pawar on instructions submitted that if Bhimrao's case is considered sympathetically now that he is no more, the legal heirs would not claim any arrears of salary in promotional post till his death. A request is made for notional promotion only for the purpose of calculating the terminal dues.

12 I have gone through the findings of the Industrial Court, which Shri Pakale, assails on merits. There is a substance in the submission of Mr. Pakale that Industrial Court could have directed the selection committee to consider Bhimrao Pawar's case for promotion instead of directing the MCGM to promote Shri Pawar.

13 Shri Pawar is no more, as he died during the pendency of

the Petition. In such circumstances, it would be equitable to consider the long service rendered by Shri Bhimrao Pawar as a workman in Class-IV category. Having succeeded before the Industrial Court and as the post of Fitter Grade-I was lying vacant till Bhimrao's death, I am inclined to consider sustaining the operative order of the Industrial Court but with a modification that Shri Bhimrao Pawar to stand notionally promoted as Fitter Grade-I only for the purpose of computing the terminal dues. The legal heirs of Bhimrao Pawar do not claim any arrears of the promotional post. Statement accepted.

14 So far as Mr. Arun Tayade is concerned, as observed above, it is for the Corporation to take decision on the recommendation of the selection committee in accordance with law.

15 A grievance not related to subject matter of these Petitions or the complaint of unfair labour practice was made before me by the learned Counsel on behalf of Bhimrao's legal heirs. It is regarding the covid compensation payable to the legal heir of Bhimrao Pawar. Shri Pakale, learned Counsel for the MCGM in all fairness, on instructions, submitted that subject to the heirs of Bhimrao Pawar completing the necessary procedural formalities, the aspect of payment of Covid compensation will be urgently looked into.

16 In the light of the above observations, both the Petitions are disposed of.

17 In view of the disposal of the Petitions itself, nothing survives in the Interim Application and the same is also disposed of.

(M.S.KARNIK, J.)