

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2884 OF 2021

PETITIONER: Dr. Ranjana W/o Ramkrishna Lade,
Aged about : 50 years, Occupation :
Service, R/o. 13, New Jagriti colony,
Gittikhadan, Katol Road, Nagpur.

V E R S U S

RESPONDENTS :

1. The State of Maharashtra,
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai - 32.
2. Nagpur Municipal Corporation,
through its Commissioner,
Mahanagar Palika Marg,
Civil Lines, Nagpur.
3. Ashok Bhimrao Patil,
Aged 56 years, Occu. Service
R/o. Chandramani Nagar, Nagpur.
4. Milind Kawdu Meshram,
Aged 51 years, Occu. Service
R/o. Telecom Nagar, Nagpur.
5. Prakash S/o Laxman Warade,
Aged 55 years, Occ. Service
R/o. NIT Layout, Trimurti Nagar,
Nagpur.
6. Vijay Charandas Humne
Aged 56 years, Occu. Service
R/o. Mhada Complex, Civil Lines,
Nagpur.

(3 to 6 added respondents/
intervene vide Court order
dtd. 23.09.21)
(Amended as per Court's
order dtd. 23.09.2021.)

Shri S. V. Manohar, Senior Counsel Assisted by Shri Y. N. Sambre,
Advocate for petitioner.

Shri A. M. Kadukar, Assistant Government Pleader for respondent No.1.

Shri J. B. Kasat, Advocate for respondent No.2.

Shri M. Anilkumar, Advocate for respondent Nos.3 to 6/Intervenors.

**CORAM: SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.**

JUDGMENT RESERVED ON : 24/11/2022
JUDGMENT PRONOUNCED ON : 06/12/2022

JUDGMENT : (PER SANDEEP K. SHINDE, J.)

1. **Rule.** Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel appearing for the parties.
3. This petition under Articles 226 and 227 of the Constitution of India challenges the implementation of Resolution No.116 dated 20/06/2015 passed by the General Body of the Nagpur Municipal Corporation AND questions the legality and validity of a combined seniority list of cadre consisting of Municipal Secretary / Octroi Superintendent / Tax Assessor and Collector / Special Desk Officer / C.A.F.O. / Statistician (Birth and Death) and Assistant Commissioner drawn, for the years 2017 and 2022 pursuant to Resolution No.116 passed by the General Body of the Nagpur Municipal Corporation and further, seeks its quashment.

Facts, essential for the decision of this petition, are as under :-

4. The petitioner is Municipal Statistical Officer (Birth and Death). In the year 1997, she was appointed as ECG Technician. In the year 2008, she was promoted as a Statistical Officer (Birth and Death). Whereafter, in the year 2012-2013, she was given additional charge as a Special Desk Officer and Transport Officer, and, additional charge of Deputy Municipal Commissioner from 28/12/2015 to January, 2022.

5. The City of Nagpur Corporation Act, 1948 was repealed by the City of Nagpur Corporation (Repeal) Act, 2001 and the Maharashtra Municipal Corporation Act, 1949 ("MMC Act", for short) came to be applied to the Areas of Nagpur Municipal Corporation, w.e.f. 21/08/2012.

6. Petitioner's case is that ;

(i) Before the repeal of the City of Nagpur Corporation Act, 1948, the recruitment and promotion of Municipal Officers was subject to Rules contained in Resolution No.31 dated 12/04/1976 ("Rules of 1976", for short).

(ii) In terms of said resolution, the post of Deputy Municipal Commissioner / Additional Deputy Municipal Commissioner is promotional post and its feeding cadre consists of six posts i.e. Municipal Secretary, Octroi Superintendent, Tax Assessor and Collector, Chief Accounts and Finance Officer, Special Desk Officer and Statistical Officer (Birth and Death) (hereinafter called as "feeding cadre"). Thus, officers holding the post in the feeding cadre were / are qualified to be appointed to the post of Deputy Municipal Commissioner / Additional Municipal Commissioner. As such, according to the petitioner, Rules of 1976, prescribe qualification for promotion to the Deputy Commissioner / Additional Municipal Commissioner.

(iii) The post of Assistant Commissioner / Ward Officer was not included in the said feeding cadre.

7. That, in exercise of powers under Section 409 (b) and other enabling provisions of the City of Nagpur Corporation Act, 1948, bye-laws, for recruitment and promotion of officers including, that of Assistant Commissioner, were framed and published in Gazette on 03/10/2001. These bye-laws were challenged by the Rashtriya Nagpur Corporation Employees

Association, before the Industrial Court in Complaint (ULP) No.462/2002. The challenge was founded on the ground that, the Certified Standing Orders under the Bombay Industrial and Relations Act, 1946 were applicable to service conditions of the employees of the Corporation and therefore, it was necessary for the Corporation to hold discussion and then finalize draft of Service Rules. The learned Member, Industrial Court, Nagpur vide order dated 30/07/2007, declared that the respondent-Corporation has committed unfair labour practice under Item 9 Schedule-IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU & PULP Act, 1971") and directed to desist from continuing the same. The operative part of the order reads as under :

"The respondent / Corporation is directed to not to act upon the Recruitment and Promotion Bye-laws in question, without following due process of law and principles of natural justice."

As such, according to the petitioner, as on date, no Rules are in force, regulating and/or governing promotion of Municipal Servants / Officers, except said Rules of 1976.

8. Inclusion of post of Assistant Commissioner / Ward Officer in the said feeding cadre.

9. That, on 11/08/2014, the Corporation published a notice to transact Subject No.179 in its General Body Meeting scheduled to be held on 19/08/2014. The aforesaid notice was seeking to delete the post of Statistical Officer (Birth and Death) from the said feeding cadre and to include the post of Assistant Commissioner and Ward officer, therein. This action on the part of Corporation was objected to, by the petitioner, as at the material time, she was a Statistical Officer. To redress grievance, she filed Writ Petition No.4684/2014, which was disposed of by granting liberty to the petitioner to address the issue upon accrual of cause of action in her favour. In any case, on 20/06/2015, the impugned Resolution No.116 was passed by the General Body of the Corporation, by which direct recruit Assistant Commissioners / Ward Officers were included in feeding cadre / promotional channel for the post of Additional Municipal Commissioner / Deputy Municipal Commissioner. In effect, said feeder cadre, as of now consist of seven posts.

10. Petitioner would plead, that even after the inclusion of the post of Assistant Commissioner in feeder cadre, Rules of 1976, alone would govern the mode of promotion to the post of Deputy Commissioner / Additional Commissioner and Corporation

admits this fact, for which support is drawn from Paragraph Nos.10 and 12 of reply filed by the Corporation in Writ Petition No.299/2016, which we reproduce as under :-

"10. It needs to be mentioned here that at present the recruitment rules framed by Corporation as per resolution dated 12.04.1976 are in force. As per the said resolution the post of Deputy Municipal Commissioner is a promotional post for which Municipal Secretary, Octroi Superintendent, Tax Assessor and Collector, Chief Accounts and Finance Officer, Special Desk Officer and Statistical Officer are eligible.

(emphasis supplied)

12. It is respectfully submitted that the respondent Corporation had created the posts of Assistant Commissioners/Ward Officers which were approved by the State Government on 20.11.2001. The draft bye laws were prepared and published on 03.10.2001 and they were subsequently published in official gazette on 23.11.2001. These bye laws were not approved by the General Body of the Corporation. After the House approves these bye laws then they are required to be forwarded to the State Government for its approval and till date no approval has been granted by the House or the State Government to these bye laws and hence the resolution dated 12.04.1976 is still in vogue."

Therefore, it is petitioner's case that in terms of avermetns in Paragraph Nos.10 and 12, Corporation admits two facts; one, that no approval has been granted to the Bye-laws prepared by the Corporation in the year 2001 and that Resolution No.31 dated 12/04/1976 would govern the recruitment and promotion of Municipal Officers of the Corporation.

11. Petitioner claims such a inclusion, in the feeding cadre, tantamounts and corresponds to, prescribing qualification to qualify the Assistant Commissioner, for promotion to the post of Deputy Commissioner. Nevertheless, until prescribed qualification is approved by the State, in terms of Rule 3 of Chapter-III, Schedule-D, Corporation could not have drawn common seniority list of the said feeding cadre now, consisting of seven posts as of 01/01/2017 updated on 01/01/2022. Petitioner claims, because the Corporation has illegally drawn the common seniority list of the said feeding cadre she has been displaced from the first position to Sr. No.11. Feeling aggrieved by the said seniority list, the petitioner has filed this petition.

12. Heard Shri Sunil Manohar, learned Senior Counsel for the petitioner, Shri J. B. Kasat, learned counsel for respondent

No.2 - Corporation, Shri A. M. Kadukar, learned AGP for respondent No.1 - State and Shri M. Anilkumar, learned counsel for respondent Nos.3 to 6 - Intervenors.

13. The questions for consideration are ;

(i) Which Rules govern and regulate promotion of Municipal Officers to the post of Deputy Commissioner / Additional Commissioner ; Whether Rules of 1976 or any other Rules.

(ii) Whether Resolution No.116 dated 20/06/2015, passed by the General Body, inter alia, including post of Assistant Commissioners / Ward Officers in the feeder cadre for promotional post of Deputy Commissioner / Additional Commissioner would be an Addition to the Rule in terms of Section 454 of the MMC Act.

(iii) Whether the Corporation's decision to include, the Assistant Commissioners in the existing feeder cadre tantamounts and corresponds to prescribing qualification, in terms of Rule 3 of Chapter-III of Schedule-D to the MMC Act and;

(iv) Whether Corporation was justified in law by drawing up a common final seniority list in feeder cadre by including post of Assistant Commissioner therein.

14. To appreciate the case of the petitioner, it would be advantageous to reproduce Section 2(58); Definition of term "Rules" ; Section 45 ; Section 453, Section 454, Section 456, and Chapter-III of Schedule-D to the MMC Act.

Section 2(58) : “rules” include rules in ²[Schedule D] and rules made under sections 454 and 456 ;

Section 45 :

45. Appointment of City Engineer, etc.

(1) The Corporation shall from time to time appoint fit persons to be City Engineer, Medical Officer of Health, ¹[* * *] and Municipal Secretary.

(2) The Corporation may from time to time with the approval of the ¹[State] Government create an appointment of Deputy Municipal Commissioner or an appointment of Assistant Municipal Commissioner or so many such appointments as it considers necessary, and may appoint a fit person or fit persons to such appointments.

(3) An officer appointed under this section shall have such qualifications as may be prescribed under the rules and shall receive such monthly salary and allowances as the Corporation may with the approval of the ¹[State] Government from time to time fix:

Provided that the salary of no officer shall be altered to his disadvantage during his period of office.

(4) Every appointment made under this section, excepting an appointment of Municipal Secretary, shall be subject to confirmation by the ¹[State] Government and any officer whose appointment the ¹[State] Government refuses to confirm shall be removed from office forthwith.

(5) On the occurrence of vacancy in any office specified in this section an appointment shall be made thereto by the Corporation within four months from the date on which the vacancy occurred or, in the event of the removal of an officer under sub-section (4) within thirty days of the receipt by the Corporation of the order of the ¹[State] Government.

(6) In default of an appointment being made by the Corporation under sub-section (5) the ¹[State] Government may appoint a fit person to fill the vacancy and such appointment shall for all purposes be deemed to have been made by the Corporation.

(7) Pending the settlement of an appointment under sub-section (1) or sub-section (5), the Corporation may appoint a person to fill the vacancy temporarily and may direct that the person so appointed shall receive such monthly salary and allowances not exceeding the maximum fixed under sub-section (3) for the time being as it thinks fit:

Provided that no such appointment shall extend beyond or be made after a lapse of six months from the date on which the vacancy occurs.

453. Rules in Schedule to be part of the Act.

The Rules in ¹[Schedule D] as amended from time to time shall be deemed to be part of this Act.

454. Alteration of and additions to Schedule.

The Corporation may add to the ¹[Schedule D] rules not inconsistent with the provisions of this Act (which expression shall in this section be deemed not to include the said Schedule) to provide for any matter dealt with or for any of the purposes specified in the said Schedule; and may, subject to the same limitations, amend, alter or annul any rule in the said Schedule :

Provided that if any rule regulating the punishment of an offence is altered or amended the punishment awarded under such altered or amended rule shall not exceed the maximum provided in section 468.

456. Power of ¹[State] Government to make rules.

(1) The ¹[State] Government may at any time require the Corporation to make rules under section 454 in respect of any purpose or matter specified in section 457;

(2) If the Corporation fails to comply with such requisition within such reasonable time as may be fixed by the ¹[State] Government, the ¹[State] Government may after previous publication made such rules and the rules so made shall, on final publication in the *Official Gazette*, have effect as if enacted in this Act.

CHAPTER III**METHOD OF APPOINTMENT OF CERTAIN MUNICIPAL OFFICERS
AND SERVANTS AND THEIR DUTIES AND POWERS***I. Method of appointment***"1. Manner of making appointment.**

Save in the case of temporary appointment made under sub-section (7) of section 45 and in the case of acting appointments made under section 58 no person shall be appointed to any of the posts the power of appointment to which vests in the Corporation unless he possesses the qualifications prescribed in this behalf under rule 3.

2. before making an appointment to any post referred to in rule 1 applications shall be invited for such post by advertisement in the local newspapers and the applications received shall be scrutinised by the Commissioner who shall submit to the Corporation, through a committee if so required by the Corporation a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post:

Provided that, if the Corporation is of the opinion that any officer in municipal service possessing the qualifications prescribed under rule 3 is a fit person to be appointed to the post, it may appoint such officer to the post without following the procedure prescribed in this rule.

3. Subject to the provisions of this Act, the Corporation shall from time to time prescribe the qualifications required for each post, the power of appointment to vest in the Corporation, with the approval of the ¹[State] Government, who may, in granting such approval make such modifications, in, or additions to the qualifications prescribed by the Corporation as it deems fit.

4. In the case of appointments made by any authority other than the Corporation no person shall be appointed except in a temporary or provisional capacity for a period not exceeding six months, unless he possess the qualifications specified in the regulations."

As also, it would be advantageous to reproduce Sections 453 and 454 of the MMC Act.

"453. Rules in Schedule to be part of the Act.

The rules in ¹[Schedule D] as amended from time to time shall be deemed to be part of this Act.

454. Alteration of and additions to Schedule.

The Corporation may add to the ¹[Schedule D] rules not inconsistent with the provisions of this Act (which expression shall in this section be deemed not to include the said Schedule) to provide for any matter dealt with or for any of the purposes specified in the said Schedule; and may subject to the same limitations, amend, alter or annul any rule in the said Schedule:

Provided that if any rule regulating the punishment of an offence is altered or amended the punishment awarded under such altered or amended rule shall not exceed the maximum provided in section 468."

15. The term "Rules" as defined in Section 2(58) includes, (i) Rules in Schedule-D; (ii) Rules made under Section 454 and (iii) Rules made under Section 456.

16. Section 453 of the MMC Act refers to Rules in Schedule-D and any alteration and addition thereto shall by fiction of law deemed to be part of the MMC Act.

17. The Rules in Chapter-III of Schedule-D prescribes the mode and manner of making appointment of Municipal Officers and Servants.

18. Chapter-III of Schedule-D consists of four Rules. Rule 1 empowers the Corporation to appoint a person to any of the post, to which power of appointment vests in it. However, appointment to any of such post shall not be made unless he possesses the qualification prescribed under Rule 3. Rule 3 empowers the Corporation "to prescribe qualification for each post which includes power to modify the existing qualification." Still, once qualifications are prescribed or modified, it calls for approval of the State Government. Whereas, Rule 2 lays down procedure or mode to appoint any person to post, power of appointment of which vests in Corporation.

19. In so far as the post of Deputy Municipal Commissioner is concerned, Section 45 empowers the Corporation to appoint a fit person as a Deputy Municipal Commissioner and other Municipal Officers. Further, Section 45(3) conveys that a person appointed as Municipal Officer shall have qualification as may be prescribed under the Rules. The term "Rules" as defined in Section 2(58) includes Rules in Schedule-D. Therefore, if a person is to be appointed to the post of Deputy Commissioner, Corporation shall prescribe a qualification for that post under Rule 3 of Chapter-III of Schedule-D or may add or alter the existing Rules. Having said that the factual position that emerges in this case is as under :-

(a) Rules framed and approved on 12/04/1976 vide Resolution No.31 by the General Body of the Corporation regulates appointment and promotion of person to the post of Deputy Municipal Commissioner / Additional Municipal Commissioner.

(b) In terms of these Rules, post of Deputy Municipal Commissioner could be filled in, either by promotion or nomination. Here, we are concerned with as to qualification, for being promoted to this post. The Rules of 1976, as translated read as under :-

ADMINISTRATIVE

Promotion Rules prepared by Municipal Corporation for implementing G.R. No. B.C.C. 1072-J dated 23.5.74 issued in respect of promotion to Backward Category Candidates.

(Approved as per Municipal Corporation Resolution No. 31 dated 2.4.76.

Sr. No.	Designation	Pay Scale	Whether the Government G.R. of promotion is applicable or not	Rules for recruitment or promotion
1	Dy. Municipal Commissioner, Additional Dy. Municipal Commissioner (3 posts) Old 3200-4625 New – 10650-15850	Old 1100-1700	The G.R. of promotion to reserved posts will not be applicable as there are only 3 posts	These posts will be filled from nearest lower cadre i.e. Municipal Secretary, P.L.V.A., Tax Collector and Assessor, Statistical officer (Birth Death) on the basis of seniority and eligibility. There is no condition of service period and educational qualification for this post. Because the nearest lower cadre officers will be experience.
2	Municipal Secretary, Chief Accounts and Finance Officer, Octroi Superintendent	600-1150 -" -" 1200-4605 8000-13500	The G.R. of promotion to reserved posts will not be applicable as there are only 5 posts	The post of Statistical Officer out of these posts is to be filled by inviting applications through advertisement or M.S.C.

TRUE TRANSLATION

ADVOCATE

20. It could be seen from the above Rules that post of Deputy Commissioner / Additional Commissioner is a promotional post and Persons holding the post of Municipal Secretary / Octroi Superintendent / Tax Assessor and Collector / Special Desk Officer / C.A.F.O. / Statistician (Birth and Death) are eligible or were qualifying themselves for promotion as per their seniority in the said cadre. That except the Rules of 1976 as it appears, there are no other Rules in force, in respect of matter specified in Section 457(3) of the Act, governing promotion to the post of Deputy Commissioner / Additional Commissioner. This fact is admitted by the Corporation in its affidavit filed in Writ Petition No.299/2016, as referred to hereinabove.

21. Thus, in consideration of the facts above, we conclude that Rules of 1976 assume character of Rules contained in Schedule-D of Section 453 of the MMC Act.

22. Once, it is concluded that only existing Rules of 1976 prescribe the qualification for promotion to the post of Deputy Commissioner / Additional Commissioner, the addition of post of Assistant Commissioner in the existing feeder cadre, tantamounts to prescribing qualification and thereby making the Assistant

Commissioner eligible for promotion to the post of Deputy Commissioner. Question is whether Corporation could implement its decision to add the post of Assistant Commissioner in the feeder cadre, by drawing a common seniority list, without approval of the State.

23. We have held that Rules of 1976, assume character of Rules under Schedule-D and by fiction of law, they are part of MMC Act in terms of Section 453. Indisputably, Section 454 enables and empowers the Corporation to alter Schedule-D Rules. Yet, any addition or alteration thereto would be subject to approval of the State Government. In the case at hand, Corporation by impugned Resolution, included post of Assistant Commissioner in promotional channel for promoting them to the post of Deputy Municipal Commissioner. It is nothing, but corresponds to prescribing qualification. Thus, conjoint reading of Section 453 with Section 454 with Rule 1 and 3 of Chapter-III of Schedule-D of Rules leads us to conclude; although the Corporation is empowered to prescribe the qualification required for each post and alter / add Rules Schedule-D, nevertheless, the mandate of Rule 3 requires the qualifications so prescribed were to be approved by the State. Indisputably, the impugned

resolution causing alteration or addition to Rules of 1976 has not been approved by the State and therefore, the Corporation was not empowered to implement its decision by drawing common seniority list of the feeder cadre. Thus, for want of approval of the State to the impugned resolution and for the foregoing reasons, we hold and conclude, and declare, that ;

(a) Rules of 1976 govern and regulate promotion of Municipal Officer to the post of Deputy Commissioner / Additional Commissioner.

(b) Resolution No.116 dated 20/06/2015 is addition to the Rules in terms of Section 454 of the MMC Act.

(c) Resolution No.116, dated 20/06/2015 tantamounts to, prescribing qualification in terms of Rule 3 Chapter-III of Schedule-D to the MMC Act.

(d) Corporation was not justified in drawing impugned common Seniority Lists dated 01/01/2017 and 01/01/2022.

(f) In the consequent, Seniority Lists dated 01/01/2017 and 01/01/2022 are quashed and set aside.

24. Rule is made absolute in the above terms.

[MRS. VRUSHALI V. JOSHI, J.]

[SANDEEP K. SHINDE, J.]

Choulwar