

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

**VAISHALI
ANIL
TIKAM**

WRIT PETITION NO.2323 OF 2023

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Shri Pradip Bapurao Jambhale-Patil	)	
Age 34 years, Occupation Service,	)	
Having address at 203, A Wing,	)	
Marvel Brissa, Balewadi,	)	
Pune 411 045.	)	.. Petitioner

Versus

1. Smt.Smita Gangaram Zagade	)	
Age 41 years, Occupation Service	)	
Having address at 803, B Wing,	)	
DSK Frangipani,Sadhu Waswani Chowk	)	
Pune-1	)	
2. State of Maharashtra	)	
through Principal Secretary	)	
Urban Development Department	)	
Mantralaya, Mumbai – 32.	)	
3. The Municipal Commissioner	)	
Pimpri-Chinchwad Municipal Corporation	)	
having office at Ambedkar Chowk	)	
Pimpri-Chinchwad	)	
Pune -18.	)	.. Respondents

**ALONG WITH
INTERIM APPLICATION (ST) NO.5776 OF 2023
IN
WRIT PETITION NO.2323 OF 2023**

Maharashtra State Chief Officer's	)
Association, through its General Secretary	)
Dr.Prashant Rasal, Age 48 years,	)
Occupation Service, Additional Municipal	)
Commissioner,Panvel Municipal Corporation)	)

Panvel, District Raigad) .. Applicant (Intervenor)

In the matter between

Shri Pradip Bapurao Jambhale-Patil)
 Age 34 years, Occupation Service,)
 Having address at 203, A Wing,)
 Marvel Brissa, Balewadi,)
 Pune 411 045.) .. Petitioner

Versus

1. Smt.Smita Gangaram Zagade)
 Age 41 years, Occupation Service)
 Having address at 803, B Wing,)
 DSK Frangipani,Sadhu Waswani Chowk)
 Pune-1)

2. State of Maharashtra)
 through Principal Secretary)
 Urban Development Department)
 Mantralaya, Mumbai – 32.)

3. The Municipal Commissioner)
 Pimpri-Chinchwad Municipal Corporation)
 having office at Ambedkar Chowk)
 Pimpri-Chinchwad)
 Pune -18.) .. Respondents

Mr.A.A. Kumbhakoni, Senior Advocate i/by Mr.Tejas D. Deshmukh a/w
 Mr. Sagar Kursija, Mr.H.D. Chavan, Mr.Manoj Badgujar, Mr.Suraj
 Jeswani, Sulgana Mohanty, Ms.Sneha Bhange for the Petitioner.

Mr.R.D. Soni with Mr.Tushar R. Momaiyah i/by Ram and Co. for the
 Applicant.

Mr.Anil V. Anturkar, Senior Advocate a/w Mr.Atharva Date and Mr.Yatin
 Malvankar with Dr.U.P. Warunjikar i/by Mr.Gaurav Bandiwadekar and
 Mr.Bhushan A. Bandiwadekar for the Respondent No.1.

Mr.N.K. Rajpurohit, AGP for the Respondent No.2.

Mr.S.C. Naidu a/w Mr.G.H. Keluskar for the Respondent No.3.

CORAM : **R.D. DHANUKA &
GAURI GODSE, JJ.**
RESERVED ON : **12th April 2023**
PRONOUNCED ON : **3rd May, 2023**

Judgment (Per R.D. DHANUKA, J.):-

. Rule. Mr. Anturkar, learned senior counsel waives service for the Respondent No.1. Learned AGP waives service for Respondent No.2. Mr. Naidu, learned counsel waives service for Respondent No.3. Rule is made returnable forthwith. By consent of parties, the petition is taken up for final disposal.

2. Interim Application is filed by the Applicant inter alia praying for impleadment as party-Respondent No.4 in the writ petition. Learned counsel for the parties have agreed that at this stage, they will address this Court only on the issue as to whether the learned Single Member of the Maharashtra Administrative Tribunal (for short “the Tribunal”) has jurisdiction to decide the Original Application No.990 of 2022 or the Original Application could be heard only by the Division Bench of the Maharashtra Administrative Tribunal. This Court recorded

the statement made by the learned counsel appearing for the parties in the order dated 11 April 2023 that they would address this Court only on the limited issue as aforesaid and not on merit. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. It is the case of the Respondent No.1 that the Petitioner does not belong to the Municipal Administrative Service and his parent department is Sales Tax Department. He was appointed as Deputy Commissioner, Vasai-Virar Municipal Corporation on deputation on 11 August 2020. By an order dated 22 September 2022, he was appointed as Additional Commissioner, Pimpri-Chinchwad Municipal Corporation (PCMC) on deputation for two years. By an order dated 22 September 2022, the Petitioner was brought in the cadre of Deputy Commissioner Sales Tax Department Class-1 (Selection grade).

4. In so far as the Respondent No.1 is concerned, it is her case that she was appointed as Assistant Commissioner, PCMC by an order dated 5 January 2018. Since then she was serving in the said department. She was in the cadre of Chief Officer, Group A. She was thereafter given selection grade and posted as Additional Commissioner, PCMC by an order dated 1 February 2021.

5. It is the case of the Respondent No.1 that in view of the Government Resolutions dated 1 September 2014 and 22 February 2022 issued by the Urban Development Department, certain posts of Commissioners and Additional Commissioners are earmarked for particular cities depending upon the classification of the Municipal Corporation viz-a-viz population of the city. In so far as PCMC is concerned, it is classified as “B” Class Municipal Corporation. The Government had taken policy decision to appoint Chief Officer in selection grade on the post of Additional Commissioner at a Municipal Corporation where population exceeds five lacs. According to the Respondent No.1, preference is given to the Chief Officer Group A in selection grade for appointment as Additional Commissioner in big city so as to exploit their experience and expertise for Municipal Administration.

6. It is the case of the Respondent No.1 that the Applicant was appointed as Additional Collector of Pimpri-Chinchwad Municipal Corporation in view of the order passed by the Hon’ble Chief Minister to appoint the Respondent No.1 as Additional Commissioner with PCMC on 22 August 2022. The Respondent No.1 was issued a formal order for

appointment on 13 September 2022 by exercising powers under Section 39A of the Maharashtra Municipal Corporation Act.

7. It is the case of the Respondent No.1 that she was not allowed to join PCMC abruptly by an order dated 22 September 2022. Her appointment has been cancelled and Petitioner was appointed without giving any reason whatsoever. The Respondent No.1 accordingly filed the original application before the Tribunal inter alia praying for setting aside the order of cancellation of appointment of the Respondent No.1 and appointing the Petitioner to the said post.

8. The said matter was heard by a Single Member of the Tribunal. The Petitioner raised an objection on 30 November 2022 that the learned member had no jurisdiction to decide the original application filed by the Respondent No.1 as the same should have been assigned to the Division Bench of the Tribunal because of its subject. The Petitioner contended that appointment of the Respondent No.1 had been cancelled after approval from the State Government. The Respondent No.1 filed an additional affidavit on 19 December 2022 contending that out of three posts of the Additional Commissioners in Respondent No.3 Corporation, one has been earmarked for appointment from the cadre of Chief Officer

(Group A).

9. On 15 February 2023, the learned Single Member of the Tribunal passed an order rejecting the objection filed by the Petitioner and held that he had jurisdiction to entertain the said original application filed by the Respondent No.1. Matter was placed on the next day for hearing of the original application.

10. The learned Single Member of the Tribunal thereafter passed an order and judgment on 17 February 2023 allowing the said original application and quashed and set aside the order of cancellation for appointment of the Respondent No.1 and appointed the Respondent No.1 to the said post.

11. Mr. Kumbhakoni, learned Senior Counsel for the Petitioner invited our attention to the Exhibits annexed to the Writ Petition and also to the orders passed by the Learned Single Member of the Tribunal. He invited our attention to the objection raised by the Petitioner before the learned Single Member of the Tribunal, raising an objection on the jurisdiction of the Single Member to entertain and adjudicate upon the Original Application filed by the Respondent No.1. Learned Senior Counsel placed reliance on Section 5 of the

Administrative Tribunals Act, 1985 (for short “the said Act”) and submitted that the jurisdiction of a Tribunal may be exercised by the Benches thereof consisting of a judicial member and an administrative member i.e. a Division Bench.

12. Learned senior counsel relied upon Section 5(6) of the said Act and submitted that an exception is carved out under the said provision by empowering the Chairman by general or special order to specify such matters pertaining to such classes of cases, which can be considered by a Single Member of the Tribunal. He submitted that fundamentally the jurisdiction of the Member has to be exercised by the Division Bench. Only as an exception, such jurisdiction is exercisable by the Single Member. He submitted that a Single Member of a Tribunal derives jurisdiction only from any general or special order issued by the Chairman, specifying such subjects, which can be considered by a Single Member, in terms of Section 5(6) of the said Act.

13. Learned Senior Counsel invited our attention to the Circular dated 28 May, 2021 issued by the Learned Chairman of the said Tribunal in exercise of the powers under Section 5(6) of the said Act and submitted that the said Circular would clearly indicate that a subject wise list of matters pertaining to the assignment of the Division Bench and Single Member of the Tribunal are

prescribed by the Learned Chairman of the Tribunal. He submitted that the subject on matter of ‘Appointment – (item-1)’ and ‘Cancellation of Appointment- (item-21)’ are pertaining to assignment of the Division Bench, whereas the issue pertaining ‘Posting- (item-3)’ falls under the jurisdiction of Learned Single Member.

14. It is submitted by the learned Senior Counsel that a close scrutiny of the entire list and the comparison of the topics/subjects contained in the said Circular would demonstrate that comparatively the important topics and/or subjects having wider ramification/ consequences are retained with the Division Bench, leaving the rest with the Single Member. He submitted that where a dispute before the Tribunal involves questions of law or interpretation of statutory provisions, the same ought to be assigned to a Division Bench.

15. It is submitted that Section 5(6) of the said Act itself cast an obligation upon the Chairman and Members to refer such disputes involving questions of law to the Division bench, more particularly when the same is suggested by either of the parties appearing before the Single Member of the Tribunal. It is submitted that the setting up of a Tribunal is founded on a premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice, more

particularly when the dispute involves questions of law.

16. It is submitted by the learned Senior Counsel that the Petitioner had raised a specific objection in the application filed by the Respondent No.1 before the Learned Single Member of the Tribunal, that dispute between the parties involved in the proceedings pertains to only 'the appointment' made or to be made on the post of Additional Municipal Commissioner and cancellation thereof, which in terms of the list falls within the purview of the Division Bench.

17. It is submitted by the learned Senior Counsel that the Learned Single Member, however, by its order dated 15 February, 2023 erroneously rejected the said preliminary objection raised by the Petitioner on the ground that the dispute pertains to 'posting' and not 'appointment'. He submitted that the Learned Single Member has erroneously held that the Cadre of Additional Commissioner and Deputy Commissioner is composite, these posts are interchangeable and it is the case of 'posting' in same cadre. He submitted that this observation of the Learned Single Member is ex-facie and unsustainable.

18. Learned Senior Counsel placed reliance on Section 39A of the Maharashtra Municipal Corporation Act which authorizes the State Government to appoint any suitable person on the post in issue to exercise all

or any of the powers and perform all or any of the functions of the Commissioner. He submitted that even the service conditions of the post in issue are not the same to that of the Commissioner. The appointment orders were issued by the Respondent No.4 to the Petitioner as well as the Respondent No.1 under Section 39A of the Maharashtra Municipal Corporation Act and the said provision has been specifically referred therein. Section 39A of the Maharashtra Municipal Corporation Act specifically uses the word 'appoint'.

19. It is submitted that when any word in a statute is clear, plain or unambiguous i.e. when the same is susceptible to only one meaning, the same should be given effect to as it is and there is no scope for interpretation. He submitted that in any event a statute should be understood in its natural, ordinary or popular sense, unless the same leads to absurdity. He submitted that since such meaning in the present case does not lead to any ambiguity, much less absurdity, the word 'appoint' used in Section 39A of the Maharashtra Municipal Corporation Act thus ought to be construed according to its natural or ordinary sense and should be given full effect.

20. It is submitted by the learned Senior Counsel that the term 'appointment' in its natural or ordinary sense means the act of nominating or selecting a person on a particular post. By appointment, the appointee is given an entry in a particular cadre. In other sense, the appointee is 'born' in a

particular cadre as a result of 'the appointment'. On the other hand, the term 'posting' is actually placing/assigning the person on/to the post on which the person is so 'appointed'.

21. It is submitted that 'posting' is a consequence of 'appointment' and the 'posting' in fact follows the 'appointment'. He submitted that 'posting' cannot carry the same meaning as the 'appointment'. The object, intention and the purpose of 'posting' and 'appointment' is and can never be the same. There cannot be posting without an appointment, more particularly when the statute like Section 39A of the Maharashtra Municipal Corporation Act provides for creation of a particular post or appointment thereon. The learned Senior Counsel placed reliance on a Dictionary meaning of 'to post' according to *Webster's New World Dictionary(1962)*, which may denote either ; (i) to station someone at a place; or (ii) assign someone to a post, especially one to which a person is appointed. The word 'posting' does not have its own independent existence but derives its colour from the term along with which it is used.

22. It is submitted that 'Posting' can be a consequence of either an 'appointment', 'promotion' or a 'transfer'. Appointment and posting are two different concepts. Once an appointment is made to a particular post, thereafter the posting on that particular post takes place. Many a times a composite order

of 'appointment' and 'posting' is issued, which does not mean that the terms 'appointment' and 'posting' are one and the same.

23. It is submitted by the learned Senior Counsel that an appointment need not be by way of recruitment alone. Recruitment is one of the modes of appointment. Recruitment is just the initial process, which may eventually lead to appointment. Similarly, appointment can also be made by way of deputation or transfer.

24. Learned Senior Counsel placed reliance on Pimpri-Chinchwad Municipal Corporation Recruitment Rules of 2020 (for short 'the said Rules') and submitted that the said Rules provide two avenues for appointment on the post in issue, i.e. one by way of 'promotion' and the other by way of 'deputation'. Additional Municipal Commissioner cannot be appointed by way of recruitment.

25. It is submitted by the learned Senior Counsel that Respondent No.1 belongs to Chief Officer (Selection Grade) cadre, which is one of the feeder cadre for the post in issue. The post of Chief Officer (Selection Grade) and the post in issue do not belong to one and the same cadre. He relied upon Rule 7 of the said Rules and submitted that Rule 7 mainly provides for filling up a post in Pune Chinchwad Municipal Council by way of deputation from the

services in any other Local Self Governments, which includes a Municipal Council. He submitted that even though Municipal Corporation and Municipal Council come under the same parent department i.e. Urban Development Department, still appointing any person from the services of Municipal Council to the services of Municipal Corporation would amount to deputation and not mere posting.

26. It is submitted by the learned Senior Counsel that the posts of Deputy Municipal Commissioner and Additional Municipal Commissioner, such as the post in issue, do not belong to one and the same cadre. The post of Deputy Municipal Commissioner and Additional Municipal Commissioner, such as the post in issue, are not composite and hence are not interchangeable. The eligibility for the posts of Deputy Municipal Commissioner and Additional Municipal Commissioner, such as the post in issue, as per the Rules are distinct. Therefore, a person who may be eligible for appointment on the post of Deputy Municipal Commissioner, may not necessarily be eligible for appointment on the post of Additional Municipal Commissioner, such as the post in issue.

27. The Chapter II of the Maharashtra Municipal Council Act deals with Municipal Authorities, under which the posts of Commissioner and

Additional Municipal Commissioner are included, whereas the post of Deputy Municipal Commissioner is included in Chapter IV, which deals with Municipal Officer. Therefore, an Additional Municipal Commissioner is a Municipal Authority, whereas, a Deputy Municipal Commissioner is a Municipal Officer and not a Municipal Authority. In case of Additional Municipal Commissioner, the State Government is an appointing authority, whereas, in the case of Deputy Municipal Commissioner, the appointing authority is the Municipal Corporation. Under Section 39A of the Maharashtra Municipal Act, the Additional Municipal Commissioner is authorized by the statute to exercise all the powers and perform all the functions of the Commissioner only if deputed by the Commissioner. Thus, these two posts are neither equivalent nor interchangeable.

28. It is submitted by the Learned Senior Counsel that the observation by the Learned Single Member that the posts of Additional Municipal Commissioner and the Deputy Municipal Commissioner belong to same cadre, are composite and are interchangeable is wholly legally unsustainable and, to put it simply, obnoxious. It is submitted by the Learned Senior Counsel that the present dispute is about 'appointment' and 'cancellation of appointment' of Respondent No.1 on the post in issue and not that of mere 'posting.' He submitted that even otherwise, the fact that the Petitioner has been 'appointed'

on the post in issue has not been disputed. Therefore, the present dispute concerns the ‘appointment’ and ‘cancellation of appointment’ of Respondent No.1 and could be heard only by Division Bench.

29. It is submitted by the learned Senior Counsel that each and every document relevant for deciding the controversy at hand, in no uncertain term, states ‘appointment’ and not ‘posting’. Even otherwise, it is admitted by Respondent No.1 that the present Petitioner has been ‘appointed’ as Additional Municipal Commissioner by way of deputation and such ‘appointment’ was challenged before the Tribunal, it is most pertinent to note that the impugned final order, including its operative portion itself demonstrates that the issue involved in the present proceedings relates to ‘appointment’ and not ‘posting’.

30. It is submitted by the learned Senior Counsel that the judgment dated 31 January, 2023 passed by the Aurangabad Bench of the Tribunal in OA No.1068 of 2022 relied upon by the Respondent No.1 will not be applicable in the facts and circumstances of present case. The issue involved in the said OA No. 1068 of 2022 was as to whether the provisions of Transfer Act of 2005 would be applicable in the facts of that case. It was in that context the Tribunal considered the aspects of ‘transfer’ and ‘appointment’. Even in the aforesaid judgment dated 31 January, 2023, this Court has observed that transfer is one of

the modes of appointment.

31. In the aforesaid judgment dated 31 January, 2023, the Tribunal was pleased to observe that as the Respondent No.3 therein was already working as the Commissioner of Parbhani Municipal Corporation, his appointment as the Commissioner of Jalgaon Municipal Council would amount to transfer on a similar post. The Tribunal in that case was also pleased to observe that as the Applicant therein was promoted to the post of Chief Officer (Grade-A)- Selection Grade, her appointment on the post of a Commissioner of Jalgaon Municipal Corporation would also amount to transfer on an equivalent post.

32. It is submitted by the learned Senior Counsel that in the present case, the Petitioner as well as Respondent No.1 were working on the post of Deputy Municipal Commissioner in Vasai-Virar Municipal Corporation and Pimpri-Chinchwad Municipal Corporation respectively. In view of what has been discussed in the foregoing paragraphs, the post of Deputy Municipal Commissioner and the post in issue are not equivalent or interchangeable. Therefore, both the Petitioner and Respondent No.1 by virtue of their 'appointment' and not mere 'posting' on the post in issue were born in that cadre for the first time as they existed the cadre of Deputy Municipal

Commissioner and entered the cadre of post in issue.

33. It is submitted by the learned Senior Counsel that the Respondent No.1 belongs to the cadre of Chief Officer (Grade A)- Selection Grade which has S-23 pay scale and therefore her entry into the cadre of post in issue, which has S-25 pay scale is not even a mere transfer, much less a 'posting'. Therefore, the post of Chief Officer (Grade A)- Selection Grade, which has S-23 pay scale and the post in issue which has S-25 pay scale are not equivalent. Even otherwise, the PCMC Recruitment Rules do not provide for mere 'transfer' from the other Local Self Governments to the services of PCMC.

34. It is submitted by the learned Senior Counsel that in view of these and such other legal as also factual aspects of the matter, the aforesaid judgment dated 31 January, 2023 passed by the Aurangabad Bench of the Tribunal in OA No. 1068 of 2022 will not be even relevant for the present case.

35. It is submitted by the learned Senior Counsel that in aforementioned facts and circumstances, the Original Application pertains to the Division Bench and the Learned Single Judge had no jurisdiction to entertain, try and decide the same in view of the Circular dated 28 May, 2021. Hence, the impugned order passed by the Learned Single Member is clearly

unsustainable in view of the principle of '*coram non judice*'. The impugned order is plainly and simply 'nullity'.

36. Learned Senior Counsel placed reliance on the following judgments:

- (i) **L. Chandra Kumar Vs. Union of India & Ors.**
[(1997) 3 Supreme Court Cases 261.]
- (ii) **Dr. Mahabal Ram Vs. Indian Council of
Agricultural Research & Ors.**
[(1994) 2 Supreme Court Cases 401]
- (iii) **State of Assam Vs. Ranga Muhammad & Ors.**
[AIR 1967 SC 903]
- (iv) **S.N. Dhingra & Ors. Vs. Union of India &
Ors.**
[(2001) 3 Supreme Court Cases 125]
- (v) **Nasiruddin & Ors. Vs. Sita Ram Agarwal**
[(2003) 2 Supreme Court Cases 577]
- (vi) **State of Punjab Vs. Davinder Pal Singh Bhullar
& Ors.**
[(2001) 14 Supreme Court Cases 770]
- (vii) **B.J. Bhagora Vs. Union of India**
[(2011) SCC Online Guj 285]

(viii) Union of India & Anr. Vs. S.K. Sharma & Anr.

[2013 SCC Online Del 856]

**(ix) Shri Hariom Krishi Kendra Vs. State of
Maharashtra and Ors.**

[2020(3) Mh.L.J. 118]

37. Mr. Anil Anturkar, learned Senior Counsel for Respondent No.1 on the other hand submitted that the circular is issued by the Chairman of the Tribunal under the provisions of Section 5 (6) of the said Tribunal Act. He submitted that the word “appointment” is at Serial No. 1, in the Division Bench list. That word, however, has been used as generic and contextual sense in as much as, the other entries such as Entry No.7 (Promotion) and Entry No.22 (recruitment/ any dispute relating to recruitment), have been specifically dealt with in list of subject of Division Bench. He submitted that Entry No.1 (Appointment) will have to be understood, as an appointment by way of promotion (Entry No.7), and appointment by way of recruitment (Entry No.22).

38. It is submitted that if Entry No.1 (Appointment) is given its most liberty meaning viz. any appointment made in any manner, whether by way of promotion or by way of recruitment then Entry No.7 and Entry No. 22, would become irrelevant. He submitted that an interpretation, which would make each entry meaningful viz. harmonious interpretation will have to be preferred.

39. It is submitted that the words “transfer, posting, repatriation and deputation” all these matters pertain to the Single Judge. These are different ways of “appointment”. He submitted that the word “appointment” pertaining to the Division Bench assignment thus harmoniously interpreted would cover only two methods of appointment viz. Promotion (Entry No.7) and Recruitment (Entry No.22) only and not other types of appointments, such as Transfer (Entry No.2) in the subject of Single Bench, posting (Entry No.3), Repatriation (Entry No.4), Deputation (Entry No.29). He submitted that in this case, it is an admitted position that the appointment of the Petitioner as well as of the Respondent is by way of deputation. The mode of appointment in case of the Petitioner and the Respondent is by way of deputation, which is item No.29, in subject of the Single Bench.

40. It is submitted that the only word “appointment” is given its fullest and broadest interpretation so as to mean appointment by promotion, appointment by transfer, appointment by deputation, appointment by posting etc.; then Item Nos.2, 3, 4 and 29 in the list subjects of the Single Bench would become *otiose*. Such interpretation therefore, cannot be accepted.

41. It is submitted by the learned Senior Counsel that the Petitioner did not challenge the order dated 15 February, 2023 passed by the Learned

Member of the Tribunal in Original Application No.990 of 2022 where the Tribunal rejected the plea of jurisdiction raised by the Petitioner. He submitted that since the Petitioner did not challenge the first order immediately and participated in the said Original Application filed by his client and Respondent No.1 on merits, unconditionally and without prejudice to the rights and contentions of the Petitioner to challenge the order dated 15 February, 2023, Petitioner cannot be allowed now to challenge the said order dated 15 February, 2023 at this stage in this Petition having lost in the said Original Application filed by the Respondent No.1.

42. It is submitted that even in the Writ Petition filed by the Petitioner, it is not the case of the Petitioner that he participated in the proceedings before the Tribunal after the order dated 15 February, 2023 without prejudice to the rights and contentions of the Petitioner to challenge the said order dated 15 February, 2023.

43. It is submitted by the learned Senior Counsel for the Respondent No.1 that it is not the case of the Petitioner that the Learned Single Member of the Tribunal had initial lack of jurisdiction. He submitted that since there is no dispute that the said Tribunal had jurisdiction to decide the said Original Application filed by Respondent No.1, whether the said application is heard by

the Single Member of the Tribunal or by the Division Bench is of no significance. He submitted that all source of mode of appointment cannot fall under Entry -1 (Appointment), of the list of matters to be heard by Division Bench. He relied upon Entry G (Posting) and submitted that transfer means posting.

44. Learned Senior Counsel relied upon the following judgments.

1. Judgment of the Supreme Court in case of **Indermani Kirtipal Vs. Union of India and Ors. [(1996) 2 Supreme Court Cases 437]**
2. Judgment of this Court in case of **Man Global Ltd. Vs. Bharat Prakash Joukani delivered on 1 October, 2019 in Second Appeal (St) No. 14845 of 2019 a/w. Civil Application No. 787 of 2019 a/w. Second Appeal (St) No. 14840 of 2019 a/w. Civil Application No. 785 of 2019.**
3. Judgment of this Court in case of **APL Yashomangal Developers & Anr. Vs. Yashwant Dashrath Sawant & Anr. Delivered on 3 December, 2019 in Second Appeal No. 617 of 2019 a/w. Civil Application No. 854 of 2019.**
4. Judgment of this Court in case of **Yogesh Pratap Singh Vs. Government of Maharashtra through the Additional Chief Secretary (Home), and Ors. [1998 (1) All M.R. 639].**
5. Judgment of the Supreme Court in case of **Mohinder Singh Gill and**

Anr. Vs. The Chief Election Commissioner, New Delhi and Ors. [AIR 1978 Supreme Court 851].

45. It is submitted by Learned Senior Counsel for Respondent No.1 that it is not the case of the Petitioner that the Learned Single Member of the Tribunal was not a Judicial Member. He submitted that categories of the matters prescribed in the circular issued by the Learned Member of the Tribunal provided the orders to be passed by the Single Judge by a member irrespective of fact that whether such member is of Administrative Member or Judicial Member. He submitted that once there was no lack of inherent jurisdiction in view of the fact that the matter was ultimately heard by the Member of Tribunal, whether matter ought to have been heard by the Single Judge or Division Bench, would not make the order without jurisdiction.

46. The learned Senior Counsel placed reliance on Article 323A and 323B of the Constitution of India and Government Resolutions dated 22 February, 2022, 1 September, 2014 and 19 October, 2020.

47. Mr. R.D. Soni, learned counsel for the Intervenor invited our attention to the order dated 15 February, 2023 passed by the Single Member of the Tribunal and submitted that the view taken by the Learned Single Member of the Tribunal holding that he had jurisdiction to try and entertain and adjudicate upon the Original Application filed by Respondent No.1 is a

plausible view, and thus cannot be interfered by this Court by exercising discretionary power under Article 226 of the Constitution of India. He relied upon the proviso to Section 26 of the Administrative Tribunal Act and submits that the Petitioner did not apply for hearing before the Division bench of the Tribunal when the matter was being heard by the Single Member of the Tribunal.

48. Mr. S.C. Naidu, Learned Counsel for the Corporation on the other hand submitted that the expression “appointment” is genus and Court has to consider the initial appointment of both the parties in the service. He submitted that appointment in service would include “recruitment by selection and by nomination”. He relied upon Article 309 of the Constitution of India which provides recruitment and conditions of service of persons in Union or State.

49. Learned Counsel relied upon the proviso to Article 309. He invited our attention to the list of disputes, which can be heard by the Learned Member of the Tribunal and submitted that those disputes are arising out of the subjects which personally would affect only the individuals who are employed and not other employees. He relied upon Entry No.29 and submitted that deputation in the category would be the deputation in the same cadre and not in the higher cadre. He submitted that the deputation is one of the manner of appointment. Entry No.29 has to be read with Entry Nos. 2 and 3.

50. It is submitted that for the purpose of making an appointment on deputation, a proposal has to be first made and has to be approved by the Hon'ble Chief Minister. He relied upon the Entry Nos. 1, 7, 18, 19, 22 and 23 from the list of disputes which are heard by the Division Bench and submitted that all these are the incidents of appointment. He submitted that if other parties are likely to be affected, Division Bench only can hear such disputes.

51. Mr. Kumbhkoni, learned Senior Counsel for the Petitioner in his rejoinder argument submitted that the order rejecting the application filed by the Petitioner and holding that the Learned Single Member has jurisdiction, was admittedly passed on 15 February, 2023. The hearing of the Original Application commenced on 15 February, 2023 and final order was passed on 17 February, 2023. He submitted that even if the Petitioner immediately did not challenge the order dated 15 February, 2023, the Petitioner is not precluded from challenging the said order on the plea of jurisdiction, since final order adjudicated on merits was passed within a span of 48 hours.

52. Insofar as the submission of Mr. Anturkar, learned Senior Counsel for Respondent No.1 that there was no inherent or initial lack of jurisdiction of the Tribunal in hearing the Original Application filed by Respondent No.1 is concerned, learned Senior Counsel for the Petitioner submitted that whether it

was a case of initial or final lack of jurisdiction, the order passed without having jurisdiction by the Single Member of the Tribunal is nullity.

53. It is submitted that if the expression “appointment” includes “cancellation of appointment”, there was no need to have separate entry for “cancellation of appointment”. He relied upon Entry Nos. 2 and 14 which deals with “selection or non-selection” respectively. He submitted that there is a separate entry “recruitment” and “cancellation of appointment” which has been heard by Division Bench. He submitted that, if the expression “deputation” is not common of appointment, it would fall under Entry No.29, to be heard by Single Member of the Tribunal and if “deputation of common of appointment” it fall under Entry No.1 and such disputes shall be heard by Division Bench. He vehemently urged that various documents on record including appointment letters of both the parties referred to the expression “appointment” and not “upon posting”. He submitted that the main issue is “appointment” and “appointment by deputation” is incidental.

54. We have heard the intervenor. Since we have heard the Learned counsel for the intervenor on merits, we allow the Intervention Application filed by the intervenor.

REASONS AND CONCLUSIONS:

55. The short question that arises for consideration of this Court is whether the case of initial appointment of the Respondent No.1 on the post of Additional Commissioner and thereafter cancellation of the said appointment followed by letter of appointment of the Petitioner would fall under the Entry No.1 i.e. “for appointment on posting” and Entry No.21 i.e. “for cancellation of appointment” respectively which subjects pertain to Division Bench of the Maharashtra Administrative Tribunal or the Original Application filed by the Respondent no.1 would fall under entry No. 3 i.e. “posting” and was rightly heard by the Single Bench of the Tribunal or not?

56. On perusal of pleadings filed by both the parties, it is clear that the Respondent No.1 belongs to “Chief Officer (Selection Grade) Cadre on the post of Additional Municipal Commissioner. The post of Chief Officer on Selection Grade and the post of Additional Municipal Commissioner did not belong to one of the same cadre.

57. We have perused Rule 7 of the Pimpri Chinchwad Municipal Corporation Recruitment Rules, 2020, which provides for filling up post of the Pimpri Chinchwad Municipal Corporation by way of deputation from the services in any other Local Self Government which includes a Municipal Council. It is thus clear that though the Municipal Corporation and Municipal Council come under the same parent department i.e. Urban Development

Department, still appointing any person from the services of Municipal Council to the services of Municipal Corporation would amount to appointment by deputation and not mere posting.

58. The posts of Deputy Municipal Commissioner and Additional Municipal Commissioner, do not belong to one and the same cadre. The post of Deputy Municipal Commissioner and Additional Municipal Commissioner are not composite and hence are not interchangeable. The eligibility on the post of Deputy Municipal Commissioner and Additional Municipal Commissioner are distinct as is apparent from the said Rules. Any person who may be eligible for the post of appointment of the Deputy Municipal Commissioner may not be eligible for the post of Additional Municipal Commissioner.

59. A perusal of Chapter II of the Maharashtra Municipal Corporation Act clearly provides that the post, 'Deputy Municipal Commissioner', is included in Chapter IV, which deals with the Municipal Officer. An Additional Municipal Commissioner is a Municipal Authority, whereas the Deputy Municipal Commissioner is the Municipal Officer and not a Municipal Authority. In case of Additional Municipal Commissioner, the State Government is an appointing authority, whereas, in the case of Deputy Municipal Commissioner, the appointing authority is the Municipal

Corporation.

60. We have perused Section 39A of the Maharashtra Municipal Corporation Act, which clearly provides that the Additional Municipal Commissioner is authorized by the statute to exercise all the powers and perform all the functions of the Commissioner. Whereas, under Section 49 of the Maharashtra Municipal Corporation Act, the Deputy Commissioner can exercise all the powers and perform all the functions of the Commissioner only if deputed by the Commissioner. It is thus, clear that both these posts are neither equivalent nor interchangeable. The Learned Single Member of the Tribunal has erroneously held that post of Additional Municipal Commissioner and the Deputy Municipal Commissioner belong to same cadre and are composite and are interchangeable.

61. A perusal of the letters of appointment placed on record by both the parties and decision taken by the State Government for cancellation of appointment of both the parties refers to the expression “appointment on deputation” or “cancellation of appointment on deputation”. None of the appointment letters refers to such appointment as “posting”. The Respondents did not dispute that the Petitioner had been appointed on the post in question.

62. A perusal of the record indicates that Respondent No.1 belongs to the cadre of Chief Officer (Grade A) and Selection Grade as S-23 pay scale and therefore, has entered into cadre of post, which has S-25 pay scale. It was not the case of transfer or posting. The posting of Chief Officer (Grade A)-Selection Grade and the post of Additional Municipal Commissioner are not equivalent. The said Recruitment Rules framed under Pimpri Chinchwad Municipal Corporation do not indicate that any provision is made in the said Rules for mere “transfer” on the other Local Self Government to the services of Pimpri Chinchwas Municipal Corporation.

63. In the Original Application filed by Respondent No.1 before the said Tribunal, it was the case of Respondent No.1 that the expression “appointment on deputation” mentioned in the appointment of the Petitioner was not correct or that the resolution passed by the State Government referring to the post of Additional Municipal Commissioner was incorrect.

64. Under Section 39A of the Maharashtra Municipal Corporation Act, it is provided that the State Government may create one or more posts of Additional Municipal Commissioner in the Corporation and appoint suitable person on such posts, who shall, subject to the control of the Commissioner exercise all or any of the powers and perform all or any of the duties and

functions of the Commissioner. Every person so appointed as the Additional Municipal Commissioner shall be subject to the same liabilities, restrictions and terms and conditions of service, to which the Commissioner is subjected to as per the provisions of the said Act. Various Government Resolutions produced on record also clearly provide for appointment by deputation for the said post for Additional Municipal Commissioner as posting in the said post in respect of the existing employee.

65. It is thus clear that a perusal of Section 39A of the Maharashtra Municipal Corporation Act, makes it clear that the appointment to the said post of Additional Municipal Commissioner is an appointment and not posting. This objection was specifically raised by the Petitioner before the said Tribunal in the affidavit in rejoinder dated 17 October, 2022. In paragraph 20 of the Affidavit in rejoinder filed by Petitioner to the Affidavit in Reply of the Respondent No.1 before the Tribunal, it was the case of the Respondent No.1 herself that as per the appointment order of the Government, the Respondent No.1 was appointed through Deputation Committee.

66. The Affidavit in Sur-rejoinder filed by the Under Secretary, the Officer of the Urban Development Department, Mantralaya on 1st December, 2022, it was averred in paragraph 5 that the appointment of the Respondent

No.1 on the post of Additional Commissioner in Pimpri Chinchwad Municipal Corporation has been cancelled and vide order dated 22 September, 2022, the Petitioner herein had been appointed on the post of Additional Commissioner, Pimpri Chinchwad Municipal Commissioner on Deputation as per recommendation of the Deputation Committee. Respondent No.1 did not produce any copy of the letter showing that the Respondent No.1 was posted to the post of Additional Commissioner. On the contrary, letter of appointment and cancellation produced on record clearly indicates that it was the case of the appointment on deputation and not simplicitor posting.

67. The paragraph 4 of the impugned order dated 15 February, 2023 also indicates that it is observed by the Learned Single Member of the Tribunal that Government by order dated 1 February, 2021 appointed the Respondent No.1 as Deputy Commissioner, Pimpri Chinchwad Municipal Corporation and thereafter Government by order dated 13 September, 2022 by exercising powers under Section 39A of the Maharashtra Municipal Corporation Act appointed Respondent No.1 as Additional Commissioner, Pimpri Chinchwad Municipal Corporation. I

68. In paragraph 5 of the impugned order dated 15 February, 2023, it is further stated that, Government suddenly by order dated 22 September, 2022 appointed the Petitioner as Additional Commissioner of Pimpri Chinchwad

Municipal Corporation and by separate order dated 22 September, 2022, cancelled the said order dated 13 September, 2022 of the Respondent No.1 on the post of Additional Commissioner and was directed to continue on the post of Deputy Commissioner of Pimpri-Chinchwad Municipal Corporation.

69. In paragraph 6 of the impugned order, it is clearly stated that under Section 39A of the Maharashtra Municipal Corporation Act, the Government is empowered to create one or more post of Additional Municipal Commissioner in the Corporation and appoint suitable persons on such posts and accordingly by G.R. dated 22 February, 2022 and 1 September, 2014, certain posts of Commissioners and Additional Commissioner are earmarked depending upon classification of Municipal Commissioner. After entering various findings in paragraphs 4 to 6 of the said impugned order, the Learned Single Member of the Tribunal recorded an erroneous finding that it was the case of posting of Additional Commissioner or Deputy Commissioner and it is not a dispute of appointment to a post, but it pertains to posting which pertained to subject matter of Single Bench, contrary to the findings already recorded in paragraphs 4 to 6 and contrary to the letter of appointment and the resolutions placed of record by the parties before the Tribunal.

70. A perusal of the order passed by the Single Member of the Tribunal on 17 February, 2023, also indicates that it was the argument of the

Respondent No.1 that once the Government had appointed, the Respondent No.1 as Additional Commissioner of Pimpri Chinchwad Municipal Corporation by order dated 13 September, 2022, such order could not be cancelled without giving reasons as well as without issuing show cause notice prior to passing the impugned order. The appointment of the Petitioner was also challenged on the ground that the Parent Department of the Petitioner herein which is Tax Department comes under the Finance Department and thus it was not eligible for the post of the Additional Commissioner, Pimpri Chinchwad Municipal Corporation on deputation.

71. The entire argument of the Respondent No.1 before the Single Member of the Tribunal was that the Petitioner as well as Respondent No.1 were appointed to the said post. In paragraph 8 of the said order dated 17 February, 2023, the Learned Single Member of the Tribunal observed that true, the Petitioner herein was appointed as Deputy Commissioner, Municipal Corporation, Vasai-Virar (on deputation) on 11 August, 2020 and was again appointed on deputation for two years as Additional Commissioner.

72. The Respondent No.1 was initially appointed as Assistant Commissioner, Pimpri Chinchwad, Municipal Corporation by order dated 5 January, 2018 and since then she was serving there. Finding is recorded by the

learned Single Member of the Tribunal that the preference is given to Chief Officer (Group -A) in Selection Grade as Additional Commissioner in big city so as to exploit their experience and expertise for Municipal Administration. In paragraph 10 of the said order, the learned Single Member opined that insofar as appointment of Respondent No.1 herein as Additional Commissioner of Pimpri Chinchwad Municipal Corporation is concerned, the perusal of the file noting reveals that the Hon'ble Chief Minister ordered to appoint the Respondent No.1 as Additional Commissioner with Pimpri Chinchwad Municipal Corporation on 22 August, 2022 and in sequel formal order for appointment was issued on 13 September, 2022 exercising the powers under Section 39A of Maharashtra Municipal Corporation Act. She was however, was not allowed to join as Additional Commissioner of Pimpri Chinchwad Municipal Corporation and abruptly by order dated 22 September, 2022 her appointment has been canceled replacing by the Petitioner without giving any reasons whatsoever.

73. The Hon'ble Chief Minister passed specific order for appointment of the Respondent No.1 as Additional Commissioner of Pimpri Chinchwad Municipal Corporation. In paragraph 13 of the said order, the Single Member of the Tribunal was of the opinion that Respondent No.1 (Original Applicant) was legally entitled to appointment as Additional Commissioner, Pimpri

Chinchwad Municipal Corporation and was appointed with prior approval of the Hon'ble Chief Minister by exercising powers under Section 39A of the Municipal Corporation Act.

74. We have dealt with the certain observations made by the Learned Single Member of the Tribunal in the order dated 17 February, 2023 to which our attention is invited by the Learned Counsel of both the parties to ascertain whether both the parties as well as Learned Single Member were of the view that it was the case of appointment on deputation and cancellation of appointment on deputation and not on the posting. The impugned order dated 15 February, 2023 in paragraph 6 of the said order, the Learned Single Member erroneously recorded a contradictory finding that it was the posting on the same cadre as Additional Commissioner or Deputy Commissioner. In our view, Mr. Kumbhakoni, learned Senior Counsel for the Petitioner is right in his submission that it was a case of appointment on deputation followed by cancellation of the appointment of the Petitioner on deputation and thus would fall under Entry No. 1 and 21 respectively and this would fall within the exclusive jurisdiction of the Division Bench of the Tribunal and not within the jurisdiction of Single Member of the Tribunal.

75. In our view, Mr. Kumbhakoni, Learned Senior Counsel for the

Petitioner is right in the submission that the 'posting' does not have its own independent existence and the word 'posting' derives its colour from the term along with which it is used. 'Posting' can be a consequence of either an 'appointment' or 'promotion' or a 'transfer'. The appointment and posting are two different concepts. In our view, the question of posting arises once an appointment is made to a particular post. There may be instances when a composite order of an appointment of posting is issued. However, this would not amount to a conclusive terms and appointment and posting are one and the same. The Pimpri Chinchwad Municipal Corporation Recruitment Rules of 2020 provide two avenues for appointment on the post in issue. One by way of 'promotion' and the other by way of 'deputation'. We are not inclined to accept the submission made by the learned Senior Counsel for Respondent No.1 that it was a case of recruitment of the Petitioner or Respondent No.1 in terms of the Rules r/w. Section 39A of the Maharashtra Municipal Corporation Act.

76. Rule 7 of the Rules framed by the PCMC makes it clear that the said Rule provides for filling up of post in the PCMC from the deputation or any other Local Self Government which includes the Municipal Council. Even if the Municipal Corporation and the Municipal Council come under the same parent department of Urban Development Department, appointment of any person would amount to deputation and not mere on posting. All these posts

are not composite and are not interchangeable. The qualification of both the posts are different. In our view, the finding of the Learned Single Member that the post of the Additional Municipal Commissioner and the Deputy Municipal Commissioner belong to one and the same cadre and all these posts are not composite and hence are not interchangeable, is totally erroneous and contrary to the provisions of the Maharashtra Municipal Act and PCMC Recruitment Rules.

77. Mr. Anturkar, learned Senior Counsel for Respondent No.1 could not demonstrate that it was not a case of appointment of the parties by deputation or was not a case of cancellation of appointment by deputation of the Respondent No.1. It was the subject matter of the Original Application before the Tribunal.

78. In case of **L. Chandra Kumar Vs Union of India and Ors. (supra)**, the Supreme Court held that the question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Member, one of whom must be a Judicial member.

79. The Supreme Court in case of **Dr. Mahabal Ram Vs. Indian Council of Agricultural Research & Ors. (supra)** has held that under Section 5(6) of the Administrative Tribunal Act, the proviso of sub-section 5(6) clearly indicates that it is the Parliament's concern to safeguard the interest of claimants by casting an obligation on the Chairman and members who hear the cases to refer to a regular bench of two members such cases which in their opinion require to be heard by a bench of two Members. It would be open to either party appearing before a Single member to suggest to the member hearing the matter that it should go to a bench of two Members. The Member should ordinarily allow the matter to go to a bench of two Members when so requested so as to protect the interest of the Claimants and even of the administrative system whose litigations may be before the Single Member for disposal.

80. The Supreme Court in case of **State of Assam Vs. Ranga Muhammad & Ors. (supra)** has held that in its ordinary dictionary meaning the word 'to post' may denote either (a) to station some one at a place, or (b) to assign someone to a post, i.e., a position or a job especially one to which a person is appointed. The Supreme Court in case of **S.N. Dhingra & Ors. Vs. Union of India & Ors. (supra)** while dealing with the Delhi Higher Judicial Rules held that appointment to a service and posting thereafter are two different concepts. Once appointment is made to the Higher Judicial Service then the

subsequent posting against some posts born in the higher judicial service will not deprive the appointees of the benefits of continuous appointment against the post.

81. The Supreme Court in case of **Nasiruddin & Ors. Vs. Sita Ram Agarwal (supra)** has held that the Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It cannot enlarge the scope of legislation or intention when the language of the provisions is plain and unambiguous. The real intention of the legislation must be gathered from the language used. In our view, the Circular issued by the Learned Member of the Tribunal thereby bifurcating the nature of dispute to be decided only by the Division Bench and not by the Learned Single Member is very clear. The Original Application filed by the Respondent No.1 clearly would fall in Entry No.1 and Entry No.27.

82. The Supreme Court in case of **State of Punjab Vs. Davinder Pal Singh Bhullar & Ors.(supra)** has held that if the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they would like to hear and decide, the machinery of the Court could have collapsed and judicial functioning of the Court could have ceased by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. It is further held that the Bench gets jurisdiction from the

assignment made by the Chief Justice and the Judge cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the order passed by the Court may be without jurisdiction and make the Judge *coram non judice*. In our view, the principles laid down by the Supreme Court **State of Punjab Vs. Davinder Pal Singh Bhulla & Ors. (Supra)** would clearly apply to the facts of this case. In this case by exercising the powers under Section 5(4) of the Administrative Tribunal Act, 1985, the Learned Chairman has already prescribed the matters which can be heard by a Single Member and by the Division Bench.

83. The Division Bench of this Court in case of **Shri Hariom Krishi Kendra Vs State of Maharashtra and Ors. (supra)** while dealing with the Rule 181 Chapter XVII of the Bombay High Court Appellate Side Rules has held that the nature of the order and enactment covered by Rule 18; are the two tests. Any decision by the Single Judge travelling beyond the scope of Rule 18 would be void. Therefore, the provision of Rule 18 would have to be construed strictly. The Single Member cannot travel beyond the restrictions imposed therein. In our view the said judgment squarely applies to the facts of this case. It is thus clear that the matter not assigned to the Learned Single Judge of the Tribunal in accordance with the Circular issued by the Learned Chairman of the Maharashtra Administrative Tribunal cannot be heard by the Single Member and any decision by him would be without jurisdiction and nullity. It will not

amount to a matter of convenience as suggested by the learned Senior Counsel for the Respondent No.1, but is clear case of inherent lack of jurisdiction.

84. We are afraid that we cannot accept the submission made by the learned Senior Counsel for the Respondent No.1 that once it is clear that the Original Application filed by his client is heard by the Tribunal constituted under the provisions of the Administrative Tribunal Act, even if the matter is heard by the Single Member though ought to have been heard by the Division Bench that would not be a case of inherent lack of jurisdiction, but would be a matter of convenience. If this argument is accepted, it will create complete breach of jurisdictional discipline, violation of Section 5 of the Administrative Tribunal Act and violation of the Circular issued by the Chairman exercising the powers to prescribe the adjudication of a particular dispute either by the Learned Single Member or by the Division Bench. In our view, once the Chairman of the Tribunal issues such Circular by exercising the statutory powers, the party or a Member of the Tribunal has no discretion to hear such matters assigned to a Member of Division Bench except in certain circumstances set out in Section 5(4) of the said Act. In this case, it was a clear case of Single Member Coram non judice.

85. In this case even otherwise, there was a specific request made by the Petitioner that considering the issues involved, the matter shall be heard by

the Division Bench. The Learned Member of the Tribunal, however, exceeded his jurisdiction by hearing the dispute falling within the exclusive jurisdiction of Division Bench and not by the Single Member.

86. A perusal of the said Circular dated 25/28 May, 2021, clearly indicates that the Learned Chairman has clearly provided the list of subject wise matters pertaining to the Division Bench and the Single Bench as on 25 May, 2021. The nature of matters prescribed, to be decided by the Single Bench would indicate that the same are personal in nature and would relate to an individual dispute not affecting the other employees, who were not parties to the said litigation. It is not the case of the Respondent No.1 that the issue of ‘cancellation of appointment’ only could be tried by the Division Bench, whereas the case of ‘posting’ could be tried by a Single Member of the Tribunal.

87. Insofar as judgment of the Supreme Court in case of **Indermani Kirtipal Vs. Union of India and Ors. (supra)** relied upon by Mr. Anturkar, learned Senior Counsel for Respondent No.1 is concerned, the Supreme Court had considered the issue of competence of Single Member to decide matter relating to promotion and held that in absence of initial lack of jurisdiction, once the matter is decided on merits by the Single Member, it was not open to the unsuccessful party to raise plea regarding lack of jurisdiction of the

Member. It was not the case of the party before the Supreme Court regarding lack of jurisdiction. In this case, the Petitioner had raised the issue of initial lack of jurisdiction.

88. It was the case of ‘appointment on deputation and cancellation of deputation’. The finding that it was the ‘posting’ in the operative part of the impugned order is erroneous. The Judgment of the Supreme Court in the case of **Indermani Kirtipal Vs. Union of India and Ors. (supra.)** thus would not advance the case of the Respondent No.1.

89. Insofar judgment delivered by the Learned Single Judge of this Court (R.D. Dhanuka, J.) in case of **Man Global Ltd. Vs. Bharat Prakash Joukani (supra)** is concerned, the said judgment would advance the case of the Petitioner and not the Respondent No.1. Insofar as the judgment of this Court in case of **APL Yashomangal Developers & Anr. Vs. Yashwant Dashrath Sawant & Anr. (supra)** relied upon by the learned Senior Counsel for Respondent No.1 is concerned, this Court while considering a case held that it was a case of an order of transfer only, which could be heard by Single Judge. In that case, the Tribunal had heard the matter on merits. The Division Bench of this Court distinguished the case of the Supreme Court in case of **Indermani Kirtipal Vs. Union of India and Ors. (supra.)** and has held that since the matter was decided after considering the case on merits, it was no

longer open to the unsuccessful party to plead that the Single Member had no jurisdiction to decide the issue or that the order suffered from initial lack of jurisdiction. In our view, the said judgment of Division Bench is clearly distinguishable on the ground that in this case the Petitioner raised an objection before the Single Member of the Tribunal that the matter could not have been heard by him as it is the case of initial lack of jurisdiction.

90. The order was passed on 15 February, 2023 rejecting the said objection. On 16 February, 2023, the matter was heard by the Learned Single Member of the Tribunal and very next date, thereafter, the Original Application filed by the Respondent No.1 was allowed. No time was thus available to the Petitioner to challenge the said order passed on 15 February, 2023. Be that as it may, the Petitioner is not precluded from challenging the order rejecting the objection raised by the Petitioner that the Single Member of the Tribunal has no jurisdiction to decide the said Original Application along with the final order which was even otherwise passed after two days from the date of passing the final order. Be that as it may, since it was a case of inherent lack of jurisdiction, participation of the Petitioner in the hearing before the learned Single Member would not confer any jurisdiction upon him.

91. Insofar as the submission made by Mr. R.D. Soni that view taken by the Learned Single Member of the Tribunal holding that he had jurisdiction

to try, entertain and adjudicate upon the Original Application filed by Respondent No.1 is a plausible view and thus cannot be interfered by this Court by exercising discretionary power under Article 226 of the Constitution of India is concerned, in our view, there is no substance in the submission made by the learned counsel. This is a clear case of inherent lack of jurisdiction of the Single Member of the Tribunal to try, entertain and adjudicate upon the Original Application filed by the Respondent No.1 as the same could be heard only by the Division Bench and not by the Learned Single Member of the Tribunal. When Court has to consider whether it was a case of inherent lack of jurisdiction, Court has to interpret the provision conferring jurisdiction strictly.

92. In our view, Mr. Naidu, Learned Counsel for the Corporation is right in his submission that this was a case of appointment of the Petitioner as well as Respondent No.1 from one cadre post to another cadre post which could be done by way of appointment and not posting. He rightly relied upon the Article 309 of the Constitution of India and Entry No.29 on the list of the disputes to be decided by the Single Member of the Tribunal and that the deputation referred therein has to be in a same cadre and not in a higher post. In our view, the said Entry No. 29 has to be read with Serial Nos. 2 and 3. For the purpose of appointment by deputation, submission of proposal is mandatory which has to be approved by the Chief Minister, whereas on deputation, totally different procedure is followed. The Appointed Authorities are also different in

both the cases.

93. In our view, Mr. Kumbhakoni, learned Senior Counsel for the Petitioner is right in his submission that if appointment includes cancellation, there was no need to have separate entry “cancellation”. Since the Learned Single Member of the Tribunal has no jurisdiction to decide the dispute in respect of ‘appointment by deputation and order of cancellation’, the impugned order dated 15 February, 2023 deserves to be quashed and set aside on the ground that the said order passed by the Learned Single Member of the Tribunal is a clear case of the inherent lack of jurisdiction. The subsequent order dated 17 February, 2023 also thus consequently deserves to be quashed and set aside on the ground of inherent lack of jurisdiction.

94. We accordingly, pass the following order:

(i) Impugned order dated 15 February, 2023 passed by the Learned Member of the Maharashtra Administrative Tribunal in Original Application No. 990 of 2022 is quashed and set aside on the ground of inherent lack of jurisdiction. Consequently, the order dated 17 February, 2023 passed by the Learned Single Member of the Maharashtra Administrative Tribunal allowing the

Original Application No. 990 of 2022 is also quashed and set aside on the ground of inherent lack of jurisdiction.

(ii) Original Application No. 990 of 2022 is restored to file. The Division Bench of the Maharashtra Administrative Tribunal to decide the said Original Application on its own merits and in accordance with law, without being influenced by the observations made and the conclusion drawn by the Learned Single Member of the Maharashtra Administrative Tribunal in the orders dated 15 February, 2023 and 17 February, 2023 within three months from the date of communication of this order.

(iii) Interim order passed by this Court on 28 February, 2023 to continue till disposal of the Original Application No. 990 of 2023 by the Division Bench of the Maharashtra Administrative Tribunal and for a period of three weeks from the date of the communication of the order that would be passed by the Division Bench of the Maharashtra Administrative Tribunal, if the same is adverse against the Petitioner.

(iv) Writ Petition is allowed in aforesaid terms.

(v) Rule is made absolute accordingly. No order as to costs.

(vi) Interim Application for intervention is allowed.

(vii) Parties as well as Maharashtra Administrative Tribunal to act on an authenticated copy of the order.

(GAURI GODSE J.)

(R.D.DHANUKA, J.)