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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6914 OF 2019**

Ramesh Bandu Thorat ...Petitioner
Versus
Bhiwandi Nizampur City Municipal Corporation ...Respondents
& Ors

Ms Anita Bhaktwani, *for the Petitioner.*
Mr ND Bubna, *for Respondents Nos. 1 & 2.*
Mr VB Kalel, AGP, *for Respondents Nos. 3, 6 & 7-State.*

**CORAM G.S. Patel &
 Dr Neela Gokhale, JJ.**
DATED: 30th January 2023

PC:-

1. There is an Affidavit in Reply and an Affidavit in Rejoinder.
2. Rule. Returnable forthwith.
3. There are seven Respondents. The 5th Respondent is the Lok Ayukta. In our view, the Lok Ayukta has been wrongly joined. No reliefs are sought against the Lok Ayukta.
4. The Petitioner's grievance is about an order passed on 13th October 2017 by the 2nd Respondent effectively cancelling or

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withdrawing an approved promotion granted to the Petitioner as long ago as March 2007. The only basis for this action seems to be a complaint by a self-styled “vigilant” citizen, the complaint being that the Petitioner did not possess the requisite qualifications for promotion to the post in question.

5. The relevant facts are these.

6. The 1st Respondent is the Bhiwandi Nizampur City Municipal Corporation (“**BNCMC**”). The Petitioner has been working with the BNCMC in different positions since 1992. Altogether, until the date of this Petition in 2019, the Petitioner had put in about 27 years of service. He began his service career in the BNCMC as a Class III employee, a clerk, and over time rose through the ranks. Even now, there is no mention anywhere in the record of any disciplinary proceedings or performance complaints against the Petitioner at any time.

7. On 13th September 2006, the promotion committee of the BNCMC met. It took up the seniority list. It considered the available posts and reservations, if any. The Petitioner was promoted to a Class-II post subject to the approval of the BNCMC general body. That General Body approval followed on 16th September 2006. There is no quarrel with this promotion. The BNCMC then issued a formal order of promotion on 18th September 2006. On 12th March 2007, the Petitioner was served with the order of promotion to the designated post. In accordance with the requirements, the promotion was sent on to the Principal

Secretary in the Urban Development Department for approval. That approval came through on 25th May 2007. The Petitioner then took charge of his promotional post and began discharging his duties.

8. This position continued undisturbed until 30th December 2013, that is to say, a good six years on. On that date, one Santosh Janu Chavan, claiming to be a vigilant citizen, though that might be doing some considerable violence to the language since there is no explanation for his six years of somnolence, made allegations against the BNCCMC and its Municipal Commissioner. The challenge was to the promotions of one Deepak Kadam and one Shaan Ali Hasan Ali. They were given promotions under a resolution of 11th February 2013. Apparently, the authorities paid no attention to this complaint. The complainant moved an enquiry officer and the Lok Ayukta. The result of that appears to have been a direction to conduct an enquiry. A report was sought from the BNCCMC and its Municipal Commissioner. The Commissioner submitted a report on 23rd December 2014. A copy is at Exhibit “H” and this is an important justification for the Petitioner’s promotion.

9. However, the Collector, Thane, seems to have embarked on some inquiry and the Divisional Commissioner of the Konkan Region placed another report of 27th March 2015 now showing the promotion of the Petitioner to have been irregular or incorrect apparently on the basis that his promotion violated the service rules for want of the necessary qualifications. Specifically, it was alleged that the Petitioner had not passed departmental examinations and

the LSGD. On the basis of this 27th March 2015 report, the Principal Secretary, Urban Development Department. directed the Commissioner of the BNCCMC to take actions against several officers mentioned in three lists annexed to that letter. It is at this stage that the Commissioner of the BNCCMC sent a show cause notice of 7th December 2016 to the Petitioner calling for an explanation in writing within eight days “as to why the promotion wrongly granted to him should not be cancelled and salary and other benefits be recovered from him”. A copy of this is at Exhibit “K” to the Petition.

10. Pausing briefly, we note that by this time, the Petitioner had been in the promotional post for nine years already. He had by this time put in 24 years of service with the BNCCMC, all of it without complaint or disciplinary action of any kind. The show cause notice proceeded as if no State Government approval had ever been granted, although it had on 23rd May 2007. The clear trajectory of the show cause notice was to punish the Petitioner for having even applied for or sought a promotion. The consequences of the promotion granted, approved and now sought to be undone were to be visited entirely on the blameless Petitioner. All this, the show cause notice completely overlooked. The Petitioner filed a Reply on 15th December 2016 bringing on record many of these facts. On 13th October 2017, when the impugned order was passed, this was, it is submitted on behalf of the Petitioner, by ignoring all vital and germane material and taking into account irrelevant considerations.

11. We believe there is considerable substance in the submission of the Petitioners. Our attention is invited to the Service Rules of 2006. According to the Petitioner, the requirement is graduate or SSC LSGD and experience of 10 years in municipal matters. The Petitioner was in fact a double graduate and had 14 years of experience in supervisory posts. In this context, it is worth noting ground (xi) at page 9 of the Petition which reads thus:

“(xi) The Resolution No. 197 and minutes of the Promotion Committee if considered and carefully perused clearly indicates that the promotions being granted to the Petitioners is on the basis of Seniority List as well as the experience of 10 years and education qualifications of Petitioner who is B.A.B.Ed graduate, as well as on availability of the vacancies. If the Service Rules of 2006 are to be considered the requisition is “Graduate or SSC LSGD and experience of 10 years in the Municipal Matters”. The Petitioner is graduate and had 14 years experience on supervisory post in the Municipal matters. So there is absolutely no irregularity in the promotion of the Petitioners. The copy of the extract of the Service Rules of 2006 is hereto annexed and marked as Exhibit “N”.”

12. If there was any ambiguity about this, it is put to rest by paragraphs 3 and 4 of the Affidavit in Rejoinder at pages 127 and 128 which read as follows:

“3. I say with regards to para no.2 that it is true that the Service Rules framed by Respondent lay down eligibility criteria for appointment to various posts. It is not denied that the Petitioner was initially appointed as a clerk and was granted promotion. But the Petitioner holding qualification of being a B.A.B.Ed was on 01.08.1994 promoted to the post of Octroi Inspector, considering the qualification

provided in Government order dated 24.11.1983. The copy of the Government order/Service Rules dt: 24.11.1983 is hereto annexed and marked as Exhibit “I”.

4. It was thereafter after 12 long years that on 18.09.2006, order of promotion was passed in favour of the Petitioner considering the fact that he is a double graduate with more than 12 years of experience at Supervisory post of Octroi Inspector. It is submitted that promotion of the Petitioner was to Class II category which comprises of Assistant Commissioner, Office Superintendent, Assessment Officer and Administrative Officer. The Petitioner was duly qualified to being promoted to the said category, being a double graduate with more than 12 years Experience at Supervisory post of Octroi Inspector and could be appointed to the posts stated therein, which was to be done by the Corporation Respondent, which cannot be disputed by the Respondent at all.”

13. There is absolutely no answer to these assertions.

14. The only ground on which the promotion of the Petitioner is sought to be invalidated is an entry in a table at page 120 to suggest that the Petitioner lacked the necessary qualifications.

15. But this cannot have come as a surprise to either the 1st or the 2nd Respondents, nor for that matter to the State Government through the Urban Development Department, the 6th Respondent. Even if the Petitioner was unaware of these requirements, these public authorities were certainly fully cognizant of them. Despite this, and even assuming that the requirements are to be read as Mr Bubna would have it, the BNCMC approved and granted the

promotion. Not only that, but it sent on the promotion for approval of the State Government through the Urban Development Department. Had it stopped at that, perhaps the matter might have stood differently. But the State Government in turn approved the promotion of the Petitioner and it did so as far back as on 25th May 2007.

16. It is difficult to understand how an order of reversion could be passed 10 years later undoing the positive acts of the public authorities in this fashion and visiting the consequences of that reversal on the Petitioner. The matter is not only of a denial of promotion but, as the show cause notice itself threatens, also of monetary recovery because undoubtedly the Petitioner would have been in the higher pay scale. We note too that there is no dispute on record about the Petitioner's educational qualifications or his career experience with the BNCMC. In 2015, in any case, the Petitioner cleared the Higher Diploma LGS Course, which is above the LSGD course, a factor that surely should have weighed with the enquiry officer before the impugned order was made on 13th October 2017.

17. To put it more bluntly; there is simply no justice in what the BNCMC proposes. It is true that it is applying what it perceives to be a standard. It is true that it has acted on the instructions of the State Government. But no authority can act in this manner by retrospectively and blindly applying a standard that was to the minds of the authorities not once, but twice: first, when the promotion was granted by one authority, and second, when it was approved by another. This undoing of a conscious and deliberate positive act and

approval, and that too after such a delay, cannot be to the detriment of an individual citizen against whom there is absolutely no adverse finding or record of any kind. No principle of equity or justice will allow us to hold against the Petitioner in favour of the Respondents.

18. The Petition succeeds.

19. Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) This Hon’ble Court may by appropriate writ of certiorari or any other appropriate writ, order or direction be pleased to quash and set aside the impugned letter dated 13th October 2017.”

20. No costs.

(Dr Neela Gokhale, J)

(G. S. Patel, J)