IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10744 OF 2016

Smt. Surekha Sanjiv Wade & Ors. .. Petitioners

Vs.

The Commissioner,
Navi Mumbai Municipal Corporation & Anr. .. Respondents

- Mr. A.V. Anturkar, Senior Advocate a/w. Mr. S.B. Deshmukh & Mr. Irvin D'souza, for the Petitioners.
- Mr. Tejesh Dande, for Respondent Nos.1 & 2-NMMC.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ

DATE : 1st AUGUST, 2023.

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule made returnable forthwith by consent of learned counsel for the respective parties.

2. This petition questions the legality and correctness of the order dated 14th September, 2016 passed by Respondent No.1 - The Commissioner, Navi Mumbai Municipal Corporation, Navi Mumbai; thereby demoting the petitioners from their present positions of Senior Clerks/Tax Inspectors to their original positions of Telephone

Operators, Drivers and Time Keepers.

3. Learned Senior Advocate appearing for the petitioners submits that the only reason stated in the impugned order is that the petitioners could not have been promoted to higher post in the cadre of Senior Clerk/Tax Inspector on the ground that the original posts the petitioners were holding were of technical nature and for technical personnel, there was no promotional channel available, was illegal and inconsistent with the Navi Mumbai Municipal Corporation Recruitment Rules, 1999 (hereinafter referred to as the Rules, 1999), in particular, the Rule prescribed in the Schedule to the Rules 1999 at Sr.No.120 and also Sr.No.116. In support of his submissions, he has taken us through the various communications and the orders filed on record, in particular, communication dated 8th May, 2000, communication dated 30th June, 2000, order dated 12th December, 2002, General Body Resolution dated 7th November, 2006 approving the promotions given to the petitioners and others and the appointment order dated 5th October, 2006.

4. Learned counsel for the Corporation submits that the impugned order is correct and legal, and therefore, no interference therewith is warranted. He submits that even though the impugned order is based only on one ground, there are additional reasons which could be seen to be present in passing of the impugned order and these reasons are to be found out from the provisions made in the Recruitment Rules of 1999. He submits that the reliance placed by the learned Senior Counsel for the petitioners, the Rule at Sr.No.120 in Schedule to the Rules 1999, is misplaced as this Rule provides for intra-change of cadre from that of Driver and Telephone Operator to Clerk-cum-Typist. He further submits that the post of Senior Clerk/Tax Inspector can be filled up by direct recruitment and also by promotion of the personnel in the cadre of Junior Clerk, Clerk-cum-Typist, Clerk-Store Keeper, subject to their holding necessary qualifications. He further submits that since the petitioners did not hold the necessary qualifications and that they were also not absorbed in the cadre of Junior Clerk-cum-Typist, the petitioners could not have been promoted to the post of Senior Clerk/Tax Inspector. He further submits that none of the petitioners possess the graduate qualification, and therefore, it may not be appropriate for the Corporation to continue the petitioners on a specialized post like that of a Tax Inspector. For these reasons, learned counsel further submits that the promotions granted to the petitioners could not be said to be legal and proper and that the impugned order passed by Respondent No.1 must be upheld.

5. We would have accepted the submissions of learned counsel for the Corporation had they been factually correct; but the position which turns out now, as rightly submitted by learned Senior Counsel for the petitioners, is that on facts of the case, the petitioners appear to be qualified for being promoted to the post of Senior Clerk/Tax Inspector inasmuch as such promotions have already approved by the General Body.

6. The correspondence and the orders referred to above and to which our attention has been drawn by the learned Senior Counsel amply show that even though the petitioners were initially appointed to the post of Driver/Telephone Operator and Time Keeper, they were absorbed in the cadre of Junior Clerk later on and while being in that cadre, the additional charge of the post of Senior Clerk was also entrusted to the petitioners. Of course, in Rule at Sr.No.120 in Appendix to Rules 1999, there is no mention of the post of Time Keeper for changing the cadre into that of Clerk-cum-Typist; but only a few of the petitioners holding the post of Time Keeper and not all the petitioners came into the cadre of Junior Clerk from the cadre of Time Keeper and such absorption of these petitioners was never questioned by the Corporation including the Commissioner of Navi Mumbai Municipal Corporation. Even today, such absorption has not been revoked by Respondent No.1. Then, this is also not the ground taken by

Respondent No.1 for passing of the impugned order. Therefore, the argument made on behalf of the Corporation that some of the petitioners even otherwise could not have been regularized by Respondent No.1 does not hold any water and it is rejected accordingly.

7. The facts and circumstances of the case as referred to above do indicate that all the petitioners possessed requisite qualifications for being promoted to the post of Senior Clerk/Tax Inspector in terms of Rule at Sr.No.116 in Appendix to Rules 1999. If that is so; the ground on which impugned order has been passed would have to be said as erroneous and even illegal, not consistent with the factual position of whole case and the applicable recruitment rules.

8. There is one more dimension of the present case and it relates to the approval granted to the promotion of the petitioners to the post of Senior Clerk/Tax Inspector by the General Body of Respondent No.1. This fact is not in dispute, as seen from the promotion order dated 5th December, 2006 making a reference to approval of the proposal for promoting petitioners to the post of Senior Clerk/Tax Inspector by the General Body vide its Resolution No.1303 passed on 7th November, 2006. Once a Resolution is passed by the General Body of the Corporation; it attains finality and is required to be implemented in its letter and spirit by the Commissioner of Corporation, unless necessary action has been imitated by the Commissioner of Corporation in terms of the provisions made in Section 451 of Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as the Act 1949). Section 451 of the Act 1949 confers power upon the State Government to suspend or rescind any resolution or order of Corporation or other authority in certain cases, as referred to in sub-section 1 of Section 451; but for that purpose, it is necessary for the Corporation or its Commissioner or Transport Manager as the case may be, to make a representation to the State Government against the Resolution or the order. In the present case, Respondent No.1/the Commissioner of Navi Mumbai Municipal Corporation has not made any representation as provided for in sub-section 2 of Section 451 of the Act 1949 and it is an admitted fact, and therefore, no occasion arose for the State Government so far to examine the legality and correctness of the Resolution passed by the General Body of Corporation. The Commissioner of Corporation cannot, as if he is an appellate authority, usurp power of the State Government to suspend or rescind a Resolution. In the present case, by passing the impugned order, reverting the petitioners to their original positions, Respondent No.1 has virtually revoked the Resolution passed by the Corporation, thereby usurping the power of the State Government under Section 451 of the Act, 1949, which is a serious illegality committed by him.

9. For the reasons stated above, we find that the impugned order is bad in law and it deserves to be quashed and set aside.

10. The petition is allowed. The impugned order dated 14th September, 2016 passed by Respondent No.1-The Commissioner, Navi Mumbai Municipal Corporation, Navi Mumbai; is hereby quashed and set aside.

11. Rules is made absolute in the above terms. No costs.

12. Petition is disposed of accordingly.

[RAJESH S. PATIL, J.] **[SUNIL B. SHUKRE, J.]**