

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9441 OF 2021

Babasaheb Bhau Kamble
Age 56 years, Occ. Service,
R/at: At Post Shevanti Ban Colony,
Survey No.66, Walhekar Wadi,
Taluka-Haveli, Chinchwad,
Pune. District Pune – 411 033.

....Petitioner

V/S

- 1 State of Maharashtra
Maharashtra Shasan,
Chief Secretary
Urban Development Department,
Government of Maharashtra
Mantralay Annexe,
Mumbai – 400 032.
- 2 The Pimpri Chinchwad Municipal Corporation
Commissioner Mr. Rajesh Patil,
PCMC Commissioner
Pimpri, Pune – 411 018.
- 3 Deputy Commissioner
Administration
Mr. Subhas Ingale,
PCMC Deputy Commissioner,
Pimpri, Pune – 411 018.
- 4 Ganesh Shankar Deshpande
Age 58 years, Occ. Service,
Address – Malati Niwas
Madhuban Colony Lane No.4,
Old Sangavi – 411 027.

....Respondents

...
Mr. Tejas R. Balsara with Mr. Ravindra S. Pachundkar for the
Petitioner.

Smt. R.A. Salunkhe, AGP for Respondent No.1-State.

Mr. Kedar D. Dighe a/w Ms. Archana Gaware for Respondent Nos.2
and 3-PCMC.

Mr. Vishal S. Khanvkar for Respondent No.4.

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CORAM	:	DHIRAJ SINGH THAKUR & SANDEEP V. MARNE, JJ.
RESERVED ON	:	26 JUNE 2023.
PRONOUNCED ON	:	20 JULY 2023.

JUDGMENT (*Per Sandeep V. Marne, J.*):

. Rule. Rule is made returnable forthwith with the consent of the parties, Petition is taken up for final hearing.

2 This is a competing claim between Petitioner and Respondent No.4 for promotion to the post of Health Executive Officer in Pimpri Chinchwad Municipal Corporation. By order dated 12 November 2021, the Respondent-Municipal Corporation has promoted Respondent No.4 on the post of Health Executive Officer, which order is the subject matter of challenge by Petitioner in the present Petition.

3 Both Petitioner and Respondent No.4 joined the services of Respondent-Municipal Corporation on the post of Sanitary Inspector. While Petitioner joined the post of Sanitary Inspector on 18 June 1990, Respondent No.4 joined the said post earlier on 22 March 1988. Petitioner belongs to Scheduled Caste category whereas Respondent No.4 belongs to Unreserved category. On account of prior appointment of Respondent No.4 on the post of Sanitary Inspector, the name of Respondent No.4 was placed higher than Petitioner in the seniority list of Sanitary Inspector published on 5 August 2004.

4 Respondent No.4 was promoted to the post of Chief Sanitary Inspector on 23 January 2008 whereas Petitioner was promoted to that post on 19 June 2013. Accordingly, in the seniority list of the post of Chief Sanitary Inspector published vide order dated 6 February 2016, Respondent No.4 ranked senior to Petitioner.

5 It appears that disciplinary proceedings were initiated against Respondent No.4 by issuing of memorandum of charge-sheet dated 21 January 2012. The next promotion available to both the Officers was to the post of Assistant Health Officer. A DPC was conducted for effecting promotions to the post of Assistant Health Officer on 29 March 2016 and Petitioner was recommended for promotion to that

post, against vacancy reserved for SC category. It appears that Respondent No.4 was not recommended for promotion to the post of Assistant Health Officer on account of pendency of disciplinary proceedings against him. By order dated 25 April 2016, Petitioner came to be promoted to the post of Assistant Health Officer.

6 Disciplinary proceeding initiated against Respondent No.4 culminated in imposition of penalty order dated 10 May 2018, by which the penalty of withholding of two increments without cumulative effect was imposed on him. It was also decided to recover amount of loss of Rs.14,37,259/- from Respondent No.4. He had already deposited an amount of Rs.3,00,000/- in the Municipal treasury and the balance amount was recovered from his salary in installments. It appears that the entire amount was accordingly recovered from salary of Respondent No.4 from May 2018 to May 2021. Respondent No.4 came to be promoted to the post of Assistant Health Officer on 2 November 2018.

7 The next promotion available for Petitioner and Respondent No.4 is to the post of Health Executive Officer, which is a Class-I post. As per the Recruitment Rules sanctioned by the State Government, the post of Health Executive Officer is to be filled 100% by promotion from officers holding the post of Assistant Health Officer for three

years in accordance with seniority and merit. By order dated 12 November 2021, Respondent-Municipal Corporation has promoted Respondent No.4 to the post of Health Executive Officer. The Petitioner is aggrieved by the same and has filed the present Petition.

8 Appearing for Petitioner Mr. Balsara, the learned Counsel would submit that promotion granted to Respondent No.4 is illegal as he did not fulfill the requisite eligibility criteria for promotion to the post of Executive Health Officer. That Respondent No.4 was promoted to the feeder post of Assistant Health Officer on 2 November 2018 and had not completed three years of service on that post as on 14 October 2021 when the DPC considered his case for promotion. That therefore, grant of promotion to Respondent No.4 is in violation of the Recruitment Rules. He would further submit that Petitioner became senior to Respondent No.4 on account of his promotion to the post of Assistant Health Officer on 25 April 2016 as compared to promotion of Respondent No.4 on 2 November 2018. That though Respondent No.4 was inflicted with penalty on 10 May 2018 and huge amount was directed to be recovered against him, which recovery continued till May 2021, he has been recommended for promotion. That even if Petitioner's promotion to the post of Assistant Health Officer is effected against reserved vacancy, he is entitled to consequential seniority from the date of his promotion.

9 Mr. Dighe, the learned counsel appearing for the Respondent-Municipal Corporation would oppose the Petition and support the decision of the Respondent-Municipal Corporation. He would invite our attention to the Affidavit-in-Reply filed on behalf of Respondent-Municipal Corporation, particularly the chart giving dates of appointment and promotions of the two officers. That Respondent No.4 is senior to Petitioner in the seniority list and would rely upon seniority list dated 5 August 2004 of the post of Sanitary Inspector. That as per Government Resolution dated 7 May 2021 Respondent-Municipal Corporation has rightly effected promotions on the basis of relative seniority list between Petitioner and Respondent No.4. That as per the Government Resolution dated 7 May 2021, officers who are promoted on the basis of reservations would be eligible for further promotions on the basis of their seniority position as on 25 May 2004. That promotion of Petitioner as Assistant Health Officer on 25 April 2016 was purely on account of reservation and therefore seniority position as on 25 May 2004 is required to be taken into consideration in term of the GR. That as on 25 May 2004, Respondent No.4 was senior to Petitioner. He would submit that as per the Government Resolution dated 5 October 2015, a provision is made for relaxation of eligibility service. He would therefore pray for dismissal of the Petition.

10 Mr. Khanvkar, the learned Counsel appearing for Respondent No.4 would submit that Respondent No.4 has always been senior to Petitioner right from the initial date of appointment. Petitioner's promotion as Assistant Health Officer as on 25 April 2016 granted against reservation cannot result in supersession of Respondent No. 4. That the penalty imposed in the disciplinary proceeding did not affect seniority of Respondent No.4 and therefore, he has rightly been promoted to the post of Health Executive Officer.

11 Rival contentions of the parties now fall for our consideration.

12 To decide competing claims between Petitioner and Respondent No.4 for promotion to the post of Health Executive Officer, it would be necessary to consider the provisions of Recruitment Rules. The Respondent-Municipal Corporation has formulated "Pimpri Chinchwad Municipal Corporation Services" (Recruitment and Classification of Service) Rules, 2020. Under the Recruitment Rules, the post of Health Executive Officer, which is a Group-A post in Public Health Department, is to be filled 100% by promotion. The eligibility criteria specified in the Recruitment Rules reads thus:

Sr. No.	Category	Designation	Method of appointment & percentage 1.Nomination 2.Promotion 3.Deputation	Qualification and method of appointment See Rule (3)
				(27) Health Department
236	Public Health Officer Group A	Health Executive Officer	Nomination (If not available with promotion)	1) Must have M.D., P.S.M./M.D. Post Graduate Degree or P.H.D. from recognized University. 2) Must have minimum experience of 05 years as Assistant Health Officer/ Deputy Chief Sanitary Officer/ Equivalent Group-B category of the Govt/ Semi Govt/ Local Body. 3) Must have knowledge of Marathi language
			Promotion 100%	1) Promotion of an officer who has completed at least 3 years of service to the post of Assistant Health Officer at the establishment of Pimpri Chinchwad Municipal Corporation on the basis of seniority and merit.

13 Thus, the post of Health Executive Officer is to be filled on the basis of seniority and merit. Seniority, therefore, would be the primary consideration. It would therefore be necessary to consider the seniority position between Petitioner and Respondent No.4. The dates of

appointment and promotions of Petitioner and Respondent No.4 are as under:

	Date of Appointment as Sanitary Inspector	Date of Promotion as Chief Sanitary Inspector	Date of promotion as Assistant Health Officer	Date of Promotion as Health Executive Officer
Petitioner	18-06-1990	19-06-2013	25-04-2016	Not promoted
Respondent No.4	22-02-1988	23-01- 2008	02-11-2018	12-11-2021

14 Respondent No.4 was thus initially recruited in service well before Petitioner and accordingly in the seniority list of Sanitary Inspector published on 5 August 2004, the name of Respondent No.4 figured at serial no.6 where name of Petitioner figured at serial no.11. After the officials were promoted to the post of Chief Sanitary Inspector, a seniority list was published on 6 February 2016 in which name of Respondent No.4 figured at serial no.1 and Petitioner's name figured at serial no.4. Thus till the post of Chief Sanitary Inspector, Respondent No.4 always ranked senior to Petitioner.

15 When the question of effecting further promotions to the post of Assistant Health Officer arose in the year 2016, Respondent No.4 got embroiled in disciplinary proceedings, which was initiated against him on 21 January 2012. The disciplinary proceeding remained pending during the year 2016, when DPC for effecting promotions to the post

of Assistant Health Officer was convened on 29 March 2016. On account of pendency of disciplinary proceedings, the case of Respondent No.4 was apparently not recommended for promotion to the post of Assistant Health Officer. It is not known whether his case was kept under sealed cover or not. The DCP however, recommended Petitioner for being promoted to the post of Assistant Health Officer in addition to one more employee. By order dated 25 April 2016, Petitioner was promoted to the post of Assistant Health Officer.

16 Respondent No.4 was inflicted with punishment of stoppage of two increments without cumulative effect after being found guilty in the disciplinary proceeding by order dated 10 May 2018. Additionally, he was held responsible for causing loss to the Respondent-Municipal Corporation for an amount of Rs.14,37,259/-. He had already deposited an amount of Rs.3,00,000/- with Municipal treasury. The balance amount was ordered to be recovered from his salary in installments. After imposition of punishment vide order dated 10 May 2018, case of Respondent No.4 was considered for promotion to the post of Assistant Health Officer by DPC convened on 4 October 2018. On the basis of recommendations of the DPC, order dated 2 November 2018 was issued promoting Respondent No.4 to the post of Assistant Health Officer. As a matter of fact, two increments of Respondent No.4 were directed to be withheld vide penalty order

dated 10 May 2018, and it appears that during currency of the penalty, he was promoted vide order dated 2 November 2018. In fact in its written submissions, the Respondent-Municipal Corporation has given the reason of '*had paid entire amount of penalty*' as a justification for promotion of Respondent No. 4 as Health Executive Officer on 12-11-2021. However no justification was offered as to how he was promoted as Assistant Health Officer on 2 November 2018 when not only the recovery of penalty was in force against him, but he was also undergoing the penalty of withholding of 2 increments. Grant of promotion to Respondent No. 4 as Assistant Health Officer on 2 November 2018 therefore becomes questionable. However only because the said promotion is not under challenge, we refrain ourselves from issuing any direction in that regard. We therefore proceed on the footing that Respondent No. 4 was promoted to the post of Assistant Health Officer on 2nd November 2018.

17 In the manner aforesaid, Petitioner came to be promoted to the post of Assistant Health Officer on 25 April 2016 whereas Respondent No.4 was promoted to that post on 2 November 2018. This is where Petitioner superseded Respondent No.4 in the seniority list of the post of Assistant Health Officer. As per the Recruitment Rules, Assistant Health Officer is the feeder post of promotion to the post of Health Executive Officer.

18 Though Petitioner superseded Respondent No.4 in the seniority list of the post of Assistant Health Officer, Respondent-Municipal Corporation ignored the seniority position of Assistant Health Officer but took into consideration the seniority list dated 5 August 2004 of the post of Sanitary Inspector. This was done by relying on the Government Resolution dated 7 May 2021. It is the contention of Respondent-Municipal Corporation that Petitioner was promoted to the post of Assistant Health Officer by taking benefit of reservation and that the Government Resolution dated 7 May 2021 provides that in case of officials who have secured promotions on the basis of reservation, their seniority as on 25 April 2004 is required to be taken into consideration. The Government Resolution dated 7 May 2021 was issued for the purpose of implementing the judgment of this Court in **State of Maharashtra Vs. Vijay Ghogare**, Writ Petition No. 2797 of 2015 decided on 4 August 2017 holding that the principle of reservations cannot be made applicable for effecting promotions. By that judgment the Government Resolution dated 25 May 2004 providing for reservations in promotion was struck down. The relevant portion of the GR reads thus:

“३. जे मागासवर्गीय अधिकारी/कर्मचारी संदर्भाधिन क.१ येथील दि.२५.०५.२००४ च्या शासन निर्णयातील तरतुदीनुसार पदोन्नतीमधील आरक्षणाचा लाभ घेऊन सेवाज्येष्ठता यादीत वरच्या स्थानावर आले आहेत, असे अधिकारी/कर्मचारी —

(अ) दि. २५.०५.२००४ रोजी किंवा त्यापुर्वी शासन सेवेत रुजू झाले असल्यास ते त्यांच्या दि.२५.०५.२००४ रोजीच्या सेवाज्येष्ठतेनुसार पुढील पदोन्नतीस पात्र ठरतील व;

(ब) दि.२५.०५.२००४ नंतर शासन सेवेत रूजू झाले असल्यास ते त्यांच्या सेवाप्रवेशाच्या मुळ सेवाज्येष्ठतेनुसार पुढील पदोन्नतीस पात्र ठरतील.”

The quoted provision in the GR can be translated as:

“3. Those employees/officers belong to reserved categories who have secured higher positions in seniority list on account of promotions by taking benefit of reservation provided vide GR at Sr. No. 1 dated 25-05-2004, such employees/officer:

(a) if have joined government service on or before 25 May 2004, shall be eligible for further promotions on the basis of their seniority as on 25-05-2004;

(b) if they have joined government service after 25-05-2005, they shall be eligible for further promotions on the basis of seniority as per their date of initial appointment.”

19 However, in the present case, the question of granting seniority to the Petitioner on the strength of his promotion secured through reservation is completely irrelevant. It is not that Petitioner has secured prior promotion to the post of Assistant Health Officer than Respondent No.4 only on account of reservation. Respondent No.4 was undergoing disciplinary proceedings as on 25 April 2016, when Petitioner was promoted to the post of Assistant Health Officer. Respondent No.4 was found guilty in the disciplinary proceedings and punished vide order dated 10 May 2018. Since Respondent No.4 was found guilty and punished in the disciplinary proceedings, there was no question of opening the sealed cover, even if the sealed cover procedure was to be adopted. It was only after conclusion of the

disciplinary proceedings that Respondent No.4 has been promoted to the post of Assistant Health Officer vide order dated 2 November 2018. Thus, supersession in the cadre of Assistant Health Officer by Petitioner over Respondent No.4 is not owing to reservation but on account of pendency of disciplinary proceedings against him in which he was punished. Therefore, the provisions of the Government Resolution dated 7 May 2021 are wholly inapplicable to the present case.

20. We have gone through the minutes of the DPC placed on record alongwith Additional Affidavit by Petitioner. The DPC met on 14 October 2021. The DPC concluded that Petitioner superseded Respondent No.4 on account of promotion through reserved category. The DPC however ignored the fact that promotion of Respondent No.4 was delayed on account of pendency of disciplinary proceedings, in which he was ultimately penalized. The recommendations of the DPC thus suffer from vice of non-application of mind to the vital aspect.

21 Now we turn to the issue of eligibility of Respondent No. 4 for being recommended for promotion by the DPC which met on 14 October 2021. The DPC arrived at a conclusion that Respondent No.4 did not complete requisite three years' of service on the post of

Assistant Health Officer as on the date of DPC meeting. Since Respondent No.4 was promoted as Assistant Health Officer on 2 November 2018, he was yet to complete three years service as on 14 October 2021. The DPC however relied upon the Government Resolution dated 5 October 2015, which prescribes minimum experience of three years on immediate post below which for effecting promotions on Class-C to Class-A posts and prohibits grant of any relaxation. The Government Resolution further provides that if for any reason Recruitment Rules provide experience in excess of three years, in the event of non-availability of officers possessing prescribed service and in the event of large number of posts remaining unfilled, upon completion of 90% of requisite service, the case of an officer can be taken into consideration for relaxation of balance period of service by submitting a proposal to a Committee headed by Chief Secretary (Services).

22 The relevant portion of the Government Resolution dated 5 October 2015 alongwith translation provided by the Petitioner reads thus:

“शासन निर्णय:-

१) गट क (वर्ग-३) पासून गट अ (वर्ग-१) मधील सर्व टप्प्यांपर्यंतच्या आंतरश्रेणी पदोन्नतीसह प्रत्येक टप्प्यावर पदोन्नती करताना निकटतम निम्न पदावर किमान ३ वर्षांच्या नियमित सेविची अट पदोन्नतीसाठी पूर्व अट म्हणून राहिल व त्यामध्ये कोणतीही शिथिलता अनुज्ञेय राहणार नाही.

२) तसेच ज्या पदांच्या सेवाप्रवेश नियमामध्ये पदोन्नतीसाठी निम्न पदांवरील अनुभवाचा किमान कालावधी विवक्षित कारणास्तव ३ वर्षांपेक्षा जास्त विहित केला असेल अशा प्रकरणी निम्न संवर्गात विहित सेवा कालावधी पूर्ण केलेले अधिकारी/कर्मचारी उपलब्ध नसल्यामुळे मोठ्या प्रमाणावर पदे रिक्त राहत असतील तर निम्न संवर्गात आवश्यक किमान सेवेच्या ९० टक्के

नियमित सेवा झाल्यानंतर व अनुभवाची अट शिथिल करण्यासाठी संबंधित प्रशासकीय विभागाकडे पुरेसे समर्थन असेल तर असा उर्वरित सेवा कालावधीची अट शिथिल करण्याबाबतचा प्रस्ताव संदर्भ क्रमांक ३ येथील दि.१६.०७.२०१५ रोजीच्या शासन निर्णयान्वये स्थापन केलेल्या अपर मुख्य सचिव (सेवा) यांच्या अध्यक्षेखालील समितीसमोर निर्णयार्थ सादर करता येतील.”

“Government Decision:

1) The prerequisite for promotion is a minimum of three years of regular service to the nearest lower post when promoting at each stage, including inter-class promotions from Group "C" (Class-3) to Group "A" (Class 1) and there will be no any relaxation applicable.

2) Also in cases where the minimum period of experience in the following posts is more than 3 years due to specific reasons for promotion in the service entry rules, if there is a large number of vacancies due to non-availability of officers / employees in the lower cadre. If the concerned administrative department has sufficient support to relax the condition of experience after 90% regular service and experience, then the proposal to relax the condition of remaining service period is before the committee under the chairmanship of Additional Chief Secretary (Services) established by Government Resolution dated 16.07.2015 which is at Reference No. 3.”

23 In our view, the DPC has committed an error in relying on Government Resolution dated 5 October 2015 for granting relaxation in favour of Respondent No.4. The Government Resolution clearly provides that in respect of posts where the minimum eligibility service is three years, there cannot be any relaxation. Relaxation is applicable only in respect of posts for which service in excess of three years is prescribed as minimum eligibility criteria. Since the Recruitment Rules for the post of Health Executive Officer prescribe minimum eligibility

service of three years, para 2 of the Government Resolution dated 5 October 2015 has no application to the present case. Also, it is not the case that the other officers fulfilling eligibility criteria were not available for promotion. Petitioner had completed eligibility service of 3 years on the date of meeting of the DPC.

24 Thus Respondent No.4 was not eligible for being granted relaxation in terms of Government Resolution dated 5 October 2015. Since Respondent No.4 did not possess requisite eligibility criteria on the date on which the DPC met, the DPC could not have recommended his case for promotion to the post of Health Executive Officer.

25 Thus on both counts of seniority as well as eligibility, Respondent No.4 was not due for being promoted to the post of Health Executive Officer. Consequently, promotion order dated 12 November 2021 effecting promotion of Respondent No.4 to the post of Health Executive Officer is illegal and liable to be set aside. Petitioner possessed requisite eligibility criteria for promotion to the post of Health Executive Officer as on 14 October 2021 and his case deserves to be considered for grant of promotion to the post of Health Executive Officer.

26 Consequently, we proceed to pass the following order:

ORDER

i) Order dated 12 November 2021 passed by Respondent-Municipal Corporation promoting Respondent No.4 to the post of Health Executive Officer is set aside.

ii) Respondent-Municipal Corporation is directed to convene review DPC for consideration of case of Petitioner as on 14 October 2021 for promotion to the post of Health Executive Officer and, if found fit, Petitioner be promoted to the post of Health Executive Officer with effect from 12 November 2021 with all consequential benefits.

27 The Writ Petition is accordingly allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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