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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4117 OF 2022

Vijay Parmeshwar Thool,
Aged about 54 Years,
Occupation – Service, Resident of
Plot No.6, Milind Nagar, Khamla,
Nagpur.

..... PETITIONER

// VERSUS //

01 Nagpur Municipal Corporation,
through is Commissioner,
General Administration Department,
Civil Lines, Nagpur.

02 Additional Commissioner,
(City) Nagpur Municipal
Corporation, Civil Lines, Nagpur.

Respondent No.3
deleted as per
Court Order
dated 29.08.2023.

03 ~~Shri P.R. Gaidhane,~~
~~Aged about 57 Years,~~
~~Occupation – Service,~~
~~Resident of Plot No.293,~~
~~Annapurna Floor Mill, Reshimbagh~~
~~Road, Nagpur 440009.~~

.... RESPONDENTS

Shri Amit A. Choube, Advocate for petitioner.
Shri J. B. Kasat, Advocate for respondent Nos.1 and 2.
Respondent No.3 – Deleted.

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : 05.09.2023

PRONOUNCED ON : 03.10.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule made returnable forthwith.

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2. The matter is finally heard by the consent of the parties.

3. By this writ petition, the petitioner is seeking direction to rectify the seniority list and grant the petitioner the benefit of deemed promotion for the post of Assistant Superintendent from 25.10.2013. The petitioner also claimed promotional benefits.

4. The petitioner was initially appointed on the post of Fireman in the Fire Department on 28.05.1992 of Nagpur Municipal Corporation in a reserved category. On 24.12.2003, he was appointed on the post of Revenue Inspector. During the course of his employment, applications were invited by the Nagpur Municipal Corporation for filling up the backlog of posts of backward class in Nagpur Municipal Corporation. In all 114 posts were advertised, among them the 9 posts of Revenue Inspectors were also advertised along with the relevant criteria for selection. The petitioner had participated in the said process of selection and was selected and appointed on the establishment department of Nagpur Municipal Corporation as a Revenue Inspector since 24.12.2003. As per contention of the petitioner, on 12.10.2006 the respondent Nagpur Municipal Corporation prepared the seniority list of Revenue Inspectors and Senior Clerks and it was published wherein the petitioner was shown at serial No.108. On 04.03.2013, the seniority list

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of Revenue Inspector was updated and published wherein the petitioner was shown at serial No.8, whereas junior employees were shown at serial Nos.5, 6 and 7. On 20.03.2013, he had raised an objection to the seniority list published. On 18.10.2013, an official note showing recommendation for the post of Assistant Superintendent was published. In the said list, two posts were shown to be reserved and on the said reserved posts the employees namely Shri G. G. Patil and Shri N. B. Bhovate who were juniors to the present petitioner were promoted. The promotion orders to Shri G. G. Patil and N. B. Bhovate for the post of Assistant Superintendent were issued. The petitioner again made a representation and requested for correction in seniority list of Revenue Inspector by filing representation on 25.06.2018. However, the representations dated 25.06.2018 and 20.03.2013 remained unanswered. Again on 25.04.2019, the petitioner has raised objection to the seniority list of the year 2018 whereby again one Dhananjay Jadhav who was junior to the petitioner was shown senior to the petitioner. As per the grievance of the petitioner, though he had preferred the representations time and again which remained unanswered the junior employees were promoted without arising any reasons. Lastly, on 09.08.2019 petitioner was promoted to the post of Assistant Superintendent. As per the contention of the petitioner, if timely correction had been made in the seniority list, he would have been

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promoted in 2013 itself. On 13.09.2019, Shri G. G. Patil was promoted to the post of Tax Superintendent, though petitioner was senior. Therefore, petitioner again made a representation for the correction of the seniority list. The petitioner made representations thereafter on 11.06.2021, 29.06.2021 and 22.09.2021, but the respondent – Nagpur Municipal Corporation had not taken cognizance of the same and despite various representations intentionally promoted the junior employees by ignoring the claim of the present petitioner, who was entitled for the said promotion. In fact, the representations made by the petitioner were not decided by the respondent – Nagpur Municipal Corporation. In the year 2023, again seniority list was published and deemed seniority was given to the petitioner from 25.10.2013. By the said order, petitioner was promoted as Assistant Superintendent. As per the contention of the petitioner, though the grievance of the petitioner that he is to be given deemed promotion from 25.10.2013 is redressed in the year 2023, but during these years he has undergone mental agony and his representations are not considered though the respondent – Nagpur Municipal Corporation was under obligation to consider the said representation and rectify the seniority list. The Nagpur Municipal Corporation had not assigned any reason for non consideration of the said representations. Thus, the action on the part of the respondent –

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Nagpur Municipal Corporation is arbitrary, illegal and against the natural justice.

5. As per the contention of the respondent Nos.1 and 2 that though the petitioner was shown junior in the seniority list first time on 04.03.2013 he never raised any objection to the said seniority list. As soon as the respondents came across the mistake, they rectified the same and now deemed promotion from 25.10.2013 is already given to the present petitioner therefore, the grievances of the petitioner are redressed. In view of that, petition deserves to be dismissed.

6. Heard learned Counsel Shri Amit Choube for the petitioner. He reiterated the contentions and submitted that the present petitioner who was entitled for the timely promotion was ignored by the respondents without assigning any reason and intentionally he was shown a junior in the seniority list. He was also ignored for the promotion without assigning any reason. Admittedly, petitioner is promoted in the year 2023 and deemed seniority was given to him from 25.10.2013 however, during these days the petitioner who had made several representations had undergone mental agony as his juniors are promoted and no reason was assigned therefore, the exemplary costs is to be imposed on the respondents, due to which, the respondent –

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Nagpur Municipal Corporation would not commit such type of the acts in future and other employees would not suffer due to the same.

7. Per contra, learned Counsel Shri Kasat for the respondents submitted that the present petitioner never objected for the seniority list, so he waived his right of objection. As soon as the respondent came across the mistake, they have rectified the same and deemed seniority is given to the petitioner, therefore, nothing survives in the petition and the petition liable to be dismissed.

8. Having heard the learned Counsel for the petitioner and on perusal of the documents, it is apparent that there is no dispute that initially on 28.05.1992 the petitioner was appointed as a Fireman on the establishment of Fire Department run by the Nagpur Municipal Corporation. The appointment order is placed on record. By order dated 20.11.2003, the petitioner was appointed on the post of Revenue Inspector. There is no dispute that first time in the year 2006 i.e. on 30.09.2006 common seniority list of Revenue Inspector and Senior Clerk was prepared by the respondent and it was published. As per the said seniority list, present petitioner was shown at serial No.108 and one Shri N. B. Bhovate, Shri G. G. Patil and Shri D. A. Jadhav were shown at serial No.110, 112 and 115 i.e. next to the present petitioner. The said

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seniority list was updated on 01.02.2013 wherein Shri Dhananjay Jadhav who was at serial No.115 in the seniority list dated 30.09.2006 was shown at serial No.5, Shri G. G. Patil who was at serial No.112 was shown at serial No.6 and N. B. Bhovate who was at serial No.110 was shown at serial No.7. The said seniority list was published on 01.02.2013. The petitioner has objected the said seniority list by filing representation which was received by the respondent on 20.03.2013. It is apparent that though petitioner has objected the seniority list dated 01.02.2013 wherein he was shown junior to the employees who were junior to him, admittedly, there is no communication on record to show that the respondents have taken cognizance of the said representation. Thus, it is apparent that the respondents neither answered the said representation nor rectified the list, nor replied the communication to the present petitioner. Admittedly, Shri G. G. Patil and N. G. Bhovate were promoted in the year 2013 itself by issuing order dated 25.10.2013. There is no dispute that Shri G. G. Patil and Shri Bhovate were junior to the present petitioner in the seniority list of year 2006. The said mistake showing the present petitioner a junior is continued in the seniority list which was published on 2016. Thereafter, also the petitioner has made representation to rectify the mistake. From the record it reveals that several representations were made by the present petitioner but the respondent – Nagpur Municipal Corporation neither

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rectified the list nor answered the representations and continued the similar mistake in the seniority list which was published in 2018. Finally, the petitioner was promoted to the post of Assistant Superintendent on 09.08.2019 and subsequent to that the seniority list was corrected in the year 2020. There is no dispute that the present petitioner was promoted after filing of this petition in the year 2023 as a Superintendent but the grievance of the petitioner is that if timely correction had been made in the seniority list, he would have been promoted in 2013 itself. Due to the mistake committed by the respondent, he was not promoted prior to Shri G. G. Patil on a higher post as a Tax Superintendent. In fact, he was entitled for the promotion of Superintendent in the year 2019 itself. But, due to the mistake on the part of the respondent, Shri G. G. Patil was promoted to the post of Tax Superintendent though petitioner was senior to him. The petitioner has admitted that now deemed seniority is already given to him from 25.10.2013 from the date on which Shri G. G. Patil and Shri N. B. Bhovate was promoted. The petitioner's contention is that during these days as his juniors were promoted, he had undergone mental agony for no reason, it was not his fault due to which he was not promoted but the approach of the respondents to the representations made by him is to be taken into consideration and therefore, exemplary costs is to be imposed on the respondents.

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9. There is no dispute that in making the promotions, it should be ensured that suitability of the candidates for promotion is considered and it should be in impartial manner. The obligation is on the employer to ensure that the candidates who are suitable for the promotions and the said promotions to be made in impartial manner. Here in the present case, though mistake was pointed out by the petitioner immediately after publishing the seniority list of year 2013. The respondents have not taken cognizance of the said objection. Though learned Counsel Shri Kasat vehemently submitted that the petitioner never objected the seniority list published in the year 2013, however, the copy of the communication filed on record by the petitioner shows that the respondents' inward and outward department has received the said communication on 20.03.2013 i.e. on the same day when the representation was made by the petitioner. Subsequent to the said representation instead of rectifying the mistake respondents continued the same seniority list and shown the petitioner junior to the employees who were juniors to him. The various representations made by the petitioner are remained unanswered and no reason is assigned by the respondents. This approach of the respondent requires to be deprecated. There is no dispute that the person to enter in the service with some ambitions and to achieve the highest position in the profession in which he is working. If the promotion was declined due to some misconduct

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on the part of the employees then the employees cannot make any grievance about the same. But when the employer is unable to point out any default on the part of the employees and juniors are promoted then definitely it causes mental agony to the petitioner. The petitioner has every right to know why he was shown as a junior in the seniority list. The said valuable right of the petitioner was not considered by the respondents – Nagpur Municipal Corporation and intentionally not granted the promotion to him.

10. Considering this approach of the respondents, though petitioner is promoted and the grievance of the petitioner is redressed, to deprecate the practice of the respondents, costs deserves to be imposed on the respondents. In view of that, we proceed to pass following order.

ORDER

(i) The Writ Petition is dismissed.

(ii) Considering the approach of the respondents which is partial and against the natural justice, the cost of Rs.50,000/- (Rs. Fifty Thousand) is imposed on the respondents, on depositing the costs, it be paid to the petitioner.

(iii) The respondents shall deposit the costs within two weeks from the date of the decision of this petition.

Rule is discharged.

(URMILA JOSHI-PHALKE, J.) (AVINASH G. GHAROTE, J.)

**Corrected as per
Court order dated
6.11.2023**