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wp 6242.24 sr.16.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6242 OF 2023

1. Lata Prabhakarrao Bhandwale (Pujari)
Age 49 years, Occ. Service,
R/o. Flat No.2, Gurusagar Apartment,
Ulkanagari, Agnihotri Chowk,
Aurangabad
Email :-
2. Uday Vasantrao Mokashi
Age 54 years, Occ. Service,
R/o. HUDCO, N-12, C-125,
Aurangabad.
3. Ishwarchandra Chunilal Kamekar
Age 51 years, Occ. Service,
R/o. House No.5/12/53, Mama Chowk,
Padampur, Aurangabad.
4. Sanjay Shankarrao Kolte,
Age 52 years, Occ. Service,
R/o. Krishna Galli, Begampura,
Aurangabad
5. Chandrashekhar Lotan Marathe,
Age 51 years, Occ. Service,
R/o. 11, Savahdan Cooperative Housing
Society, N-8, CIDCO, Aurangabad.
6. Dattatraya Pandu Surywanshi,
Age 52 years, Occ. Service
R/o. N-12, F-125, Swami Vivekanand
Nagar, HUDCO, Aurangabad.
7. Sanjay Ramchandra Meher
Age 47 years, Occ. Service,
R/o. Flat No.3, Plot No.11,
Jai Vishwabharti Colony, Aurangabad.

8. Naeem Ahmed Ansari,
Age 55 years, Occ. Service,
R/o. plot No.131, Sohel Garden,
Ganesh Colony, Aurangabad.
9. Govind Vinayarao Barabote,
Age 48 years, Occ. Service,
R/o. Mangalmurti, Nina's Plot No.17,
Gat No. 95, Peshwe Nagar, Satara Parisar,
Aurangabad.
10. Vinod Vikramrao Pardeshi,
Age 47 years, Occ. Service,
R/o. 137, Bhagwati Colony,
Near Jawahar Colony, Aurangabad.
11. Shaikh Mohd. Abdul Qader s/o. Abdul Aleem
Age 32 years, Occ. Service,
R/O. House NO. A-6-44, Asifiya Colony,
Near Janata clinic, Town Hall,
Aurangabad – 431 001.
12. Aqeel-Ur-Rahman,
Age 46 yeas, Occ. Service,
R/o. Ganes;h Colony, Hudco Road,
Aurangabad.
13. Ramesh Keruba More,
Age 49 years, Occ. Service,
R/o. 2-10-92-30, Harsh Nagar,
Labour Colony,
Aurangabad 431 001.

... Petitioners

Versus

1. Aurangabad Municipal Corporation,
Aurangabad
through its Municipal Commissioner.
2. The State of Maharashtra,

through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai – 400 032.

... Respondents.

Mr. B.L. Sagar, Killarika, Advocate for petitioners.
Mr. A.B. Girase, Government Pleader for respondent No.2.
Ms. Anjali Dube, Advocate for respondent No.1.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& KISHORE C. SANT, J.**

DATE : 26th August, 2024.

ORAL JUDGMENT [PER CHIEF JUSTICE] :-

Heard learned advocate for the petitioners, learned Government Pleader for respondent No.2 and Mrs. Anjali Dube, Advocate representing the Aurangabad Municipal Corporation (hereinafter referred to as, “the Municipal Corporation”).

2. By instituting these proceedings under Article 226 of the Constitution of India, the petitioners who were working in different posts with the Municipal Corporation have prayed that a direction be issued to the Municipal Corporation to classify their services in terms of the provisions of Rule 3 of the Aurangabad Municipal Corporation Service Rules, 2021 (Hereinafter referred to as “Service Rules of 2021”).

3 A further prayer made by the petitioners is that the State Government be directed to take decision in terms of the Govt. Resolution dated 4.5.2006 and further that during the pendency of the writ petition, respondents be directed not to transfer or depute officers from technical to non technical services and vice versa. It has also been prayed that as

an interim measure the respondents be directed not to fill up the posts by nomination or appointment even on contract basis.

4. At the outset, learned counsel for the petitioners categorically stated that there is no need to file any rejoinder affidavit to the affidavit in reply filed by the Municipal Corporation for the reason that the claim of the petitioners is based on the statutory rules contained in the Service Rules, 2021. Accordingly, we have proceeded to hear the learned counsel for final disposal of this matter.

5. Petitioners were appointed prior to framing of Service Rules 2021. They were initially appointed on the posts of clerk and subsequently they have been promoted to higher posts. It is stated that the petitioners No. 1 to 4 are presently occupying the post of Superintendent, whereas, petitioners Nos. 5 to 13 are occupying the post of Senior Clerk.

6. The Municipal Corporation in exercise of its powers conferred on it under Section 456 of the Municipal Corporation Act have framed the statutory rules known as Service Rules of 2021 for regulating the conditions of service of its employees which will include recruitment, appointment and promotion as well. Section 456 of the Maharashtra Municipal Corporation Act, 1949 provides that the State Government may, at any time, require the Corporation to make rules under Section 454 in respect of any purpose or matter specified in Section 457.

7. Section 457 (3) of the Act, clearly provides for Municipal Officers and Servants including qualifications necessary for and the method of appointment to posts, in respect of which the power of appointment vests in the Corporation. Section 456(1) and Section

457(3) are quoted hereinbelow :-

456. Power of State Government to make rules :-

(1)“The State Government may at any time require the Corporation to make rules under Section 454 in respect of any purpose or matter specified in Section 457”

457. Matters in respect of which rules may be made

(3) Municipal Officers and Servants :-

(a) The qualifications necessary for and the method of appointment to posts the power of appointment to which vests in the Corporation :

(b) the mode of appointment to other posts;

(c) the powers and duties of the Municipal Chief Auditor and his staff;

(d) the determination of the services under the municipality to be treated as essential services for the purposes of Chapter V”.

8. Accordingly in view of the aforesaid provisions contained in Section 456(1) of the Act, the State Government may require the Corporation to make certain rules and under the said provisions, the Corporation is under statutory obligation to frame rules. It is in exercise of these powers that the State Government required the Corporation to frame Service Rules and accordingly, Service Rules of 2021 have been framed.

9. Before proceeding to delve into the submissions made by the learned counsel for the parties, we may also note that so far as employees and servants of the Corporation are concerned, Chapter IV of the Corporation Act contains certain provisions, which lay down the procedure etc. for appointment of various servants of the corporation.

10. Section 53 of the Act mentions about the power of

appointing the Municipal Officers, whether temporary or permanent, to the posts equivalent to or higher in the rank than the post of Assistant Municipal Commissioner shall vest in the Corporation. The power of appointing Municipal Officers and servants, whether temporary or permanent, under the immediate control of the Municipal Chief Auditor and Municipal Secretary shall vest in the Municipal Chief Auditor or the Municipal Secretary, as the case may be, subject to approval of the Standing Committee. Sub section (3) of Section 53 provides that the power to appoint Municipal employees and servants, whether permanent or temporary, vests in the Commissioner.

11. Accordingly, in terms of the provisions contained in Section 53, it is the Municipal Commissioner who is the appointing authority for Municipal Officers and Servants except those provided in sub-Section (1) (2) of Section 53.

12. Thus, in view of the scheme of the Act comprised in Chapter VI and Sections 456 and 457 of the Corporation Act, the conditions of service which, will include appointment and promotions etc. of the Municipal Officers or employees, are to be governed by the Rules of 2021 framed by the Corporation. Accordingly, since these rules have been framed on the asking of the State Government, in terms of the provisions contained in Section 456 and 457, the said rules are statutory in nature and will be binding on all concerned.

13. Rule (3) of 2021 Service Rules gives in detail, the classification of various services which comprise of Administrative Services, Accounts and Audit Services, Technical Services, Medical Services, Semi-Medical Services, Public Health Services and Fire Fighting

Cadre and Services.

14. Rule (5) of the Service Rules of 2021 provides for the procedure for appointment and qualifications, according to which, the procedure for appointment to various posts of Municipal Corporation will have to be followed as prescribed in “Appendix-I” appended to Service Rules of 2021. and the necessary qualification and experience for appointment which each post has to be in terms of provisions contained in Appendix II appended to the said Rules.

15. When we peruse “Appendix I” appended to Service Rules of 2021, we find that it provides for constitution of Selection Committee, procedure for appointment by nomination or direct recruitment, procedure for appointment on promotion etc. “Appendix II” appended to 2021 Rules classifies various posts of servants and employees of the Corporation into different categories. So far as General Administration of the corporation is concerned, Appendix II comprises of the posts mentioned in the said Appendix from Sr. Nos. 1 to 14. Similarly, the posts comprised in the Technical Department are enlisted in the said Appendix from Sr. Nos. 15 to 40. Posts at Sr. No.41 to 43 in the said appendix are enlisted in the Department of Town Planning, whereas, various posts at Sr. Nos. 44 to 46 are enlisted in the Environment Department. Posts mentioned at Sr. Nos. 47 to 51 are enlisted in the Department of Solid Waste Management. Posts at Sr. Nos. 52 to 57 are enlisted in the Department of Horticulture, Posts at Sr. Nos. 58 to 66 are enlisted in Accounts/Audit Department. Posts at Sr. Nos. 67 to 72 are enlisted in the Security Department. Post at Sr. Nos. 73 to 76 are enlisted in Department of Information and Technology, whereas, posts at Sr. Nos. 79 and 80 are enlisted in Public Relations Department.

16. The said rules, as already observed here-in-above, are statutory rules framed under the powers available to the corporation under the Corporation Act. It is to be noticed that the Service Rules of 2021 do not make any provision for restructuring of the cadre. The rules only reflect cadre formation in the Aurangabad Municipal Corporation. There is no provision that the employees who were already appointed and were working prior to promulgation of 2021 Rules will be restructured in view of the services/cadres being created by promulgating 2021 Rules. It is well settled principle of law that any statutory rule or any other law will necessarily operate prospectively, unless the statutory rule or law itself provides for its retrospective application.

17. Having noticed the aforesaid legal position qua 2021 Service Rules, we would now proceed to examine the grievance raised by the petitioners in this writ petition.

18. We have already noted that petitioners were initially appointed on various posts of Clerks and having worked for some time, were promoted to the post of Senior Clerk and some of them have also been promoted to the next higher post of Superintendent and are working on these posts. It is the contention of the petitioners that since these petitioners were initially appointed as clerks and have been tasked to perform works at Accounts and Audit Department; therefore, services rendered by these petitioners while discharging their functions in the Accounts and Audit Department should be taken into consideration for the purpose of considering them eligible for being promoted to the higher posts in Accounts and Audit Department.

19. It is in this background that the prayer has been made to

issue direction to the Corporation to classify the existing staff in terms of the Service Rules of 2021.

20. On the other hand, opposing the prayers, the learned Government Pleader as also the learned counsel representing the Corporation have submitted in unison that the petition is completely misconceived for the reason that the Service Rules of 2021, do not prescribe for restructuring of the cadres in the Corporation. They have also submitted that petitioners already stood classified to belong to General Administration Department for the reason that they were initially appointed for doing the work in the General Administration Department as Clerks and as per the administrative exigencies of the Corporation, their services are placed in different departments. However, the nature of work to be performed was only clerical in character. The learned Government Pleader as also learned counsel for the Corporation have drawn our attention to the classification of posts as per the 2021 Service Rules and according to them, there are various departments where not even a single post of clerical cadre has been included and therefore clerical cadre personnel appointed in the Corporation in General Administration Department are required to function at various other Departments of the Corporation as well for discharging of the nature of work which can broadly be classified as clerical. Their submission is that merely because these petitioners have been required to work in departments other than General Administration viz. Accounts or Audit, it will not make them eligible for promotion in other departments.

21. Having considered the submissions on behalf of respective parties and having perused the records available before us in this writ petition, we are in complete agreement with the submissions made by the

learned Government Pleader appearing for the State, so also, learned counsel representing the Corporation. As already noted here-in-above, there is no provision in 2021 Service Rules which makes it applicable retrospectively. Thus, in absence of any such prescription in the 2021 Rules, the question of restructuring the cadre or services in the corporation which existed prior to promulgation /notification of 2021 Service rules, does not arise at all. To that extent, the submission of the learned counsel for the petitioner is misconceived.

22. It is also to be noticed that the cadre structure in “Appendix II” of 2022 reflect various departments where not even a single clerical post is included. There may be various clerical functions which are to be performed by the incumbents appointed in General Administration Department. It is the very name of General Administration which suggests that any employee or servant of the Corporation appointed to work in the General Administration Department is liable to be placed to work in the other department in case of exigencies of administration. For example, the Technical Department as mentioned in Appendix-II though comprises of various technical posts, however, this department does not have even a single clerical post.

23. The question which arises for consideration, thus, is whether the technical department in the corporation will not require services of any clerk. The answer to this, has to be an emphatic “No”. The Technical as also various other departments may also require services of clerks and in such an exigency, incumbents of the posts initially appointed in the General Administration Department will be liable to be placed in such departments. However, as noted above, we are also of the view that any employee appointed in the General Administration

Department cannot claim promotion only because he has worked in some other department, for promotion in other departments. The mandate/classification in terms of Service Rules 2021 is very clear and if prayer of the petitioners is acceded to, that would amount to deviation from the requisite qualifications and experience etc. as contained in statutory rules and thus, we are of the opinion, that in such a situation we are unable to grant relief of issuing Mandamus to the respondent Corporation for consideration of petitioners for promotion to the posts in other Departments such as Accounts and Audit Department.

24. For the aforesaid reasons, the conclusion to which we unambiguously arrive at is that the writ petition is misconceived.

25. Resultantly, writ petition stands dismissed.

26. There shall be no orders as to costs.

[KISHORE C. SANT J.]

[CHIEF JUSTICE]

grt/-