

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(901) WRIT PETITION (L) NO. 35306 OF 2022

Javed Mohiddin Sayyed And Ors

...Petitioners

Versus

The Brihanmumbai Municipal Corporation And Ors. ...Respondents

WITH

INTERIM APPLICATION NO. 3210 OF 2023

WITH

INTERIM APPLICATION (L) NO.8566 OF 2024

WITH

INTERIM APPLICATION NO.801 OF 2024

WITH

INTERIM APPLICATION NO.776 of 2024

WITH

WRIT PETITION (L) NO.40791 OF 2022

WITH

(902) WRIT PETITION NO.1044 OF 2024

Ravi Keshav Mhaske and Ors.

...Petitioners

Versus

The Brihanmumbai Municipal Corporation and Ors. ...Respondents

WITH

(903) WRIT PETITION NO.1056 OF 2024

Rohit Vishwanathrao Rajas and Ors.

...Petitioners

Versus

The Brihanmumbai Municipal Corporation and Ors. ...Respondents

Mr. Prathamesh Bhargude a/w. Mr. Sumit Sonare, for Petitioner in
WPL/35306/2022 and WP(L)/40791/2022.

Mr. Sachin Mhatre a/w. Ms. Diksha Firodkar, Rochelle Fernandes i/b.

Mhatre Law Associates, for Petitioner in WP/1044/2024 and WP/1056/2024 and for Applicants in IA/776/2024 and IA/801/2024.

Mr. Om M. Lonkar, for Respondent Nos. 6 to 14 in WPL/35306/2022.

Mr. Nikhil Wadikar i/b. Nandu Pawar, for Applicant in IAL/8566/2024.

Mr. A.V. Bukhari, Senior Advocate a/w. B.V. Bukhari, Shilpa Redkar and Sharmeen Bukhari i/b. Sunil Sonawane, for BMC.

Mr. Sanjay Gosavi, Joint Chief P.O, City Engineer is present.

Mr. Ajay Patil, Administrative Officer is present.

**CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 30 APRIL 2024

P.C.:

1. Heard learned counsel for the parties.

2. By consent of the parties petitions are taken up for disposal. The learned counsel for the Petitioners inform that all the Respondents are served.

3. The petitions pertain to process of promotion to the post of Assistant Engineers from the post of Sub Engineers in the services of the respective Corporations. There are two stream to the promotion on the post of Assistant Engineers i.e. Sub Engineers (Diploma holders) and Sub Engineers (Degree holders). The contest in these Petitions is between these two groups of Sub Engineers as regarding the manner of promotion.

4. Petitions filed by Diploma holders have assailed the decision

taken by the Municipal Corporation fixing a quota in respect of promotion to the Assistant Engineers. The change in quota for the promotion to the post of Assistant Engineers from this group has raised substantive litigation, giving rise to six petitions.

5. When these petitions came on board on 31 January 2024, the following order came to be passed.

“ The dispute involved in this Petition is in respect of promotion to the post of Assistant Engineer in the Respondent – Municipal Corporation of Greater Mumbai (“MCGM”). Petitioners represent the Sub Engineers (Diploma holders) and Respondents are Sub Engineers (Degree holders). A decision taken by the MCGM in the matter of promotion to the post of Assistant Engineer is the subject matter of challenge.

2. Before we proceed further with the hearing of the Writ Petitions, learned Senior Advocate appearing for the MCGM drawn our attention to the endorsement of the Municipal Commissioner on the note put up by the City Engineer that an appropriate solution needs to be found out.

3. As to whether this matter has been taken forward by the Municipal Commissioner, the learned Counsel for the Municipal Corporation informs us that the decision is not taken because of pending Petitions. Learned Counsel further states that the Municipal Commissioner intends to involve both, the Degree holders and Diploma holders in the discussions to ascertain whether the dispute can be amicably resolved. Learned Counsel, on instructions, further states that the

Municipal Commissioner would take an appropriate decision within a period of four weeks and in that regard, the Municipal Commissioner would call representatives of both, the Degree holders and Diploma holders.

4. Since, the impugned position is being reconsidered as above, we direct that, to avoid any complications, the promotions to the post of Assistant Engineers which is the subject matter of this Petitions, would not be made till the next date of hearing.

5. Stand over to 4 March 2024. List the matters under the caption "For Directions".

6. On 4 March 2024, further order came to be passed and the matter was adjourned.

“ Learned counsel for the Respondent - Municipal Corporation informs us that a joint meeting was held and substantially the issue has been resolved.

2. It appears that the issue raised by the Intervenors would have to be addressed by the Municipal Corporation so as to achieve overall settlement of the dispute. Learned counsel for the Respondent - Municipal Corporation seeks time in that regard.”

*3. Stand over to **12 March 2024** under the caption "For Directions".*

7. Then, on 19 April 2024 and 23 April 2024, the petitions were adjourned since the learned counsel for the parties had informed the Court that in the joint meeting held with the Commissioner of the

Municipal Corporation, certain consensus has been arrived at. The matters were kept today so that the parties can put their consensus in writing and the order can be passed by consent.

8. The learned counsel for the Petitioners (Diploma holders) have also tendered their suggestions as to how the consent order can be made. The learned counsel for the Corporation has also tendered his version. Substantially both the drafts are identical except for few differences which the learned counsel for the parties have called upon the Court to resolve by passing appropriate order. In light of this consensus at the bar, the learned counsel request not to give elaborate reasons in this order. We, therefore, dispose of the petitions as under :

9. The Petitioners and the Respondent No. 6 to 14 Degree holders in above Writ Petition (L) No. 35306 of 2022, Intervening Respondents Degree holders in Interim Application (L) No. 801 of 2024, Interim Application No. 776 of 2024 in the above Writ Petition (L) No. 35306 of 2022 and Petitioners in Writ Petition (L) No. 40791 of 2022, Writ Petition No. 1044 of 2024, and Writ Petition No. 1056 of 2024, agrees that 38 Promotee Sub Engineers (Civil) (Diploma) & 76 Directly recruited Sub Engineers (Civil), (Degree holders) shall be promoted to the post of Assistant Engineer (Civil) out of total 114 vacant posts as per 1: 2 ratio i.e. One Diploma holder to Two Degree holder, in terms of the recently revised Promotion policy of the BMC, as sanctioned by the Municipal

Commissioner Vide his Order U/No. MGS/F/2036 dated 21 February 2024.

10. The, Petitioners and Respondent Nos. 6 to 14 in above Writ Petition (L) No. 35306 of 2022, Intervening Respondents Degree holders in Interim Application No. 801 of 2024 and Interim Application No. 776 of 2024 above Writ Petition (L) No. 35306 of 2022 and Petitioners in Writ Petition (L) No. 40791 of 2022, Writ Petition No. 1044 of 2024 and Writ Petition No. 1056 of 2024, agree that one single office order of promotion shall be issued on all available vacant posts of Assistant Engineers (Civil) to Diploma and Degree holder Sub Engineers which will be subject to outcome of the Writ Petition No. 2278 of 2023, Writ Petition No 3400 of 2023 and Writ Petition (L) No. 9164 of 2024.

11. As regards the completion of the promotion process and the time within which it should be completed, the learned counsel for the Municipal Corporation submitted that the promotion process would be completed within 45 days from the date of relaxing code of conduct subject to prospective promotees to the post of Assistant Engineers submitting their requisite documents, within one week from the date of the order.

12. The learned counsel for the Engineers submitted that code of conduct will not apply for the process of promotion. It is not necessary for us to enter into that arena. We direct that if the code of conduct is applicable, then above course of action suggested by the

Municipal Corporation would apply. If the code of conduct is not applicable, then the process will be completed within a period of 45 days from today.

13. We make it clear that this order will not have any effect to the individual Writ Petitions particularly Writ Petition No. 2278 of 2023, Writ Petition No. 3400 of 2023 and Writ Petition (L) No.9164 of 2024 which are pending before this Court. The claim of seniority shall be subject to outcome of Writ Petition No. 2278 of 2023 and Writ Petition No. 3400 of 2023. The points raised in both Writ Petition No. 2278 of 2023 and Writ Petition No. 3400 of 2023 are kept open and will be heard on merits for further consideration.

14. There is a debate before us as to whether the course of action adopted by the Municipal Corporation in respect of promotions should be a long term policy of the Municipal Corporation or not. It is pointed out to us that in the order dated 21 February 2024 passed by the Municipal Commissioner, the Municipal Commissioner has indicated that this would be a long term measure therefore we find the apprehension of the Engineers before us to be unwarranted.

15. Even otherwise, we are of the opinion that the Municipal Corporation being a statutory body, ideally, should have statutory rules governing the service conditions of its employees so as to obviate the dispute such as present one which has taken substantial time not only of the Court but also of all the Engineers involved and

that of the administration of Municipal Corporation. Having a stable policy/Rules governing the service conditions of the employees brings certainty in the administration as well as service career of the employees involved, so that they can focus on their public duties for which they are employed.

16. Writ petition (L) No. 35306 of 2022, Writ Petition No. 1044 of 2024, Writ Petition No. 1056 of 2024, Writ Petition (L) No. 40791 of 2022 and interim applications are disposed in the above observations and also placing on record that this order is passed by the consensus of petitioners and respondents.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)