



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 8158 OF 2022

(Shyamsundar s/o Jayram Gohokar..Vs...Nagpur Municipal Corporation and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. R.S. Sirpurkar, Advocate for petitioner,
Mr. J.B. Kasat, Advocate for respondent Nos. 1,2,4 and 5.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 15-07-2024

Heard.

2. By deleting words 'has' and 'not', paragraph No. 3 of the order dated 1.7.2024 be corrected as under:

“3. The respondents must come with calculation by the said date as regards the entitlement of the petitioner for monetary benefits had it been a case that he would occupy the post of Headmaster for the period for which the opportunity was deprived.”

3. One Amol, a sibling of ex-student of the petitioner, lodged a complaint with Anti Corruption Bureau alleging illegal demand of two dozens of notebooks for releasing the School Leaving Certificate, which has led to registration of offence against the petitioner. After the investigation, since no evidence was found in the said matter, a closure summary in the form of 'C' summary was submitted to the learned Special Judge.

4. In this background, it is the claim of the petitioner

that his juniors were promoted in 2021 when his claim ought to have been considered. Act of the respondents in denying the promotion for the post of Headmaster in grant-in-aid school is alleged to be arbitrary and unreasonable.

5. It is the contention of Mrs. Sirpurkar, learned Counsel for the petitioner, that since the petitioner was not at fault as false offence was registered against him, he should have been conferred promotion from due date by extending all the consequential monetary benefits. She would claim that the petitioner is entitled for such benefits from 16.7.2021 with the existing rate of interest given by the nationalized Bank.

6. As against above, Mr. Kasat, the learned Counsel appearing for respondent Nos. 1,2,4 and 5 would urge that the petitioner is not entitled for the monetary benefits as he was already granted promotion after the closure report was accepted. Mr. Kasat would urge that the registration of offence was not at the behest of the employer and as such, petitioner cannot blame the employer for implicating him in such an offence where there was no evidence against him. In this background, he would claim that the provisions of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 shall be applicable and the petitioner can claim benefits only from such date on which he was actually promoted.

7. In furtherance to the above, Mr. Kasat would

claim that the petitioner was already granted benefits and that being so, he cannot claim any monetary benefits in the matter. In order to substantiate his contentions, Mr. Kasat would draw support from the judgment of the Hon'ble Apex Court in the case of ***Corp. Mithilesh Kumar Alias Mithilesh Singh Vs. Union of India and Others*** reported in ***(2020)12 SCC 423***. He would claim that even in case of reversal of conviction, the Hon'ble Supreme Court has held that the employee like petitioner is not entitled for the monetary benefits.

8. While countering the aforesaid claim, Mrs. Sirpurkar would draw support from the Government Resolution dated 6.6.2002 as against the claim of the respondents based on the Government Resolution dated 8.3.2017.

9. We have appreciated the rival claims.

10. It is not in dispute that the closure summary was submitted in the offence registered against the petitioner under the provisions of the Prevention of Corruption Act. Such enquiry was found to be the basis for denying the promotion to the petitioner and his juniors were given preference over his lawful claim.

11. It has to be inferred from the aforesaid fact that the petitioner was denied promotion at the relevant time for the reasons which were beyond his control as he appears to have been falsely implicated in the offence in question.

12. Merely because the complaint was not at the behest of the employer by itself will not absolve the respondents of the liability, particularly when it was not the decision of the employer to deny the lawful claim of the petitioner for consideration for the promotional post on the date on which his juniors were considered.

13. It is brought to our notice that juniors to the petitioner were considered on 16.7.2021 for the promotional post of Headmaster.

14. In the aforesaid background, it is declared that the denial of promotion to the petitioner is illegal as the petitioner was not at fault for pendency of the enquiry under the Prevention of Corruption Act, which was later on closed for want of evidence. As such, we hold that the petitioner was entitled to promotion on the post of Headmaster from 16.7.2021.

15. In compliance with the order of this Court, the learned Counsel for the respondents has placed on record that the petitioner is entitled to difference in wages to the tune of Rs.41,614/-. However, such wages are disputed by the learned Counsel for the petitioner as the interest is not given on that amount. It is claimed that with interest, the petitioner is entitled to Rs.64,000/- and odd amount.

16. In the interest of justice, we deem it appropriate to round up difference in wages with interest to

Rs.51,000/-, which we direct respondents to pay within a period of four weeks from today.

17. The petition stands allowed in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede