



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

WRIT PETITION NO. 3347 OF 2019

(MUNICIPAL CORPORATION, CHANDRAPUR & ANR...VS..SACHIN MORESHWARRAO MAKODE)

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

Court's or Judge's orders

Shri M.I.Dhatrak, Advocate for Petitioners.
Shri C.V.Jagdale, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 09, 2024.

- 1) Heard.
- 2) The judgment and order passed by the Industrial Court dated 27/09/2018 in Complaint (ULP) No. 43 of 2017 allowing the complaint of the respondent and thereby setting aside the show cause notice dated 04/07/2017 is under challenge in this writ petition.
- 3) The petitioner is the Municipal Corporation and the respondent is an employee of the petitioner. The respondent was appointed as Peon on 17/05/1997 on compassionate ground and thereafter he was promoted as Hawaldar/Naik as per the staffing pattern of the year 2005. The initial appointment of the respondent and his promotion as Hawaldar/ Naik was made when the petitioner was Municipal Council. The petitioner became Municipal Corporation, in the year 2011.
- 4) Thereafter, on 10/06/2013 in view of the resolution passed on Subject No.32 in general body

meeting of the petitioner-Corporation for grant of promotions, the petitioner-Corporation formed a Departmental Promotion Committee consisting of 7 members. The said committee held a meeting on 20/05/2014 and accordingly the respondent/ complainant was promoted vide order dated 21/05/2014 as a Senior Personal Assistant.

5) However, the respondent was served with a show cause notice, calling the explanation from the respondent why his promotion shall not be revoked as the promotion is not as per the Recruitment Rules of 2016.

6) The said show cause notice dated 08/06/2017 was the subject matter of challenge before the Industrial Court in a complaint filed by the respondent viz. Complaint (ULP) No.43 of 2017.

7) The learned Industrial Court, while allowing the complaint, held that the promotion of the petitioner was made on 21/05/2014, whereas, the Recruitment Rules on which the Corporation is relying upon came into force on 29/04/2016 with prospective effect. Accordingly, it is held that the said Rules are not applicable to the promotion of the respondent and hence, the learned Industrial Court set aside the show cause notice dated 04/07/2017.

8) The learned counsel for the petitioners is not disputing the fact that the Recruitment Rules came into

force on 29/04/2016 and it was given prospective effect and not the retrospective effect. Thus, if the promotion of the respondent is dated 21/05/2014 i.e. prior to coming into force the Recruitment Rules of 2016 and the show cause notice is based on such Recruitment Rules, I do not find any error committed by the Industrial Court in setting aside the show cause notice dated 04/07/2017. In the circumstances, as there is no merit in the present writ petition, the Writ Petition is **dismissed**. No order as to costs.

9) At this stage, the learned counsel for the petitioners seeks liberty to issue show cause notice to the respondent if the Corporation is of the opinion that the promotion given to the respondent in the year 2014 is illegal in view of the Recruitment Rules prevailing at the relevant time.

10) As no prejudice would be caused to the respondent if such show cause notice is issued for the reason that, the respondent is having right to reply the same and thereby submit his explanation. Hence, the liberty is granted as prayed for keeping all the points open.

JUDGE