



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

WRIT PETITION NO.1812 OF 2024

Sunil S/o Baldeo Kharate, Amravati

-VS-

State of Maharashtra, Thr. Chief Secretary, Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri N. R. Saboo, Advocate for petitioner.

Shri H. R. Dhumale, Assistant Government Pleader for respondent Nos.1 and 3.

Ms Neerja Choube, Advocate h/f Shri N. S. Deshpande, DSGI for respondent No.2.

Shri D. M. Kale, Advocate for respondent Nos.4 to 6.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : June 20, 2024

1. Heard.
2. The issue pertains to the appointment of a non Indian Administrative Service (IAS) cadre officer on the post of Commissioner-Municipal Corporation, Amravati.
3. The Government of India vide its notification dated 15/06/2028 in exercise of powers under sub-section (1) of Section 3 of the All India Services Act, 1951 read with sub-rules (1) and (2) of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954 in consultation with the respondent-State Government of Maharashtra made a regulation thereby fixing cadre strength of the Indian Administrative Service.
4. By the said notification, in view of consent extended by the respondent-State Government, the post of Commissioner, Municipal Corporation, Amravati is notified to be occupied by an officer from IAS cadre. The said notification was further upgraded on 06/12/2023 and manning the post of Commissioner, Municipal Corporation Amravati by

a candidate from the Indian Administrative Service was continued.

5. As a sequel of above notification, it was incumbent on the part of the State Government to appoint the Commissioner of respondent No.6-Municipal Corporation, Amravati from the Indian Administrative Service cadre. It appears that since 2016 onwards till this date the officer from the Indian Administrative Service cadre was never appointed on the post of Commissioner of respondent No.6-Municipal Corporation, Amravati. As on today, respondent No.4 who is the officer of the rank of Chief Officer, Grade-A in the State of Maharashtra is manning the said post that too under the interim order passed by the Maharashtra Administrative Tribunal. It appears that respondent No.4 came to be transferred at the place of respondent No.5 and respondent No.5 is appointed on the post of Commissioner, Municipal Corporation, Amravati and the dispute to that effect is pending on the file of Maharashtra Administrative Tribunal in O.A. No.272/2024 in which interim order is operating thereby staying the transfer of respondent No.4. As a sequel of above, respondent No.4 who is admittedly not from IAS cadre is occupying the post of Commissioner, Municipal Corporation, Amravati contrary to the aforesaid notifications issued by the Central Government.

6. It is the contention of the petitioner that the post of Commissioner, Municipal corporation has to be manned by the officer/candidate from the Indian Administrative Service.

7. The fact remains that the appointment of the respondent No.4 or respondent No.5 can be gathered from the record and the Chief Secretary as well as the Competent Authority has already raised an objection that there is no basis to overrule the aforesaid notifications for appointing the persons like respondent Nos.4 and 5.

8. The aforesaid conduct prima facie appears to be not only contrary to the notification referred above issued by the Government of India on 15/06/2018 but also the subsequent notification dated 06/12/2023.

9. The fact remains that the objection to the appointment of respondent Nos.4 and 5 was duly taken by the Chief Secretary who is also party to the present petition but has chosen not to file affidavit or reply till this date.

10. Once there is a notification by the Government of India in respect of appointments of officers from IAS cadre, we are of the view that the post of Commissioner should be manned by the member from the Indian Administrative Service and none other than the said officer.

11. Though the learned Assistant Government Pleader has stated that the Deputy Secretary, Urban Development has filed an affidavit upon authorisation from the Chief Secretary, we are unable to satisfy ourselves based on the said statement as neither such authorization nor approval of the Chief Secretary to same is produced on record. Apart from above, there is no statement in the said affidavit that the Chief Secretary has approved the same.

12. Shri D. V. Chouhan, learned Government Pleader has also pointed out that the affidavit was not drafted by the Law Officer. We hardly see any clause to that effect, that it was not drafted and signed by him. However, no Law Officer has taken responsibility of the same.

13. Even if for the sake of argument if we accept the contention of the learned Government Pleader that contents of the affidavit are duly approved by the Chief Secretary, what can be noticed is the contents of

the affidavit go contrary to their own noting which are produced along with the petition in relation to the posting of respondent No.4 on the post of Commissioner, Municipal Corporation, Amravati. The noting dated 26/06/2023 are worth referring which are produced at page 27 of the petition.

14. As such the stand taken in the affidavit even if accepted goes contrary to the record pertaining to posting of respondent Nos.4 or 5 on the post of Commissioner, Municipal Corporation, Amravati.

15. It is not the case of the respondent-State Government that both the notifications i.e. of 2018 and 2023 referred above, issued by the Government of India are modified and it is open for the State Government to use their power of posting their officers from Grade-A in the State of Maharashtra to the post of Commissioner. Though the reliance is sought to be placed on the resolution dated 10/05/2004, which permits the posting of the Chief Officer, Grade-A in the Municipal Corporation but not on the post of Commissioner or any other allied post and such officer cannot be given full time charge of the post of Commissioner.

16. Apart from above, the aforesaid Government Resolution further makes it clear that the appointment of the Chief Officer, Grade-A can be made on the post of Deputy Commissioner or equivalent post that too in the newly created Municipal Corporation. That does not appear to be the case of respondent No.6 which is informed to have been formed sometime in 1983.

17. Respondent No.6-Municipal Corporation, Amravati though served has neither chosen to file affidavit nor reply in the matter. That being so, we deem it appropriate to direct the Chief Secretary of the

State Government of Maharashtra to file affidavit duly sworn by him dealing with the aforesaid issue about posting/transfer of respondent Nos.4 and 5 who are not from the Indian Administrative Service cadre on the post of Commissioner of respondent No.6-Municipal Corporation, Amravati.

18. Further, it is clarified that in case if the State entity continues posting in accordance with the notifications dated 15/06/2018 and 06/12/2023 of the Government of India, it is open for them to do so if so required by ignoring the order of Maharashtra Administrative Tribunal referred above at the behest of respondent No.4.

19. Let response be placed on record in any case by 04/07/2024.

20. Stand over to 05/07/2024.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)