



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

Writ Petition No. 2030 Of 2020

Bandu s/o Bhikaji Bhalerao

Age : 62 years, Occupation-Retired,

R/o. N-12, D27/7, Swami Vivekanand Nagar,

Aurangabad, Dist. Aurangabad.

.. Petitioner

Versus

1. The Aurangabad Municipal Corporation,
Aurangabad through its Commissioner,
Office of Municipal Corporation, Aurangabad,
Juna Bazar, Aurangabad, Dist. Aurangabad.

2. The State of Maharashtra,
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

.. Respondents

* Mr. B.L. Sagar Killarikar, *Advocate for the Petitioner.*

* Mrs. Anjali Bajpai Dube, *Advocate for Respondent No.1.*

* Mr. A.S. Shinde, *Addl.GP for Respondent No. 2/State.*

**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ..**

RESERVED ON : 24th FEBRUARY 2025

PRONOUNCED ON : 28th FEBRUARY 2025

J U D G M E N T (Per Shailesh P. Brahme, J.) :

. Rule. Rule is made returnable forthwith. Heard
both sides finally.

2. By way of this petition, the Petitioner is claiming retiral benefits which, he is deprived of by the Respondent No.1/Corporation due to punishment of withholding of two annual increments with permanent effect.

3. Petitioner was working as Cashier. A disciplinary action was taken against him by conducting inquiry. He was found guilty and punishment of withholding of two annual increments with permanent effect was imposed by the Deputy Commissioner vide order dated 09.02.2007. The punishment was assailed by him by preferring appeal before the Standing Committee. Vide resolution no.235 dated 30.04.2013, Standing Committee restored the annual increments by canceling order of punishment. He was rendering services till his superannuation dated 31.05.2015. He was not disbursed regular pension and other retiral benefits for which the representations were made by him from time to time. Ultimately he was constrained to approach this Court for direction to release retiral benefits.

4. Learned Counsel for the Petitioner Mr. Sagar Killarikar placed heavy reliance on the judgments of coordinate bench in the matters of **Dattatray s/o Anandgir Giri Vs. The Aurangabad Municipal Corporation, Aurangabad and Anr.**, in Writ Petition No.4146/2014; **Shrish s/o. Deodas Ramteke Vs. Chief Minister and Minister for Urban Development and Others**, in Writ Petition No.5961/2016 and **the Aurangabad Municipal**

Corporation Vs. Shirish and Others in Special Leave Petition (Civil) Diary No(s). 163/2019, to buttress the submission that the decision of the Standing Committee has not been assailed by the Corporation and therefore that cannot be questioned for withholding the legitimate retiral benefits.

5. He would submit that right to receive retiral benefits is envisaged by Article 300(A) of the Constitution of India and inaction on part of the Respondents is unconstitutional. It is submitted that after decision of the Standing Committee, the Corporation did not challenge the decision till the superannuation of the Petitioner and thereafter also. The Corporation is bound to follow the decision of the Standing Committee. It is further submitted that the judgment in the matter of Shirish s/o. Deodas Ramteke (supra) was confirmed by the Supreme Court vide order dated 01.02.2019.

6. Learned Counsel Mrs. Anjali Bajpai Dube would support the impugned action by referring to affidavit-in-reply. It is submitted that appeal preferred by the Petitioner against the penalty which was minor in nature was not maintainable before the Standing Committee as per Section 56(4) of the Maharashtra Municipal Corporation Act (hereinafter referred to as 'Act'). Appeal was maintainable against major penalty. Petitioner was informed vide letter dated 07.02.2017 that the decision of the Standing Committee could not

be implemented. She would submit that the appointing authority of the Petitioner is the Commissioner and therefore the Standing Committee had no power to quash the penalty.

7. We have considered rival submissions of the parties. Petitioner suffered penalty of withholding of two increments with permanent effect. Section 56(2)(b) contemplates penalty of withholding of increments. The punishment imposed by the Deputy Commissioner on the Petitioner is in a way not covered by sub-section (2). There is provision of preferring appeal under Section 56(4) to immediate superior authority. But this appeal is provided against penalty of reduction, removal or dismissal. The Petitioner in the present case was not inflicted with the said penalty. Despite that his appeal was entertained by the Standing Committee and was virtually allowed.

8. The Standing Committee by its resolution dated 30.04.2013 reversed order of penalty dated 09.02.2007. It was possible for the Respondent No.1/Corporation to challenge the resolution by resorting to Section 451 of the Act. If the order of appellate forum was without jurisdiction, the remedy provided under the Statute was not availed of by Respondent No.1/Corporation. Petitioner was permitted to render the services till his superannuation. Respondent No.1 remained dormant from 2013 to 2020. Even the representation of the Petitioner was rejected by the Corporation on

07.02.2017. Respondent No.1 is guilty of acquiescence. Now when it comes to disbursement of retiral benefits, it is coming with a stand that the penalty could not have been quashed as the appeal was not maintainable. This approach is afterthought and arbitrary.

9. Reliance is placed on the judgment of Dattatray s/o Anandgir Giri (supra). In that case Petitioner was Ward Officer who met with punishment of withholding of promotion and recovery imposed by Commissioner which was regarded to be major penalty. He had also preferred appeal against it before the Standing Committee under Section 56(4) of the Act. The Standing Committee had quashed the penalty by its resolution. In that matter also Petitioner was superannuated and he was not awarded the retiral benefits. It was the defense of the Corporation that the Standing Committee had no power and no reasons were assigned.

10. It was held by the coordinate bench that the decision of the Appellate Authority had attained finality and it was not challenged by the Corporation or the Commissioner. It was also observed that the Standing Committee would stand on higher footing. In that view of the matter, in paragraph no.11 of the judgment, High Court disapproved the stand of the Corporation recording it to be belated attempt. It was further recorded that the decision of the Standing Committee could have been assailed. The following observations are made :

"As already observed, upon considering the scheme of the said Act, it is only the Corporation, who is appointing authority of the petitioner, can take appropriate decision either to upset/set aside/cancel the decision taken by the Standing Committee. So far contention of Respondent No.1 that, appeal was not maintainable cannot be considered in the Writ Petition, filed by the petitioner, to his disadvantage, when the decision of the standing committee has attained finality and there is no challenge to the said decision from the year 2009 till 2015."

11. Although the contentious issue as to the maintainability of the appeal before the Standing Committee against the penalty, otherwise than reduction, removal or dismissal was not dealtwith by the coordinate bench, it was specifically held that the decision of the Standing Committee was never challenged. Being belated attempt of the Corporation, plea of maintainability of the appeal was discarded. We also propose to follow the same course and action.

12. Reliance is placed on the judgment of Shrish s/o. Deodas Ramteke (supra). In that case, the Petitioner was imposed with major penalty of stoppage of increments withholding of promotion and recovery. Being aggrieved, appeal was preferred before the Standing Committee and it was allowed. Corporation did not challenge the decision of the Standing Committee in time. After four years, the decision was taken to challenge under Section 451 of the Act. Thereafter the State of Government quashed the decision of the Standing Committee. The Writ Petition was allowed by the coordinate bench because no reasons were assigned by the Respondent No.1/State Government for quashing

the resolution of the Standing Committee. It was also held that the decision was challenged before the State Government belatedly. We find that there is difference in the facts and hence the said decision cannot be made applicable to the present case. Though the Supreme Court confirmed the decision of the High Court, it is inconsequential for the present case.

13. For the reasons stated above, in the peculiar facts, we find that Respondent No.1/Corporation is bound to follow the decision of the Standing Committee and disburse the retiral benefits to the Petitioner. Hence we pass following order :

ORDER

(i) Respondent No.1/Corporation shall restore two annual increments and accordingly calculate and revise retiral benefits of the Petitioner and those shall be disbursed within a month from today.

(ii) If the monetary benefits are not disbursed within above referred period, it shall carry interest of 6% per annum.

(iii) Rule is made absolute in above terms.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

najeel..