

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2463 OF 2010

Deepak Shivaji Vanzare

... Petitioner

Vs

1. Solapur Municipal Corpn. & Ors.

... Respondents

Mr. S.G. Kudle for the Petitioner.

Mr. Sharad T. Bhosale i/b Mr. Dilip B. Bodake for the Respondent No.1.

Ms. Sushma Bhende, AGP, for the Respondent No.4 - State.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

THURSDAY, 09TH MARCH, 2017

P.C. :

1 By this writ petition under Article 226 of the Constitution of India, the petitioner has sought a writ of mandamus or any other writ, order or direction in the nature thereof, directing respondent Nos.1 to 3 to appoint the petitioner with effect from 1st February, 2003, vide Resolution of the Standing Committee No.263 dated 14th November, 2008, and to

modify the appointment letter. He should be granted all the benefits in terms of the above direction. The petitioner also seeks a writ of mandamus directing the respondents to absorb him in the employment of the Solapur Municipal Corporation with effect from 25th May, 1992, and not from 1st February, 2003, as per prayer clause (a) in the light of the Resolution No.42 of the General Body dated 3rd February, 2001, Standing Committee Resolution No. 2210 dated 13th February, 2001 and the State Government's letters dated 23rd October, 2000 and 31st January, 2003, along with all consequential benefits, including arrears of salary and continuity of service.

2 By prayer clause (B1), which was introduced by amendment, the further writ of mandamus sought is to direct respondent No.4 to decide an application dated 5th March, 2004, made by the respondent No.3 - Commissioner to the respondent No.4 - State Government, within a reasonable time.

3 The petitioner is one of the employees like others and involved in the writ petitions filed by the employees of several Gram Panchayats whose areas were later on brought within the

limits of the Solapur Municipal Corporation. Once the request for absorption of such employees of the eleven Gram Panchayats with areas merged with the Solapur Municipal Corporation was considered and granted by a Resolution No.98 dated 31st August, 2002, then, the prayer is that similar benefit be extended to the petitioner. We had, in a detailed order passed on the earlier occasion, noted briefly the controversy. On 19th January, 2017, when it was a conceded position that the petitioner's case is identical and similar to the employees whose cases were dealt with by this Court in the Writ Petition No. 1297 of 2012 - *Shankar Rao Govind Rao Patil vs. Solapur Municipal Corporation & Ors.* and connected petitions, decided on 31st July, 2013, then, the query raised is what is the impediment in extending the same relief to him. Two reasons were assigned. Firstly, that against this common judgment delivered by a Division Bench of this Court, though dealing with identical controversy, the Solapur Municipal Corporation has, in challenging it approached the Hon'ble Supreme Court of India. The Special Leave Petitions 5142 - 5147 of 2015, have been admitted and the judgment has been stayed. Secondly, the Municipal Corporation of Solapur has referred the matter to the Government of Maharashtra, invoking

the powers conferred in the State vide section 451 of the Maharashtra Provincial Municipal Corporation Act, 1949. It is only to ascertain the position with regard to the pending reference from the Solapur Municipal Corporation with the State Government that we sought for an affidavit from the State. We also directed the Secretary of the Department concerned to take a decision on the pending proposal of this Municipal Commissioner of Solapur Municipal Corporation.

4 Today, Ms. Bhende, appearing on behalf of the State, tenders an affidavit of the Principal Secretary to the Government of Maharashtra in the Department of Urban Development stating in categorical terms that the State Government has taken a decision on 6th March, 2017, that it is not necessary to rescind the Resolution No.98 dated 31st August, 2002 of the Solapur Municipal Corporation. Once such a decision has been taken by the State Government, then, the respondent Nos.1 to 3 have not only to abide by the Government's decision dated 6th March, 2017, copy of which is annexed as Exhibit-1 to this affidavit of the Principal Secretary which is taken on record, but also the Division Bench judgment of this Court. It is common ground that

there is a difference and distinction between operation and implementation of a judgment and order of this Court being stayed by a Higher Court and such judgment and order being quashed and set aside. The quashing and setting of the judgment wipes out its existence whereas in the former, the judgment remains and in force, but its implementation and enforcement is kept in abeyance. It is in the former circumstance that we had called for this affidavit and also to ascertain whether the State Government agrees with the Municipal Commissioner or it desires that the petitioner's fate be decided in terms of the Solapur Municipal Corporation's Resolution dated 31st August, 2002, and on par with other employees he should be extended the benefits. Once this affidavit clarifies the entire position and understood by us as above, then, the Writ Petition must succeed.

5 The Rule is made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.