IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION. 3977 OF 2025

Mahendra Manoharlal Panjabi
Age 46 years
Occupation Service
Residing at Sikki Apartment,
207, Station Rod, Ulhasnagar -3
District - Thane … PETITIONER

Versus

1. Ulhasnagar Municipal Corporation
Ulhasnagar
District – Thane

2. Commissioner
Ulhasnagar Municipal Corporation
District – Thane

3. State of Maharashtra
Urban Development Department
Mantralaya, Mumbai
Through Chief Secretary

… RESPONDENTS

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Mr. Sugandh B. Deshmukh a/w Mr. Irvin D'Souza i/b. Mr. Vaibhav Thorve, Advocate for the Petitioner.
Ms. Pooja Joshi Deshpande, for the Respondent Nos.1 and 2.
Ms. Pushplata Narayan Diwan, AGP for Respondent No.3-State.

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CORAM : RAVINDRA V. GHUGE AND ASHWIN D. BHOBE, JJ.

RESERVED ON : 17th APRIL, 2025
PRONOUNCED ON : 6th MAY, 2025

ORDER (Per : ASHWIN D. BHOBE, J.)

1. Heard Mr. Sugandh Deshmukh, learned Advocate for the Petitioner, Ms. Pooja Joshi Deshpande, learned Advocate for the Respondent Nos.1 and 2 and Ms. Pushplata Narayan Diwan, learned AGP for Respondent No.3-State.

Factual Matrix:-

2. Petitioner was appointed on the post of a Clerk by the Respondent No.1 on 26.03.1998. Petitioner by relying on the Recruitment Rules 1996/Recruitment Rules 2015, claims that despite he being eligible and being due for promotion, the Petitioner was denied promotion. According to the Petitioner, upon completion of 3 years on the post of Clerk in the year 2003, Petitioner was entitled to be promoted as a Senior Clerk. Recruitment Rules required 5 years experience on the post of Senior Clerk for promotion to the post of Tax Inspector/ Octroi Inspector, which post/s were vacant in the year 2006 as such, the Petitioner was entitled to be promoted on the said post in the year 2008, after completion of notional experience on the post of Senior Clerk. Post of Superintendent/Head Clerk required experience of 3 years on the post of Tax Inspector, thus Petitioner was entitled for promotion on the said

post of Superintendent after 3 years of notional experience of Octroi Inspector/Tax Inspector in the year 2011. Petitioner was entitled to be promoted on the post of Assistant Commissioner in the year 2016 upon notional experience of 7 years on the post of Superintendent in the Corporation. In terms of the Recruitment Rules, 2015, 5 years experience on the post of Assistant Commissioner is required for the promotion to the post of Deputy Commissioner/Tax Assessor and Collector, which the Petitioner would be entitled in the year 2020 on account of notional experience on the post of Assistant Commissioner.

3. Petitioner was promoted on the post of Senior Clerk/Tax Inspector w.e.f. 28.02.2020. Alleging inaction on the part of the Respondent Nos.1 and 2 in not making timely promotion of the Petitioner in the post of Senior Clerk/Octroi Inspector/Tax Inspector Superintendent/Head Clerk/ Assistant Commissioner and Deputy, Commissioner and the consequent denial of the benefits of the said post/s, the Petitioner is before this Court seeking the following substantial reliefs:

> *"[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India 1950 direct the Respondent-Corporation to give the notional promotion to the Petitioner on the post of Octroi*

Inspector, Superintendent/Head Clerk, Assistant Commissioner and Dy. Commissioner in the years 2008, 2011, 2016 and 2021 and all the consequential benefits from the date of the respective notional promotion.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India 1950 direct the Respondent-Corporation to thereby direct the Respondent-Corporation to give all consequential benefits of the post of Senior Clerk of the period before 28.02.2020 and from since the year 2001/2003."

4. Mr. Sugandh Deshmukh, learned Advocate for the Petitioner submits that on account of gross inaction on the part of the Respondent Nos.1 and 2, the Petitioner though entitled to be promoted on the post of Senior Clerk/Octroi Inspector/Tax Inspector/Superintendent/Head Clerk/Assistant Commissioner/Ward Officer in the year 2003, 2008, 2011, 2016 and 2020, respectively, was illegally and arbitrarily denied promotion. He submits that despite repeated requests, the Petitioner was not provided the seniority list and vacancy on the post. He places reliance on a chart at Exhibit-J, page no. 37 of the petition paper book, to contend that the said chart indicates the entitlement of the Petitioner for notional promotion as per the Recruitment Rules, 1996 and 2015.

<u>Chart at Exhibit J at page no.37 is extracted herein below:</u>

Recruitment Rules 1996

Years of Service	2015 Seniority list SR NO.	Experience required for the post	Qualification required	For the post	Vacant posts in open category	counting
1998	97	NO	SSC 40 wpm English. 30 wpm Marathi	Clerk		1998-97 1999-67 2000-37 2001-07
2001	07	3 years as a clerk	SSC	SR. Clerk/	17	2001+5= 2006
2006		5 years as a Senior Clerk	SSC	Tax Inspector/ Octroi Inspector	07+13=20	2006+3=2009
2009		3 years as Tax Inspector/Octroi Inspector	Amongst Inspector	Superintendent/ Head Clerk	07+1=8	2009+5=2014

As per 2015 service Rules/Recruitment Rules sanctioned by Maharashtra Government for Ulhasnagar Municipal Corporation.

2015		5 years as Superintendent	Graduation	Assistant Commissioner/ Dy. Tax Assessor & Collector	1+1=2	2015+5 = 2020
2020		5 years as a Asst. Comm./Dy. Tax Assessor & Collector		Dy. Commissioner/Tax Assessor & Collector	1+1=2	--------

5. Ms. Pooja Joshi Deshpande, learned Advocate for the Respondent Nos.1 and 2 submits that the Petitioner was placed under suspension in the year 2003, 2015 and in the year 2022. She submits that departmental inquiry was initiated against the Petitioner, which culminated into an order dated 21.01.2025, by which the Deputy

Commissioner found the charges against the Petitioner, being proved and therefore, imposed penalty of stopping one increment. She, therefore, submits that the antecedents of the Petitioner would be tainted and therefore, the Petitioner is not entitled to any relief.

6. In rejoinder, learned Advocate for the Petitioner submits that the Petitioner has filed Writ Petition No.13553 of 2017 and Writ Petition (St.) 20945 of 2017 before this Court questioning the suspension orders, which petitions are pending. He further submits that the Petitioner is in the process of challenging the order dated 21.01.2025 passed by the Deputy Commissioner ordering stoppage of one increment. He submits that Petitioner and other similarly situated employees were not promoted despite the post being available and therefore, prays that the petition be allowed.

7. From the perusal of the petition and the reliefs, the Petitioner is seeking a writ of Mandamus directing the Respondent No.1-Corporation to promote the Petitioner by giving notional promotion to the Petitioner and the consequential benefits. Claim of the Petitioner is reflected in paragraph nos.15, 17, 20 and 23, which are transcribed herein below:

"15. The Petitioner submits that the post of Octroi Inspector/ Tax Investor were vacant at the relevant time Petitioner was also eligible and entitled to be promoted on the post of Tax Inspector in the year 2008 after completion of notional experience of three years on the post of Senior Clerk and considering the seniority list at the relevant time.

17. The Petitioner submits that the Petitioner was entitled for appointment on the post of Superintendent after three years of notional experience of Octroi Inspector/Tax Inspector in the year 2011 considering the seniority list of the relevant time.

20. The Petitioner submits that hence as per the Recruitment Rules, 1996 the Petitioner was supposed to be promoted on the post of Assistant Commissioner in the year 2016 i.e. after the notional experience of seven years on the post of Superintendent in Corporation.

23. The Petitioner submits that the Petitioner as per the 2015, Rules that the Petitioner was entitled to be promoted on the post of Assistant Commissioner in the year 2016 i.e. after completion of five years notionally on the post of Superintendent in the Corporation and after the notional experience of 5 years in the post of Assistant Commissioner in the year 2021 as per seniority list."

8. From the case setup by the Petitioner, the Petitioner is apparently claiming to be entitled to promotion on the various posts, that too on a contention that Petitioner be given benefit of notional

experience. The Hon'ble Supreme Court as well as this Court has time and again held that there is no indefeasible right to promotion. Thus, in the absence of a legal duty being cast on the Respondent-Corporation, to promote the Petitioner, there would be no occasion for issuing a writ of Mandamus. Petition is therefore liable to be dismissed on this count alone. Even otherwise, the contention of notional experience as claimed by the Petitioner is misconceived.

9. Though, the right guaranteed to employees is for being "considered" for promotion according to Recruitment Rules, in the facts and circumstances of the case and considering the taint in the antecedents of the Petitioner as reflected in the order dated 21.01.2025 passed by the Deputy Commissioner imposing a penalty of stoppage of one increment of the Petitioner, we are not inclined to exercise our discretion.

10. For the above stated reasons, **the Writ Petition is dismissed**. There shall be no order as to cost.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**