

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.990 OF 2022

**DISTRICT: PUNE
SUBJECT: Cancellation of
Posting**

Smt. Smita Gangaram Zagade,)
Aged 40 yrs, Posted as Additional)
Commissioner, Pimpri-Chinchwad)
Municipal Corporation, but working as)
Deputy Commissioner, Having office at)
Ambedkar Chowk, Pimpri, Pimpri-Chinchwad,)
Pune-18, R/o. 803, B-Wing, DSK Frangipani,)
Sadhu Waswani Chowk, Pune-1.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Principal Secretary,)
Urban Development Department, Having Office)
at Mantralaya, Mumbai-32.)
- 2) Pradip Bapurao Jambhale-Patil,)
Aged Adult, Posted as Additional Commissioner,)
Pimpri-Chinchwad Municipal Corporation,)
Having Office at Ambedkar Chowk, Pimpri,)
Pimpri-Chinchwad, Pune-18.)
- 3) The Municipal Commissioner,)
Pimpri-Chinchwad Municipal Corporation,)
Having Office at Ambedkar Chowk, Pimpri,)
Pimpri-Chinchwad, Pune-18.)...**Respondents**

Shri Arvind Bandiwadekar, Advocate for Applicants.

Shri. A.J. Chougule Presenting Officer for Respondent No.1

Shri M.D. Lonkar, Advocate for Respondent No.2

Shri U. V. Bhosale, Advocate for Respondent No.3

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 17.02.2023

JUDGMENT

The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 challenging two orders passed by the Government on 22.09.2022 whereby her appointment to the post of Additional Commissioner, Pimpri-Chinchwad Municipal Corporation (PCMC) is cancelled and in her place Respondent No.2 has been posted on deputation for two years.

2. Shortly stated facts giving rise to O.A. are as under:-

While the Applicant was serving as Deputy Commissioner, Pimpri - Chinchwad Municipal Corporation, the Respondent No.1-Governemnt by order dated 13.09.2022 appointed and posted the Applicant as Additional Commissioner, Pimpri Chinchwad Municipal Corporation. In pursuance of Government order, the Applicant made an application to Commissioner, PCMS on 14.09.2022 for allowing her to join the post of Additional Commissioner. However, the Commissioner, PCMC did not pass any order allowing her to join the post of Additional Commissioner. She was thus kept out of post of Additional Commissioner, PCMC for about 10 days. Abruptly, the Respondent No.1 by order dated 22.09.2022 appointed Respondent No.2 as Additional Commissioner, Pune on deputation for two years exercising powers under Section 39-A of Maharashtra Municipal Corporation Act and on the same day by another order cancelled the order of appointment dated 13.09.2022 whereby the Applicant was appointed as Additional Commissioner, PCMC without assigning any reason in the order. The Applicant has therefore filed the present O.A. challenging both the orders dated 22.09.2022.

3. Respondent No.1- Government, Respondent No.2 who is placed in place of Applicant as well as Respondent No.3 - Commissioner, PCMC have filed their Affidavit in Reply. The contentions raised by them will be dealt with during the course of discussion.

4. Learned Counsel for the Applicant Shri A. V. Bandiwadekar sought to assail the impugned orders dated 22.09.2022 on following reasons :-

(A) Once the Government appointed the Applicant as Additional Commissioner, PCMC by order dated 13.09.2022, such order could not have been cancelled without giving reasons as well as without issuing show cause notice prior to passing of impugned order.

(B) The appointment of Applicant being from the cadre of Chief Officer, Group-A (Selection Grade), she has preference in the appointment on the post of Additional Commissioner in Municipal Corporation.

(C) The Government did not place the matter before the CSB for its vetting before cancelling her appointment order.

(D) The parent department of Respondent No.2 is State Tax Department which comes under the finance department and he was not eligible for such appointment on the post of Additional Commissioner, PCMC on deputation.

(E) The Government has not followed requisite terms and conditions while appointing Respondent No.2 as Additional Commissioner on deputation as mentioned in G.R. dated 17.12.2016 neither approval of finance department is taken. The Respondent No.2 was brought in place of Applicant on political pressure.

5. Whereas, Shri A. J. Chougale, learned P.O. and Shri M.D. Lonkar, learned Counsel for the Respondent No.1 and 2 respectively sought to justify the impugned orders on following grounds :-

(a) The Appointment of Respondent No.2 as Additional Commissioner, PCMC is administrative decision of Government and judicial intervention of Tribunal is very limited and impermissible.

(b) The Respondent No.2 was initially deputed as Deputy Commissioner, Municipal Corporation, Vasai - Virar and, therefore, there was no need to observe /adhere to the procedure laid down in G.R. dated 17.12.2016 again for his appointment as Additional Commissioner, PCMC.

(c) The Applicant's appointment itself on the post of Additional Commissioner, PCMC was outcome of political pressure and, therefore, she cannot take advantage of her posting as Additional Commissioner.

(d) The Applicant has no locus to challenge the appointment of Respondent No.2 as Additional Commissioner, PCMC otherwise it would assume the character of Public Interest Litigation.

6. Whereas Shri U. V. Bhosale, learned Counsel for the Respondent No.3 all that submits that there were certain oral complaints against the Applicant and therefore Commissioner, PCMC did not allow the Applicant to join in terms of order dated 13.09.2022. Except his bare submission, there is absolutely nothing to substantiate it.

7. In view of pleadings and submissions, the issue posed for consideration is whether impugned order dated 22.09.2022 about posting of Respondent No.2 in place of Applicant and cancellation of appointment of Applicant as Additional Commissioner, PCMC is legally sustainable in law. In my considered opinion, the answer is in emphatic negative.

8. At the very outset, let us see the sequence of events about posting and appointment of the Applicant as well as Respondent No.2. Indisputably, the Applicant belongs to Municipal Administration service in the cadre of Chief Officer, Group-A (Selection Grade) as explicit from Government order dated 01.02.2021 (Page 48 of PB). Whereas, it needs to be mentioned that Respondent No.2 does not belong to Municipal Administration Service and his parent department is State Tax Department. True, he was appointed as Deputy Commissioner, Municipal Corporation, Vasai-Virar (on deputation) on 11.08.2020 and now by impugned order dated 22.09.2022, he is again appointed on deputation for two years as Additional Commissioner, PCMC. Notably, by order dated 22.09.2022, he was brought in the cadre of Deputy Commissioner, State Tax Department, Class-1 (Selection Grade). As such, he does not belong to Municipal Administration Service.

9. The Applicant was initially appointed as Assistant Commissioner, PCMC by order dated 05.01.2018 and since then she is serving there. That time, she was in the cadre of Chief Officer (Group-A). Later she was given selection grade and posted as Additional Commissioner, PCMC by order dated 01.02.2021. In this connection, it would be pertinent to note that in terms of G.R. dated 01.09.2014 (Page 32 of PB) and G.R. dated 22.02.2022 issued by Respondent No.1-Urban Development Department, certain posts of Commissioners and Additional Commissioners are earmarked for particular cities depending upon classification of Municipal Corporation viz-a-viz population of city. What is further important to note that Municipal Corporation, Pimpri-Chinchwad is classified as 'B' Municipal Corporation. Furthermore, as per G.R.s dated 04.05.2006 and 19.10.2020, the Government had taken policy decision to appoint Chief Officer in Selection Grade on the post of Additional Commissioner at Municipal Corporation where population exceed 5 lacks. Thus, preference is given to Chief Officer, Group A, in Selection Grade for appointment as Additional Commissioner in big city so as to

exploit their experience and expertise for Municipal Administration. It is on this background, one needs to see the legality of Applicant's appointment as Additional Commissioner, PCMC which was subsequently cancelled by Government and Respondent No.2 was posted in her place.

10. Insofar as appointment of Applicant as Additional Commissioner, PCMC is concerned, the perusal of file noting (Page 106 of PB) reveals that the Hon'ble Chief Minister ordered to appoint the Applicant as Additional Commissioner with PCMC on 22.08.2022 and in sequel formal order for appointment was issued on 13.09.2022 (Page 50 of PB) exercising the powers under Section 39-A of Maharashtra Municipal Corporation Act. However, she was not allowed to join as Additional Commissioner, PCMC and abruptly by order dated 22.09.2022 her appointment has been cancelled replacing by Respondent No.2 without giving any reasons whatsoever.

11. The perusal of file noting further makes it quite clear that Deputation Committee headed by Principal Secretary of the department recommended the name of Respondent No.2 for Additional Commissioner, PCMC but when file was placed before the Hon'ble Chief Minister for approval, he passed specific order for appointment of Applicant as Additional Commissioner, PCMC. Thus, that time, the Hon'ble Chief Minister overruled the recommendations made by the Deputation Committee but within 9 days again file noting was prepared in pursuance of letter given by Deputy Chief Minister as well as Shri Laxman Jagtap, MLA and things moved in reverse direction for cancellation of appointment of Applicant. The Hon'ble Chief Minister simply approved the file noting for cancellation of appointment of Applicant. What happened in 9 days to change the decision is in mystery. What is striking to note, not a single reason is forthcoming either in impugned order, file noting or Affidavit in Reply for taking such U-turn.

On this background, the submissions advanced by learned Counsel for the Applicant that Applicant was ousted from the post only to favour Respondent No.2 get support from the material on record as discussed above.

12. As regard judicial interference in administrative orders as canvassed by learned Counsel for the Respondents in present case, impugned orders cannot be simply termed as purely administrative action. It has civil consequences of affecting Applicant's service condition and status. Indeed, even if, action is purely administrative in nature, it can be assailed on the ground of exercise of gross abuse of power arbitrariness. Needless to mention, distinction between judicial act and administrative act has withered away and principle of natural justice apply administrative orders which involved civil consequences. Where such administrative action affects a Government servant in his career, withdrawal of post to which he or she entitled then it cannot be termed purely administrative action so as to get immunity from judicial review.

13. In present case, as discussed above, the Applicant was legally entitled to appointment as Additional Commissioner, PCMC and accordingly she appointed with prior approval of Hon'ble Chief Minister exercising the power under Section 39-A of Municipal Corporation Act having regard to her experience in Municipal Administration as a Chief Officer, Group-A (Selection Grade). Therefore, such legal entitlement cannot tinkered with by executive for no reason and such action is not immune from judicial review and it has to be interdicted particularly when such order is passed without assigning single reason, even for namesake, and without following principle of natural justice. Suffice to say, the submission advanced by learned Counsel for the Respondents that impugned action is purely administrative order and beyond the ambit of judicial review is totally misplaced and unacceptable. The judicial review of action of such administrative action is permissible

when action suffers from vice of arbitrariness and in blatant violation of principles of natural justice more so when it inflicts civil consequences to Government servant.

14. Apart, as rightly pointed out by learned Counsel for the Applicant there is no observance and adherence to terms and conditions mentioned in G.R. dated 17.12.2016 whereby detailed procedure for taking Government servant on deputation is prescribed. There is specific pleading to that effect in Para Nos.6.41, 6.42, 6.43 and 6.46 of O.A. that procedure mandated in G.R. dated 17.12.2016 is not adhered to. Surprisingly, Affidavit in Reply of Government is totally evasive. The contentions raised by Applicant in this behalf are not specifically denied nor there is any averment that conditions mentioned in G.R. dated 17.12.2016 are followed before appointing Respondent No.2 in place of Applicant.

15. In terms of G.R. dated 17.12.2016, the borrowing department is required to publish advertisement calling willingness from the eligible candidates giving all necessary details. Such applications are required to be scrutinized having regard to Annual Confidential Report, service record and suitability of candidate. It further requires concurrence of parent department as well as borrowing department. However, in present case, apparently there is no such compliance as stated above. The Applicant has raised specific contention in this behalf but reply of the Respondent is totally evasive meaning thereby there is no such compliance. Even, the file noting also does not disclose any such scrutiny for compliance of terms and conditions mentioned in G.R. dated 17.12.2016.

16. The submission advanced by learned Counsel for the Respondents that such requirement ought to have been complied with while initially Respondent No.2 was appointed on deputation in Vasai-Virar Municipal

Corporation is nothing but assumption. Learned P.O. was not in position to satisfy that the terms and conditions of G.R. dated 17.12.2016 were complied with when Respondent No.2 was initially appointed on deputation in Vasai-Virar Municipal Corporation.

17. All that learned Counsel for Respondents were harping upon the recommendations made by Deputation Committee which is at Page No.107 of PB. It appears that Government had constituted one committee as Deputation Committee as seen from office order issued by Urban Development Department on 29.06.2020 (Page 205 of PB). All that this office order speaks about formation of committee headed by Principal Secretary and important to note that it also refers G.R. dated 17.12.2016 meaning thereby committee has to scrutinize the applications of deserving candidates in terms of G.R. dated 17.12.2016. However, perusal of minutes of Deputation Committee does not reveal that committee has examined the issue of deputation of Respondent No.2 on the touchstone of terms and conditions mentioned in G.R. dated 17.12.2016 were complied with. On the contrary, it simply recommended the name of Respondent No.2 without a single word about compliance of terms and conditions of G.R. dated 17.12.2016.

18. The submission advanced by learned Counsel for the Respondents that Applicant was at PCMC from 2018 and being overstayed, she was required to be shifted, will not render impugned orders legal and valid. True, the Applicant was initially appointed in 2018 as Assistant Commissioner, PCMC and thereafter appointed as Additional Commissioner, PCMC. If the Applicant was overdue, in that event, Respondent No.1 ought to have availed the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005') which also requires specific reason recorded in writing for such mid-term transfer as contemplated under Section 4(5) of 'Act, 2005'.

Be that as it may, once the Applicant was appointed as Additional Commissioner having found eligible then in absence of justifiable reasons, she could not be ousted in such manner. Apart, before cancellation of appointment order, it was not at all placed before the CSB as mandated by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732**. In reference to decision of the Hon'ble Supreme Court, State of Maharashtra had constituted Civil Services Board at different level by G.R. dated 31.01.2014 and Deputation Committee cannot be equated with CSB.

19. The submission advanced by learned Counsel for Respondents that while securing appointment as Additional Commissioner, the Applicant has also secured recommendations from Shri Santosh Laxmanrao Bangar, MLA and, therefore, she is estopped from challenging the appointment of Respondent No.2, is fallacious.

20. True, the file noting (Page No.106 of PB) reveals that Shri Bangar, MLA gave one letter and in pursuance to it, the file was placed before the Hon'ble Chief Minister who passed the order for appointment of Applicant as Additional Commissioner, PCMC. However, the fact remains that Applicant was Chief Officer, Group-A (Selection Grade) and eligible for appointment as Additional Commissioner and accordingly, she was appointed. Whereas on the other hand while appointing Respondent No.2 on deputation as Additional Commissioner, PCMC, the terms and conditions mentioned in G.R. dated 17.12.2016 were not followed. Basically, he belongs to State Tax Commissioner office but on recommendation of Deputy Chief Minister and Shri Laxman Jagtap, MLA got appointment as Additional Commissioner, PCMC cancelling the appointment of Applicant which clearly indicates only to favour Respondent No.2 appointment of Applicant has been cancelled that to without assigning a single reason much less justifiable and thereby Applicant's right to post and to perform duty attached to post are taken

away arbitrarily. She has, therefore, locus to redress her grievance and Original Application will have to be held perfectly maintainable and it cannot be termed Public Interest Litigation as canvassed by learned Counsel for the Respondents.

21. Indeed, the practice to transfer Government servant on the recommendation of Politician is frowned upon by Hon'ble High Court in ***Writ Petition No.8987/2018 [Balasaheb V. Tidke Vs. The State of Maharashtra]*** decided on 12.12.2018, in which the then Chief Secretary had filed Affidavit that the process of transfer at the level of Government will not be influenced by any recommendation made by any political leaders or Ministers who are not part of the process of transfer. Despite filing of Affidavit before Hon'ble High Court the practice of transfer on influence of politician and abrupt ouster from the post seems continued unabated which is nothing but contempt of the undertaking given before Hon'ble High Court. Though that matter was arising from transfer principle underline is important that rule of law must prevail and there should be no political consideration behind it.

22. In view of above, inevitable conclusion is that impugned order dated 22.09.2022 appointing Respondent No.2 as Additional Commissioner, PCMC and cancelling appointment of Applicant as Additional Commissioner, PCMC are totally indefensible. The impugned orders are totally arbitrary and de hors the law. Hence, the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 22.09.2022 appointing Respondent No.2 as Additional Commissioner, PCMC as well as impugned order dated 22.09.2022 cancelling appointment of Applicant as Additional Commissioner, PCMC are quashed and set aside.

- (C) The Applicant be reposted as Additional Commissioner, PCMC within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 17.02.2023
Dictation taken by : *Vaishali S. Mane*

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O.A.607/2022 S.L. Sawant Archana B.K. Adm. F.H.

With Adv. M.D. Lonkar

(2) O.A.608/2022 P.B. Kadam Archana B.K. Adm. F.H.

With Adv. M.D. Lonkar Delay M.A. not filed.

(3) O.A.620/2022 S.G. Ghatge Archana B.K. Adm. F.H.

With Adv. M.D. Lonkar

(4) O.A.827/2022 D.D. Sonawane Archana B.K. Home Dept.

With Adv. M.D. Lonkar

(5) O.A. 966/22 S.V. Raje Archana B.K. Home Dept.,

With Adv. M.D. Lonkar

(6) O.A. 1101/22 V.D. Parab Archana B.K. Revision of

(7) O.A. 1166/22 G.N. Kamble Archana B.K. Recovery Home Dept., Adm. F.H.

With Adv. M.D./A.M./O.M. Lonkar

(8) O.A. 1202/22 V.B. Shinde A.J. Chougule Recovery Home Dept.

With Adv.M.D./A.M./O.M./Lonkar

(9) O.A. 1240/22 R.V. Indulkar Archana B.K. Recovery Home Dept., Due Adm.

With M.D/A.M/O.M. Lonkar

(10) O.A. 1241/22 V.P. Pendurkar Archana B.K. Recovery Home Dept., Due Adm.