

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 990 OF 2022**

DISTRICT : PUNE

Smt Smita Ganagaram Zagade,)
Additional Commissioner,)
Pimpri-Chinchwad Municipal Corporation,))
but working as Deputy Commissioner,)
having office at Ambedkar Chowk,)
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,)
Mantralaya, Mumbai 40 032.)
2. Shri Pradip Babpurao Jambhale-Patil,))
Posted as Additional Commissioner,)
Pimpri-Chinchwad Corporation,)
having office at Ambedkar Chowk,)
Pimpri Chinchwad, Pune-18.)
3. The Municipal Commissioner,)
Pimpri-Chinchwad Municipal)
Corporation,)
having office at Ambedkar Chowk,)
Pimpri Chinchwad, Pune-18.)...**Respondents**

Shri A.V Bandiwadekar, learned Counsel for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondent No.1.

Shri M.D Lonkar, learned Counsel for Respondent No. 2.

Shri U.V Bhosle, learned Special Counsel for Respondent no. 3.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member)(A)**

RESERVED ON : 28.07.2023

PRONOUNCED ON : 28.08.2023

PER : Shri Debashish Chakrabarty (Member)(A)

J U D G M E N T

1. The Original Application has been filed by the applicant, Smt Smita Ganagaram Zagade, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the cancellation of her appointment order on transfer dated 13.9.2022 as Additional Municipal Commissioner, Pimpri-Chinchwad Municipal Corporation and issue of appointment order on deputation dated 22.9.2022 for Shri. Pradip Bapurao Jambhale-Patil, Respondent No. 2, in her place as Additional Municipal Commissioner, Pimpri-Chinchwad Municipal Corporation.

2. The Original Application was heard by Single Bench of the Tribunal which by order dated 17.2.2023, quashed and set aside the impugned order dated 22.09.2022 appointing Respondent No.2 as Additional Municipal Commissioner, PCMC as well as impugned order dated 22.09.2022 cancelling appointment of Applicant as Additional Municipal Commissioner, PCMC and also reinstated the

Applicant to the post of Additional Municipal Commissioner, PCMC.

3. The Respondent No. 2, aggrieved by the order dated 17.2.2023 of the Single Bench of the Tribunal, thereupon filed Writ Petition No. 2323/2023 before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court by order dated 3rd May, 2023, in Writ Petition No. 2323/2023, set aside the order dated 17.2.2023 passed by the Single Bench of the Tribunal on the grounds of inherent lack of jurisdiction and restored the Original Application to file further directing that it be heard by Division Bench of the Tribunal on its own merit and in accordance with law.

4. The Tribunal accordingly constituted Division Bench to hear the Original Application and heard the matter 'de-novo' on 19.7.2023, 24.7.2023 and 28.7.2023.

FACTS:-

5. The applicant was appointed in the cadre of Chief Officer, Group-A under the Urban Development Department on 7.7.2010 and was working as Assistant Municipal Commissioner in Pimpri-Chinchwad Municipal Corporation, when she came to be promoted as Deputy Commissioner, (Selection Grade) vide Urban Development Department order dated 1.2.2021. The Urban Development Department, thereafter, with the approval of the Competent Authority posted the applicant to the post of Additional Municipal Commissioner, PCMC, on 13.9.2022. Thereupon, she reported to the Municipal Commissioner on 14.9.2022, seeking permission to join the post of Additional Municipal Commissioner, PCMC. However, she was not permitted to take charge of the post of

Additional Municipal Commissioner, PCMC and was kept waiting for want of directions of the Municipal Commissioner, PCMC.

6. The Urban Development Department, in the meanwhile appointed the Respondent No. 2, to the post of Additional Municipal Commissioner, PCMC, by transferring him while already on deputation from State G.S.T Department which is under the Finance Department when he serving on the post of Deputy Municipal Commissioner, Vasai-Virar Municipal Corporation. Thus, the Applicant and the Respondent No. 2 were consecutively given appointment orders for the post of Additional Municipal Commissioner, PCMC, respectively on 13.9.2022 and 22.9.2022 after approval of the Competent Authority, as per provisions of Section 39A of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as the said Act).

ARGUMENTS

7. The learned Counsel for the Applicant in his arguments listed out the chronology of the orders passed by the Urban Development Department, beginning with the order of appointment of the Applicant on 13.9.2022. He also emphasized on the decision of the Urban Development Department to recategorize some Municipal Corporations, which includes PCMC to Category-B, the decision to increase in the number of posts of Additional Municipal Commissioners in Municipal Corporations, as well as notings on the files of Urban Development Department which have emphasized on the postings of officers from the cadre of Chief Officer, Group-A in recognition of their long experience of working with various Urban Local Bodies, (ULB).

8. The learned Counsel for the Applicant further argued that while posting the Respondent No. 2, the Urban Development

Department had not followed the detail guidelines issued vide G.A.D G.R dated 17.12.2016 in respect of appointments on deputation from cadres under various Administrative Departments of the State Government. The learned Counsel of the Applicant then emphasized on the contraventions of G.A.D G.R dated 17.12.2016, while making appointment of Respondent No. 2, first to the post of Deputy Commissioner, Vasai Virar Municipal Corporation and then to the post of Additional Municipal Commissioner PCMC. The guidelines of issuing Advertisement of Deputation Posts for calling application from officers of other Administrative Departments as well as the requirement of Cooling Off periods between consecutive appointment while already being on deputation. The Respondent No. 2, was given Proforma Promotion while serving on deputation as Deputy Commissioner, Vasai Virar Municipal Corporation in contravention of the guidelines of Proforma Promotion under Para 18 of Appendix II under Rule 40 of Maharashtra Civil Services (Joining Time, Foreign Service.....Dismissal & Removal) Rules, 1981. The learned Counsel for the Applicant, vehemently argued that the Municipal Commissioner, PCMC, the Respondent no. 3, should have immediately permitted her to join on the post of Additional Commissioner, PCMC, when she reported on 14.9.2022. Instead for reasons unknown she was kept waiting by Municipal Commissioner, PCMC, the Respondent no. 3, for reasons unknown and in the meanwhile the Respondent No. 2, came to be appointed in her place as Additional Municipal Commissioner, PCMC on 13.9.2022.

9. The learned P.O for the Respondent No. 1 made submissions based on the Affidavit in Reply dated 11.10.2022, of Urban Development Department and reiterated that the appointment of the Applicant was not at all proposed by Urban Development

Department, although her name came to be approved directly by the Competent Authority. On the other hand, the name of Respondent No. 2, was proposed by the Deputation Committee constituted by the Urban Development Department by order dated 29.6.2020.

10. The learned P.O on behalf of Respondent No. 1, in his arguments further relied upon the file notings and drew attention of the Tribunal to the admitted fact that the Deputation Committee of the Urban Development Department in the initial instance on 22.8.2022 had made its recommendations for the Respondent No. 2, based on letter of some people's representatives which had endorsement of the Competent Authority. However, the Competent Authority directly gave orders for appointment of the Applicant and accordingly her appointment order on transfer from the post of Deputy Commissioner, (Selection Grade), PCMC, to the post of Additional Municipal Commissioner, PCMC, came to be issued on 13.9.2022.

11. The learned P.O further stated that on account of another letter received from some another people's representatives and endorsements thereon by the Competent Authority, the Deputation Committee of the Urban Development Department met again on 21.9.2022 and recommended the cancellation of the earlier order of appointment of the Applicant, which had been issued on 13.9.2022 and in her place again proposed appointment of the Respondent No. 2 which was forthwith approved by the Competent Authority.

12. The learned Counsel for the Respondent No. 2, in his arguments stated that because of the provisions of Section 39A of the Mumbai Municipal Corporation Act, 1949, mentions about

'Suitable Person', the Urban Development Department had in an earlier instance even issued the order of deputation of Shri Vikas Dhakne, who is an officer of the Indian Railways Personnel Service (IRPS) under the Ministry of Railways, Government of India and he was in fact working as Additional Municipal Commissioner, PCMC, when his deputation was cancelled by the Urban Development Department so as to appoint the Applicant on 13.9.2022. So, going by precedence, the Urban Development Department has in no manner acted beyond the scope of its powers to cancel order of appointment issued on 13.9.2022 of the Applicant and then appoint Respondent No. 2, on the post of Additional Municipal Commissioner, PCMC on 22.9.2022. He further emphasized that the Applicant cannot espouse her private cause before the Tribunal through the Original Application.

13. The learned Counsel for Respondent No. 2, further argued that the applicant was not even entitled to be appointed as Additional Commissioner, PCMC, by the Competent Authority as there was no formal proposal before him. The Urban Development Department based on recommendation of the Deputation Committee had submitted the proposal to appointment Respondent No. 2, on 22.8.2022. The Competent Authority had not approved the name of Respondent No. 2 initially but upon his name being recommended again by the Deputation Committee on 21.9.2022, it was forthwith approved by the Competent Authority. The orders of Respondent No. 2's transfer on deputation from the post of Deputy Commissioner, Vasai Virar Municipal Corporation to the post of Additional Municipal Commissioner, PCMC, was accordingly issued on 22.9.2022.

14. The learned Counsel for Respondent no. 2, then proceeded to read the relevant paragraphs of the Original Application to

highlight that the Applicant all along was aware that she was not being allowed to join the post of Additional Municipal Commissioner, PCMC by the Municipal Commissioner, PCMC on the basis of the appointment order dated 13.9.2022 and therefore should have promptly knocked the doors of the Urban Development Department. However, she chose not to do so, but waited till she became aware that the Deputation Committee in its subsequent meeting held on 21.9.2022 had recommended cancellation of her appointment order dated 13.9.2022 and instead recommended Respondent No. 2, for appointment on deputation to the post of Additional Municipal Commissioner, PCMC. So the Applicant, whose name was earlier approved directly by the Competent Authority without recommendation of the Deputation Committee cannot challenge the appointment of Respondent No. 2, which was duly recommended by the Deputation Committee of the Urban Development Department. The learned Counsel for Respondent No. 2, went on to state that thus the Applicant had not approached the Tribunal with clean hands to file the Original Application.

15. The learned Counsel for Respondent No. 2, argued that in exercising the powers under Section 39A of the Maharashtra Municipal Corporation Act, 1949 while issuing of his appointment order on 22.9.2022, the Competent Authority had exercised them judiciously as expected under the provisions of law and therefore there was no scope of Judicial Review.

16. The learned Special Counsel for Respondent No. 3, justified the denial of permission by Municipal Commissioner, PCMC, to the Applicant, to join the post of Additional Municipal Commissioner, PCMC after she reported on 14.9.2022. The learned Special Counsel for Respondent No. 3, further stated that the Applicant

had first joined as Assistant Commissioner, PCMC, on 6.1.2018 and will complete tenure of 5 years on 6.1.2023, which as per G.A.D, G.R of 16.2.2018 should not exceed total of 5 years.

17. The learned Special Counsel for Respondent No. 3, further emphasized that Additional Commissioner, PCMC, is an important position. Additional Commissioner, PCMC, heads around 13 to 15 departments. The Applicant, has been working in the position of Deputy Commissioner (Selection Grade), PCMC, from last two years and some complaints were received and oral complaints were made following her appointment to the post of Additional Municipal Commissioner. The Municipal Commissioner, PCMC, the Respondent No. 3, wanted to verify the complaints and competency of the Applicant to handle the duties and responsibilities of the post of Additional Municipal Corporation, PCMC. Meanwhile, as per order dated 22.9.2022, the Urban Development Department cancelled the appointment of the Applicant as Additional Commissioner, PCMC, but allowed her to continue on the present post of Deputy Commissioner (Selection Grade). The Municipal Commissioner, PCMC, as Respondent No. 3, has filed a brief Affidavit in Reply dated 23.7.2023, through Deputy Commissioner, G.A.D, P.C.M.C, in which it is also stated that the Urban Development Department has now issued order of the appointment of Shri Vijaykumar Khorate, Chief Officer, Group-A, (Selection Grade), to the post of Additional Municipal Commissioner, on 6.7.2023, and that he has since joined duties as Additional Municipal Commissioner, PCMC. On being asked by the Tribunal to clarify about this, the learned Special Counsel for Respondent No. 3, stated that there are 3 posts of Additional Municipal Commissioners in PCMC, and all of these have now been filled up with the appointment of Mr Vijaykumar Khorate, on 6.7.2023.

Reasoning:

18. The orders of appointment on transfer of the Applicant, who was working on the post of Deputy Commissioner (Selection Grade), to the post of Additional Municipal Commissioner, PCMC on 13.9.2022 had been issued with the approval of the Competent Authority under Section 39-A of the Maharashtra Municipal Corporation Act, 1949. The perusal of the file notings of Urban Development Department, indicate that the proposal which it had submitted in the initial instance to the Competent Authority on 22.8.2022, had in fact recommended the name of the Respondent No. 2, for appointment on deputation to the post of Additional Municipal Commissioner, PCMC. However, the file notings do not indicate that the name of Respondent No. 2, was proposed with the recommendations of the Civil Services Board (CSB) constituted by the Urban Development Department. Instead, the recommendations of his appointment to the post of Additional Municipal Commissioner, PCMC, had been made by the Deputation Committee constituted by Urban Development Department order dated 29.6.2020. Howsoever, on this proposal the Competent Authority had directly approved the name of the Applicant for appointment on transfer to the post of Additional Municipal Commissioner, PCMC and accordingly appointment order was issued on 13.9.2022. Further perusal of the file notings of the Urban Development Department shows that after issue of the orders of appointment of the Applicant to the post of Additional Municipal Commissioner, PCMC, on 13.9.2022, the Deputation Committee of the Urban Development Department again met on 21.9.2022, and recommended the name of Respondent No. 2, for appointment on deputation to the post of Additional Municipal Commissioner, PCMC, in place of the applicant, and proposed cancellation of her earlier order dated 13.9.2022. The proposal for appointment on deputation of Respondent no. 2, and order of

cancellation of appointment on transfer of the applicant were both approved together by the Competent Authority and accordingly, the Urban Development Department on 22.9.2022, cancelled the order of appointment of the Applicant and in her place appointed Respondent no. 2, to the post of Additional Municipal Commissioner, PCMC.

19. The orders of consecutive appointments of the Applicant and Respondent No. 2, were done by the Competent Authority invoking the provisions of Section 39-A of the Maharashtra Municipal Corporation Act, 1949, which is reproduced below:-

“39A. Appointment of Additional Municipal Commissioners.

(1) The State Government may create one or more posts of Additional Municipal Commissioners in the Corporation and appoint suitable persons on such posts, who shall, subject to the control of the Commissioner, exercise all or any of the powers and perform all or any of the duties and functions of the Commissioner.

(2) Every person so appointed as the Additional Municipal Commissioner shall be subject to the same liabilities, restrictions and terms and conditions of service, to which the Commissioner is subjected to as per the provisions of this Act.”

20. The provisions of Section 39A of the said Act was inserted by Maharashtra Act 32 of 2011, w.e.f 21.5.2011, giving powers to the Competent Authority to appoint “Suitable Persons” to the post of Additional Municipal Commissioner in Municipal Corporations. On the other hand, the provisions of Section 36 of the Maharashtra Municipal Corporation Act of 1949 which is reproduced below and governs the appointment of Municipal Commissioners, a higher post in Municipal Corporations does not require appointment of ‘Suitable Person’.

“36. Appointment of the Commissioner: (1) The Commissioner shall from time to time be appointed by the 1[State] Government.

(2) The Commissioner shall in the first instance hold office for such period not exceeding three years as the 1[State] Government may fix and his appointment may be renewed from time to time for a period not exceeding three years at a time.”

21. The statutory requirement for appointment of ‘Suitable Person’ therefore seems necessary for only the post of Additional Municipal Commissioner. Therefore, it became imperative for the Tribunal to delve into this statutory requirement of ‘Suitable Person’ for appointment to be made on the post of Additional Municipal Commissioner in Municipal Corporation and as to why the provisions of law was incorporated through Maharashtra Act 32 w.e.f 21.5.2011. The Tribunal looked into the “Statement of Objects and Reasons” published MGG (Extra) Part V-A dated 27.7.2011 but did not find any specific reason for incorporation of this Section 39A in to Maharashtra Municipal Corporation Act, 1949 with use of an unique expression to appoint ‘Suitable Person’. The requirement of a ‘Suitable Person’ to be appointed to the post of Additional Municipal Commissioner in Municipal Corporations came to be elaborated through Urban Development Department, G.R dated 6.1.2015, wherein in respect of appointment of Additional Municipal Corporations in ‘A’, ‘B’ & ‘C’ Class it came to be explained in terms of certain ‘Bench Mark Criteria’ which needs to be achieved by such ‘Suitable Person’. The averments made by the learned Counsel on behalf of the applicant and Respondent No. 2, do not lead the Tribunal to conclude that this ‘Bench mark Criteria’ were relied upon at all by the Deputation Committee when they recommended the respective appointments to the post of Additional Municipal Commissioner, PCMC respectively on 22.8.2022 and 21.9.2022.02

22. The statutory powers of the Competent Authority to make the appointments of 'Suitable Person' to the post of Additional Municipal Commissioner, first of the Applicant and then of Respondent No. 2, lies circumscribed within the provisions of Section 39A of the Maharashtra Municipal Corporation Act, 1949.

23. The legislative intent is not mentioned in the "Statement of Objects and Reasons" for incorporating the provisions of Section 39A vide Maharashtra Act 32 of 2011 w.e.f 21.5.2011. The selection of 'Suitable Person' can be made in various manner and its wider connotation may even include Open Invitation for Applications, Constitution of Selection cum Recommendation Committee or based on etc. to suggest probable names of appointees for consideration of the Competent Authority. The Urban Development Department in realization of the ambiguous and subjective dimensions of the words 'Suitable Person' would assume whenever appointments were to be made to the posts of Additional Municipal Commissioners in Municipal Corporations, appreciably took the initiative to define the modalities to be observed while selecting 'Suitable Persons' for appointment to the post of Additional Municipal Commissioners and issued Urban Development Department G.R dated 6.1.2015.

24. The tiled Urban Development Department G.R dated 6.1.2015 is "महानगरपालिकांमध्ये अतिरिक्त आयुक्तांची पदे निर्माण करणे व सदर पदे भरण्याबाबतची कार्यपद्धती निश्चित करणेबाबत" and it incorporates specific provisions in respect of A, B, C Categories of Municipal Corporations about the number of sanctioned posts of Additional Municipal Commissioners with break up of those to be filled from amongst officers serving working under various Administrative Departments of the State Government and number of posts of Additional

Municipal Commissioner to be earmarked for officers appointed by and serving in the respective Municipal Corporations.

25. The Urban Development Department G.R dated 6.1.2015 has set stringent standards for the selection and appointment of Additional Municipal Commissioners from amongst officers appointed by and serving in respective Municipal Corporations by fixing 'Benchmark Criteria' at par with those adopted by the State Government for selection of officers for appointment to I.A.S from category of Non-State Civil Services (Non SCS). Further it has constituted a High Level Selection Committee headed by the Principal Secretary (UD-I), along with other senior officers including (i) Seniormost Municipal Commissioner (ii) Municipal Commissioner of concerned Municipal Corporation, (iii) Commissioner and Director, Municipal Administration. The High Level Selection Committee is required to prepare a panel of 5 names of officers and submit them to the Competent Authority for appointment of 'Suitable Person' to the post of Additional Municipal Commissioner.

26. The Urban Development Department G.R dated 6.1.2015, however, falls woefully short of expectations that these transparent modalities of 'Bench mark Criteria' and 'High Level Selection Committee' could have also been adopted on grounds of parity as required under the law in Section 39A of the Maharashtra Municipal Corporation Act, 1949 when recommendations are made for appointments to the post of Additional Municipal Commissioner from amongst the posts earmarked for officers working in various Administrative Departments under the State Government.

27. The observance of transparent modalities in making appointments to the posts of all Additional Municipal

Commissioners in Municipal Corporations as the Urban Development Department G.R dated 6.1.2015 seeks to achieve and for them to be valid in the eyes of law is paramount as they are made under the provisions of law under Section 39A of the Maharashtra Municipal Corporation Act, 1949.

28. The arguments of learned counsel seek to highlight the distinction between the order of appointment on transfer of the Applicant to the post of Additional Municipal Commissioner on 13.9.2022, as she was serving on the post of Deputy Commissioner, (Selection Grade) PCMC and that of Respondent no. 2, on the other hand appointed on deputation to the post of Additional Municipal Commissioner, PCMC, on 22.9.2022 from Vasai Virar Municipal Corporation where he was working as Deputy Commissioner while on deputation from the GST Department. The Respondent No. 2, was already on deputation from GST Department to Vasai Virar Municipal Corporation when he was given "Proforma Promotion" to the post of Deputy Commissioner. The Tribunal is of the view that provisions of Rule 18 for a 'Proforma Promotion' were required been observed when the Respondent no. 2 was given in-situ 'Proforma Promotion' in Vasai Virar Municipal Corporation. The guidelines regarding transfer of Government Servants to Foreign Service as prescribed in Appendix III under Rule 4 of the Maharashtra Civil Services (Joining Time, Foreign. Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, especially those in respect of 'Period of Deputation' and Proforma Promotion" were evidently not observed by the Deputation Committee of the Urban Development Department, while recommending the name of Respondent No. 2 to the Competent Authority for appointment to the post of Additional Municipal Commissioner, PCMC.

29. The Urban Development Department must achieve a clearer perspective regarding appointments which are to be made on the basis of transfer to Cadre Posts which are under it and required to be filled as expected of Cadre Controlling Authority. In the instant case where, the Applicant belongs to the cadre of Chief Officers (Group-A) and was appointed by the Cadre Controlling Authority to Cadre Post of Additional Municipal Commissioner, PCMC, following the earmarking of 24 posts of Additional Commissioners to be filled from amongst Chief Officers Group-A as per Urban Development Department G.R of 22.2.2022. The provisions of Section 45B of the Maharashtra Municipal Corporation Act, 1949 which has been brought into implementation, through Notification dated 1.11.2021 shows that Chief Officers Group-A and Chief Officers Group-B directly under the Urban Development Department as the Cadre Controlling Authority are also shown to be eligible for appointment on deputation as 'Suitable Officer' while being posted as Deputy Commissioner, Group-A/Assistant Municipal Commissioner, Group-A and Assistant Municipal Commissioner, Group-B in all Municipal Corporations.

30. The provisions of Section 45B of the Maharashtra Municipal Corporation Act, 1949 are as follows:-

"[45B. (1) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, it shall be lawful for the State Government to notify in the Official Gazette, any post or any class of posts under any Corporation, for being filled in, by deputation of a suitable officer from the cadre of the State Government, specified by the State Government, for this purpose : Provided that, every such notification shall be laid before each House of the State Legislature, after it is issued.

(2) Every notification issued under sub-section (1) specifying the posts or class of posts, shall contain the description of the cadre of officers (hereinafter referred to as "the feeder

cadre”), of the State Government, from amongst whom the posts notified under sub-section (1) are to be filled.

(3) On issuing the notification under sub-section (1), the numerical strength of the feeder cadre shall stand increased by an equivalent number of posts which shall be created in such feeder cadre.

(4) The number of posts created and added to the feeder cadre under sub-section (3) shall, as far as possible, be filled in by selection, of one or more suitable officers of the concerned Corporation, in such manner as may be prescribed by the State Government by rules:

Provided that, nothing in this section shall affect the appointment and terms and conditions of service of an incumbent holding such notified post in the Corporation, on the date of issuing the notification under sub-section (1)”.

The essence of Section 45B of Maharashtra Municipal Corporation Act, 1949, therefore is to facilitate the appointment of Suitable Officer from cadres of various Administrative Departments under the State Government to specific posts or class of posts in all Municipal Corporations. The Tribunal observes that the Urban Development Department as the Cadre Controlling Authority therefore needs to clearly distinguish while making appointments that are on transfer of its own officers and those appointments which are of ‘Suitable Officers’ by way of deputation made from cadres under various Administrative Departments of State Government. These observations are made here for effective implementation of the G.R of Urban Development Department dated 6.1.2015 for appointment to posts of Additional Municipal Commissioners in Municipal Corporations as well as to give effect to legislative intent of Section 45B of the Maharashtra Municipal Corporations Act, 1949. 31. The appointment of Respondent No. 2, was made by the Competent Authority on 22.9.2022 to the post of Additional Municipal Commissioner, PCMC based on the recommendation of the Deputation Committee. However, there was no recommendation at all from the Deputation Committee when

the appointment of Applicant came to be made on 13.9.2022 by the Competent Authority. Thus, there is atleast semblance of some procedure having been followed in appointment of Respondent No. 2, but none so while making appointment of the Applicant. The perusal of file notings indicate that the Urban Development Department while making these appointments did not recommend the names for appointment after receiving approval of the Civil Services Board (C.S.B).

32. The applicant after having been initially found to be 'Suitable Person' on 13.9.2022, as required under Section 39A of the Maharashtra Municipal Corporation Act, 1949, was any grounds not recorded by the Deputation Committee was seen on 21.9.2022 found to be no longer the 'Suitable Person'. Further for reasons not explained the valid order of the Urban Development Department regarding appointment of the Applicant were not implemented from 14.9.2022 to 22.9.2022 by Municipal Commissioner, PCMC, the Respondent No. 3. The Competent Authority for inexplicable reasons approved the appointment of Respondent No. 2, not on 13.9.2022, but instead later on 22.9.2022, when recommended as 'Suitable Person' again by the Deputation Committee.

33. We are therefore of the considered opinion that the manner in which the consecutive appointments and cancellation of appointment to the post of Additional Municipal Commissioner, PCMC has been exercised by the Competent Authority under Section 39A of the Maharashtra Municipal Corporation Act, 1949, when recommendations of the Civil Services Board (CSB) of the Urban Development Department or the High Level Selection Committee constituted especially for appointments under Section 39A of the Maharashtra Municipal Corporation Act, 1949, were not

submitted to the Competent Authority leaves much scope for introspection so as to obliterate arbitrariness in discharge of executive action relating to transfers and appointments of Government Servants as per the guidelines of the Hon'ble Supreme Court of India, in the case of **T.S.R Subramanian & Ors Vs. Union of India & Ors, W.P (C) No. 234/2011.**

34. The Hon'ble Supreme Court of India in the widely cited case of **COMMISSIONER OF POLICE, BOMBAY Vs. GORDHANDAS BHANJI, AIR 1952 SC 16**, had rendered the following words of a caution for all Public Authorities. The Hon'ble Supreme Court had observed:-

“Public authorities cannot play fast and loose with the powers vested in them, and person to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.”

35. The Hon'ble Supreme Court in the case of **East Coast Railway & Another Vs. Mahadev Appa Rao & Ors, (2010) 7 SCC 678**, has emphasized the crucial importance of application of mind and recording of reasons by Public Authority. The relevant extract of the judgment is as under:-

“There is no precise statutory or other definition of the term “arbitrary”. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best

done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

36. The Hon’ble Supreme Court of India in the case of **ANNA MATHEWS & ORS Vs. SUPREME COURT OF INDIA & ORS, W.P (Civil) No. 148/2023**, dated 10th February, 2023, has explained basic difference between ‘Eligibility’ and ‘Suitability’ in the case of appointment of Judges to High Courts, with respect to scope for ‘Judicial Review’. The relevant extracts of the judgment is reproduced below:-

“Thus, this judgment draws on the basic difference between eligibility and suitability. Eligibility is an objective factor which is determined by applying the parameters or qualifications specified in Article 217(2). Therefore, when eligibility is put in question, the question would fall within the scope of judicial review. However, the question whether a person is fit to be appointed as a judge essentially involves the aspect of suitability and stands excluded from the purview of judicial review.”

37. Thus, we taking into consideration all the facts of the case, the law and rules applicable, the procedures to be observed and arguments made by the learned Counsel on both the sides, are of the considered opinion that the appointment on 13.9.2022 of the Applicant was an arbitrary exercise of executive powers by the Competent Authority. However, as the Competent Authority has subsequently cancelled the appointment order of the applicant on 22.9.2022, although without assigning any reasons thereof, setting aside the order of cancellation of appointment of the Applicant dated 22.9.2022, by the Tribunal will amount to permitting

sustenance of arbitrariness in executive action contrary to the principles laid down by the Hon'ble Supreme Court of India. The Tribunal, therefore, refrains from reinstating the applicant to the post of Additional Municipal Commissioner, PCMC. However, as she belongs to the cadre of Chief Officer, Group-A, there is no bar to consider her for future appointments to the post of Additional Municipal Commissioner, in any Municipal Corporation including PCMC.

38. We are of the considered opinion that as the Hon'ble Supreme Court of India has excluded "Suitability" from the purview of 'Judicial Review', the Tribunal cannot retrospectively go into the issue of appointment of Respondent No. 2, as 'Suitable Person' under Section 39A of the Maharashtra Municipal Corporation Act, 1949 to the post of Additional Municipal Commissioner, PCMC. However, his 'Eligibility' for appointment to the post of Additional Commissioner, PCMC, falls within the purview of 'Judicial Review'. The Respondent No. 2, was appointed by Competent Authority on recommendation of the Deputation Committee evidently without meeting prescribed 'Eligibility' as specified in "Benchmark Criteria" and without being recommended made by the High Level Selection Committee as was 'de-jure' expected for observance of the transparent modalities enumerated in Urban Development Department G.R dated 6.1.2015 for all appointments under Section 39A of the Maharashtra Municipal Corporation Act, 1949. The Respondent No. 2 is thus allowed to remain on the post of Additional Municipal Commissioner, PCMC, till the period 'of completion of One Year' which is up to 22.09.2023, on the condition that his deputation is reviewed by the Urban Development Department which may then extend it up to 2 years if and only if Respondent No. 2 meets the standards of eligibility as specified in 'Bench Mark Criteria' and is then

recommended by the 'High Level Selection Committee' and thereupon appointed afresh on the post of Additional Municipal Commissioner, PCMC, by the Competent Authority.

40. In view of the above, we pass the following order:-

ORDER

(i) The Original Application is dismissed.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 28.08.2023
Dictation taken by : A.K. Nair.