

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 52 OF 2023 (NAGPUR)**

DISTRICT : AMRAVATI

Rushikesh Satish Deshmukh)
Occ-Service,)
R/o: Railway Station Road,)
Rajapeth, Amravati,)
Dist-Amravati.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Additional Chief)
Secretary, Urban Development Dept)
Mantralaya, Mumbai 400 032.)
2. The Commissioner / Director,)
Municipal Administration,)
7th floor, New Mumbai Municipal)
Corporation Bldg, Belapur Bhavan)
[C.B.D], Belapur,)
Navi Mumbai 400 614.)...**Respondents**

Shri S.P Palshikar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

RESERVED ON : 03.07.2024

PRONOUNCED ON : 19.07.2024

J U D G M E N T

1. The applicant prays that the impugned order dated 17.3.2022 be quashed and set aside. Applicant further prays that the Respondents be directed to appoint the applicant as Chief Officer and further be pleased to grant deemed date of the said post as of 16.3.2022 by granting all consequential and monetary benefits.

2. Learned counsel submitted that the applicant was appointed initially as Junior Engineer in the year 2013. Learned counsel further submitted that Respondent No. 2, had issued a communication dated 21.9.2019 thereby informing that the post of Chief Officers in the Municipal Councils and Nagar Panchayats will be filled in the ratio of 90% through Department candidates and 10% through direct recruitment.

3. Learned counsel referred to the impugned order dated 17.3.2022, wherein the name of the applicant is shown at Sr. No. 19. However, it is stated in the said order as under:-

सदर आदेशातील अ.क्र.१९ येथे नमुद श्री ऋषिकेश सतीश देशमुख, महाराष्ट्र नगरपरिषद पाणी पुरवठा जलनिस्सारण व स्वच्छता अभियांत्रिकी सेवा, श्रेणी.क (गट.क) यांचा २६ अधिकाऱ्यांच्या निवडयादीत समावेश नाही. तथापी संदर्भिय आदेशात त्यांचे नाव परिच्छेद क्र.४ मधील अ.क्र.१९ मध्ये टंकलेखनीय चुकीमुळे नमुद झाले होते.”

Learned counsel relied on order dated 16.3.2022, wherein the name of the applicant appears at Sr No. 19 in the list of selected candidates, who appeared in the Limited Departmental Examination for the post of Chief Officer, Group-B. By the said order names of 26 persons were recommended for appointment to the post of Chief Officer, Group-B, Municipal Council.

4. Learned counsel relied on the affidavit in reply dated 22.6.2023 filed by Respondent No. 2, through Sanghamitra M. Dhoke, Deputy Commissioner, Municipal Administration, Nagpur. In the said affidavit in para 5 it is stated that due to the pendency of the criminal case against the applicant for the crime registered on 19.3.2020 under Section 7 of the Prevention of Corruption Act, 1988, the name of the applicant is not considered for appointment to the post of Chief Officer and the name of the applicant which was inadvertently seen in the appointment order dated 16.3.2022 was cancelled and corrigendum dated 17.3.2022 was issued in the name of Shri Pawan Suresh Mhetre. Learned counsel has further submitted that at present there are two posts vacant and he produced copy of letter dated 26.10.2023 of the Under Secretary addressed to the Commissioner and Director, Directorate of Municipal Administration, Navi Mumbai. Learned counsel for the applicant submitted that the reason given by the Respondents for the first time in the affidavit in reply that since criminal case is pending against the applicant cannot be a justifiable reason to deny the applicant his appointment to the post of Chief Officer. Learned counsel therefore submitted that the impugned order dated 17.3.2022 be quashed and set aside and the applicant is to be granted deemed date of appointment from 16.3.2022.

5. Learned counsel for the applicant relied on the following case laws:-

- (i) Union of India & Ors Vs. K.V Jankiraman & Ors, (1991) 4 SCC 109, (Para 12 onwards).
- (ii) Union of India & Ors Vs. Anil Kumar Sarkar, (2013) 4 SCC 161. (Para 12 to 17).
- (iii) Judgment of Hon'ble Bombay High Court, Aurangabad Bench in Ashok M. Nand Vs. State of Maharashtra & Ors, 2024 (1) Mh.L.J 134.

6. Learned C.P.O submitted that Limited Departmental Examination was held on 19.12.2021 and 20.12.2021 and on that basis the result was declared and thereafter the name of the applicant appeared in the select list of 26 candidates out of 40 candidates who appeared in the said examination. Learned C.P.O submitted that 10% of the total strength of the cadre of Chief Officer were required to be filled in. Thus 44 candidates were shortlisted for promotion to 29 posts. The applicant whose name appeared at Sr. No. 19 in the merit list was not given appointment to the post of Chief Officer due to pendency of the criminal case under the Prevention of Corruption Act, 1988 against him. Learned C.P.O submitted that FIR was filed on 19.3.2022, Charge sheet was filed on 27.1.2021 and the meeting of the Committee for the selection of the candidates was held on 16.3.2022. Learned C.P.O relied on G.R dated 1.8.2019, wherein at Sr No. 34, the reference to G.R dated 15.12.2017 and 30.8.2018 is mentioned. The same is also referred to in clause 6 of the said G.R. Clause 6 states about the sealed cover procedure. The Learned C.P.O submits that therefore the case of the applicant is kept in sealed cover and the name of the applicant is not mentioned in the original order.

7. We have gone through the said notings carefully on the background of these submissions. The case of the applicant is falling under sub-clause (xi) & (xii) of clause 3 G.R dated 1.8.2019. Learned C.P.O produced the original file, wherein the note of preparation of the select list was submitted by the Under Secretary on 17.2.2022. It was signed by the Hon'ble Minister and Hon'ble Cabinet Minister, Urban Development Department on the same day, i.e., 17.2.2022 and it was sent on 14.3.2022. In the said note the names of the persons who are eligible and the names of the persons who are not eligible are mentioned in separate column.

The name of the applicant is mentioned in the column of not eligible candidates for the reason that prosecution case under the Prevention of Corruption Act and departmental enquiry is pending against the applicant. It appears to be an error on the part of the Respondent-State to issue the order of appointment in favour of the Applicant and withdrawing the said order is a correct measure taken by the Respondent-State as no option was available to them when the Applicant was found ineligible due to pendency of the criminal case against him at the time of his appointment to the post of Chief Officer based on the Limited Departmental Competitive Examination.

7. We have considered the ratio laid down in the cases of K.V Jankiraman & Ors, Anil Kumar Sarkar and also the case of Ashok M. Nand decided by the Hon'ble Bombay High Court, Aurangabad Bench. We hold that none of the cases is applicable to the facts of the present case.

8. In view of the above, we find no merit in the Original Application and the same is accordingly dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.07.2024
Dictation taken by : A.K. Nair.