
(1959) 04 BOM CK 0021

In the Bombay High Court

Case No : Special Civil Application No. 394 of 1958

Gajanan Krishnarao Chawandke

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 61 BOMLR 1402

Hon'ble Judges : Naik, J;Mudholkar, J

Bench : Division Bench

Judgement

Mudholkar, J.—The petitioner is a primary school teacher serving with the Municipal Committee, Khamgaon. He joined service on January 18, 1932, and was eventually confirmed. There are six posts in the Select Grade which are open to primary school teachers serving with the Municipal Committee. The question of filling those posts came before the Municipal Committee on April 17, 1953. On that date they called for recommendations from the Education Sub-Committee. That Sub-Committee sent up the names of six teachers. Apparently, the recommendations of the Sub-Committee did not find favour with the General Committee and, therefore, the General Committee referred the matter to the Education Sub-Committee for fresh recommendations. The petitioner's name was originally recommended by the Sub-Committee, but on the second occasion it was not recommended. On March 19, 1953, the Municipal Committee considered the entire question at its general meeting and resolved to appoint the following six persons in the Select Grade:—

- (1) G.D. Shegokar.
- (2) B.N. Rajhansa.
- (3) H.T. Saraf.
- (4) R.M. Amle.

(5) S.T. Potdar.

(6) S.B. Panat.

The petitioner was thus not one of those persons who were appointed in the Select Grade by the Municipal Committee. One K.M. Ghatol was also a senior primary school teacher and he preferred an appeal before the Sub-Divisional Officer, Khamgaon, apparently under the rules framed u/s 25(6) of the-C.P. and Berar Municipalities Act against his exclusion from promotion to-the Select Grade. This appeal was allowed by the Additional Deputy Commissioner, Khamgaon, by the Order dated November 24, 1954. The operative-portion of the order of the Additional Deputy Commissioner was: ?-

I, therefore, order that the applicant should be given the selection grade. He should¹ be given selected grade either out of the teachers described above or the order of selection of either Amle or Saraf should be cancelled and preference given to the applicant. It is for the M.C. to decide whether to cancel Amle's selection grade or Saraf's but the applicant should be given the selection grade.

2. The Municipal Committee, purporting to comply with the aforesaid order,, reviewed the entire position and passed a resolution on March 14, 1955, cancelling the select grade of four teachers, S.B. Panat, S.T. Potdar, H.M. Amle and H.T. Saraf, and instead appointed the following six teachers to the select: grade with effect from March 1, 1955: ?

(1) D.N. Bhangadbhatti.

(2) N.M. Mandvekar.

(3) G.D. Shegokar.

(4) B.N. Rajhansa.

(5) G.K. Chawandke (Petitioner).

(6) K.M. Ghatol.

This was by a resolution of the General Meeting of the Municipal Committee-held on April 6, 1958.

3. The four persons whose select grade was taken away preferred an appeal" before the Sub-Divisional Officer, Khamgaon, again apparently under the rules framed u/s 25(6). The Sub-Divisional Officer allowed the appeal and¹ observed: ?

I therefore hold that the action of the Municipal Committee in withdrawing the" select grade of the 4 appellants and selecting the aforesaid 4 teachers in their place is illegal and improper. I therefore set aside the decision of the Municipal Committee and further direct the 4 appellants shall continue in the select grade as before and the other 4 teachers namely Shri Bhangadbhatti, Shri Mandvekar, Shri Rajhansa and Shri Chawandke shall revert, if promoted to select grade, to their original grade.

After the aforesaid order was passed by the Sub-Divisional Officer, the President of the Municipal Committee made the following endorsement:?

Effect needs be given to the S.D.O.'s order. Inform all those affected by the order and place before Ex. S.C. for its information.

4. The petitioner and the other three teachers, who were affected by the order - of the Sub-Divisional Officer, moved the Municipal Committee for preferring an appeal against the order of the Sub-Divisional Officer. The Municipal Committee then went up in appeal before the Deputy Commissioner against the order of the Sub-Divisional Officer. That appeal was dismissed by the Deputy Commissioner. In that appeal one of the contentions raised on behalf of the Municipal Committee was that the appeal before the Sub-Divisional Officer was incompetent. This contention was overruled by the Deputy Commissioner and the appeal of the Municipal Committee was dismissed on merits. The Municipal Committee then went up to the Board of Revenue, Madhya Pradesh, in revision and the application for revision was transferred to the Divisional Officer, Vidarbha. The Divisional Officer dismissed the revision application on the ground that the application was incompetent.

5. After the dismissal of the revision application the Municipal Committee, Khamgaon, served the following notice dated November 29, 1957, on the petitioner :?

Subject: ?Select Grade.

Reference: Since the appeal (revision) of the Municipal Committee before the Revenue Tribunal has been rejected, therefore your Select Grade has been taken away. Note.

It may be mentioned that the petitioner actually worked in the Select Grade from March 1, 1955, till the end of November 1957 and was given his pay admissible in that grade. After the petitioner was served with the aforesaid order he preferred an appeal before the Sub-Divisional Officer. The Sub-Divisional Officer also dismissed the appeal on the ground that the order sought to be appealed from was against only an administrative order which intended to give effect to the previous judicial order and was thus incompetent. The petitioner then preferred an appeal to the Deputy Commissioner and that appeal was dismissed on that ground as also on the ground that the teachers who were appointed in place of the petitioner and other ousted persons were not joined as parties to the appeal. The petitioner has, therefore, come up to this Court under Article 226 of the Constitution.

6. It seems to us that there has been a complete misapprehension of the question as to the right of appeal in such cases on the part of Revenue Officers. Section 172 of the Municipalities Act provides that no appeal shall lie against any order made under the Act except where express provision for appeal from such order has been made in the Act or any rule made thereunder. Section 25 of the

Act deals with appointment, duties and conditions of service of the municipal servants. Sub-section (6) of that section makes the following provision in regard to the right of appeal:?

The Provincial Government may prescribe the classes or grades of officers and Servants who shall have the right of appeal except in the case of dismissal under Sub-section (5) from any decision of the committee inflicting any departmental punishment other than censure.

In regard to this provision rules have been framed by the then Provincial Government which are to be found at pp. 183 to 184 of the Municipal Manual.

7. It is to be borne in mind that Sub-section (6) of Section 25 confers power on the Provincial Government to make rules for providing for appeals only against those decisions of the Municipal Committee which inflict departmental punishments otherwise mentioned. Therefore, those rules must be deemed to be limited to appeals against departmental punishments only. They cannot be regarded as-general rules enabling any employee of the Municipal Committee who is aggrieved by the decision of the municipal committee to prefer an appeal. It would appear that the Revenue Officers are under the impression that those rules confer a general right of appeal upon a municipal servant against any decision of the municipal committee. If the right of appeal is limited, and it must be according to the rules limited, to those decisions of the municipal committee which inflict departmental punishments on a municipal servant, then it would follow that the appeal preferred by Ghatol against the resolution dated March 19, 1953, appointing Shegokar, Rajhansa, Saraf, Amle, Potdar and Panat to the select grade, was incompetent. Ghatol's contention in the appeal was that he had better claims to be appointed to the select grade than the persons whom the Municipal Committee by its resolution dated March 19, 1953, had appointed. Even though Ghatol may have a just grievance, we do not think that any redress could be given to him in an appeal by the Sub-Divisional Officer. It must be borne in mind that no Government servant has a vested right to promotion; if a person, though entitled because of the length of his service or of his qualifications to promotion, is not promoted in due course, it cannot be said that he has been punished. If the Revenue Officers think that the refusal to promote a person in due course is a punishment, then we would like to remove the misconception. The action of the Municipal Committee may be regarded as a punishment only where as a result of it the existing position of a person is worsened. It cannot be regarded as a punishment where there is a refusal on the part of the Municipal Committee or any other employer to promote its employee or to improve his position.

8. If, therefore, the resolution of March 19, 1953, could not be interfered with by the Sub-Divisional Officer in appeal, it follows that the subsequent resolution of the Municipal Committee dated April 6, 1955, whereunder the petitioner was appointed, must be regarded as without jurisdiction. Upon this view, we must hold that the petitioner's grievance cannot be redressed because there was no

legal basis for his appointment to the select grade. Here we would like to make one point clear and it is this that in so far as the appeal to the Sub-Divisional Officer by the four persons who were appointed by the resolution dated March 19, 1953, but were reverted by the resolution of April 6, 1955, is concerned it was competent because the action of the Municipal Committee amounted to a reversion of those persons without following the procedure laid down in the rules.

9. We realize that the petitioner having worked in the select grade for almost three years has been hit hard by what has happened subsequently, but since his original appointment itself was illegal, there is nothing which we can do for him except recommend to the Municipal Committee to consider his case favourably when the next occasion arises for selection. Mr. Kalele, who appears for the petitioner, says that the Municipal Committee will ask him to refund the excess salary which he drew during the period he worked in the select grade. Now we realize that it would be very hard for the petitioner to payback that amount. But we cannot do anything about it. We, therefore, leave it to the good sense of the Municipal Committee to deal with the petitioner in a sympathetic way.

10. The rule is discharged. We make no order as to costs.