

(2016) 07 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 3584 of 2016

Ganesh s/o. Tulshiram Pagare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) 5 AIRBomR 73 : (2017) 2 ALLMR 711 : (2016) LIC 4163

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Thombre, Advocate, for the Petitioner; Mr. V.S. Badakh, AGP, for the Respondent; Mr. M.S. Indani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Writ Petition takes exception to the impugned letter/order dated 02.03.2016 issued by respondent no.2 Divisional Commissioner, Aurangabad.

2. The learned counsel appearing for the petitioner submits that by the impugned order, the Divisional Commissioner has directed to transfer the petitioner to other Municipal Council in Beed District. The said order is passed on the basis of complaint filed by one Mr. Anil Mate, President of Maharashtra Rajya Nagar Parishad Karmachari Sanghatana and others, against the petitioner and under the influence of Mr. Vinayak Mete, the Member of Legislative Council, Maharashtra State. It is submitted that the petitioner has worked in the various capacities in the Municipal Council, Beed, since 01.05.2001. His service record is unblemished. The State of Maharashtra, vide its Resolution dated 02.08.2011, changed the cadre of the petitioner from the Municipal Council as the State level Cadre of the Municipal Council and the services of the petitioner are regularized, vide order dated 02.08.2011. The impugned order is an outcome of rivalry between the employees Unions. The petitioner is a Leader of one Union. Shri. Anil Mate, who was member of Union, left the petitioner's Union and became

member of the rival Union. The petitioner is working in the accounts Division of the Municipal Council since 19.01.2015. The Union leader of rival Union filed complaint to the District Collector against the petitioner and also approached Shri. Vinayakrao Mete, Member of Legislative Council ("MLC" for short). It is submitted that the said MLC written a letter to the District Collector on 10.06.2015 and directed the District Collector to transfer the services of the petitioner to any other Municipal Council. The learned counsel invites our attention to the copies of letters, which are placed on record.

3. He submits that in pursuance of the said letter, the District Collector called the report from the Chief Officer, Municipal Council. However, the Chief Officer, Municipal Council, opined that there is no complaint pending against the petitioner and his services are satisfactory. It is submitted that though there was no substance in the complaint filed by Shri. Anil Mate, the respondent State Authorities under the influence of the letter written by the MLC and complaint filed by Shri. Anil Mate, concocted enquiry was initiated against the petitioner and thereafter, the impugned letter is issued by the Commissioner. It is submitted that the Chief Officer submitted a report to the Sub Divisional Officer stating therein that the petitioner had worked with the utmost care as well as it was specifically stated that in the year 2011-12, the petitioner had received excellence award for his work. The learned counsel invites our attention to the report submitted by the Chief Officer. It is submitted that the Sub Divisional Officer issued a notice to the petitioner and called his explanation, vide its letter dated 05.10.2015. Thereafter, the petitioner submitted his say/reply on 09.10.2015. The learned counsel invites our attention to the copy of notice and reply to the said notice.

4. It is submitted that the reference of the Enquiry No.31/2002 conducted in the year 2002 in the report prepared by the Sub Divisional Officer is misconceived, and no reliance can be placed on the said report whatsoever since the said enquiry report was placed before the General Body and general body of the Municipal Council absolved the petitioner from the charges levelled against him and also his period under suspension was considered as working period and no action was proposed by the general body against the petitioner. Therefore, the said enquiry report could not have been relied upon/acted upon by the Sub Divisional Officer or the respondent State Authorities, when the petitioner is already exonerated by the general body in its meeting held on 20.07.2006.

5. It is submitted that on the basis of impugned communication, the District Collector is likely to transfer the petitioner from the Municipal Council Beed to other Municipal Council. It is submitted that the directions issued in the impugned letter to transfer the petitioner from Beed Municipal Council to other Municipal Council are not on the ground of administrative convenience but punitive in nature. The enquiry conducted by the Sub Divisional Officer is not independent in nature and the same was influenced by the direction issued by the Collector and the letter written by the Member of Legislative Assembly. The

impugned communication is made under the political pressure of the Member of Legislative Assembly and also under the pressure of the Union leader of the rival union. The learned counsel appearing for the petitioner relying upon the averments in the affidavit-rejoinder submits that the statement made by the intervenor on 07.06.2016 during the course of hearing of the Petition that the Divisional Commissioner had again issued an order dated 06.05.2016 in respect of transfer of the petitioner from Beed Municipal Council to Sillod Municipal Council, is based upon the concocted and fake documents/transfer order, which is neither issued by the office of the Commissioner. It is submitted that the District Collector, Beed, had sought clarification from the office of the Divisional Commissioner and it was informed to the office of the District Collector that no such order of transfer has been issued by the office of the Divisional Commissioner. Therefore, the learned counsel for the petitioner submits that the appropriate action should be initiated against those persons who have created/fabricated such documents, in accordance with law.

6. On the other hand, the learned counsel appearing for the intervenor, whose intervention application is already allowed, relying upon the affidavit-in-reply filed on behalf of intervenor submits that the respondent/intervenor is the President of the Maharashtra Rajya Nagar Parishad Karmachari Sanghatana, Branch Beed. The said Union is duly registered under the Trade Unions Act, 1926 and headed by the Union leader Shri. Andhale at State level. This Trade Union is formed by the Class-IV employees of the Nagar Parishads and Nagar Panchayats in the State of Maharashtra, and therefore, the said Union is working for the welfare of the Class-IV employees of Nagar Parishad and Nagar Panchayats in the State of Maharashtra. It is submitted that the petitioner has made misleading statement in the Petition so as to gain sympathy. It is not explained how the petitioner has come in possession of the impugned letter in this Petition, which is internal correspondence between the administrative authorities of the State Government and the said administrative correspondence cannot be challenged in the writ jurisdiction under Article 226 of the Constitution, and therefore, Writ Petition is not maintainable and deserves to be dismissed in limine.

7. It is submitted that the petitioner being State employee ought to have approached the Maharashtra Tribunal for redressal of his grievance raised in this Petition. He further submits that since the petitioner has been held guilty in department enquiry he should have availed appropriate remedy. The petitioner has not approached this Court with clean hands, disclosing all relevant and correct facts. The impugned communication/order is based upon the enquiry report submitted by the Sub Divisional Officer to the District Collector wherein the petitioner is held guilty for the charge which is mentioned in the said report. It is submitted that the petitioner is guilty for the contravention of Rule 3 (1) (i) (ii) of the Maharashtra Civil Services (Conduct) Rules, 1979. Hence it is crystal clear that the impugned letter issued by the Divisional Commissioner, Aurangabad, is on the basis of enquiry report of the Sub-Divisional Officer, Beed and not on the basis of instruction of the MLC or the complaint filed by the

respondent no. 4/deponent. It is submitted that the petitioner is working since last 17 years as an Assistant Accountant and recently also holding the post of Head of the Administrative Department of the Beed Municipal Council. The services of the petitioner are regularised in the state cadre since 02.08.2011, therefore, he became due for transfer after completion of three years service from the above mentioned date. The learned counsel invites our attention to the order issued by the Collector, Beed, by which the petitioner has been transferred under the State employment. It is submitted that the employees of Municipal Council, Beed, are not getting the benefits of the time bound promotion after completion of 12 years service due to interference and hindrance created by the petitioner. There are several complaints of the aggrieved employees against the petitioner lodged with the Maharashtra Rajya Nagar Parishad Karmachari Sanghatana, Beed. It is submitted that the report of Chief Officer, Municipal Council, Beed, dated 07.09.2015 is submitted in collusion of the petitioner, which is far away from the truth and reality.

8. It is submitted that looking to the complaint filed against the petitioner and the enquiry conducted against him, the statement made in the said report that, the contention that the petitioner had worked with the utmost care, is contrary to the record. It is pertinent to note that in the Department Enquiry No.31/2002, which was initiated by the Chief Officer, Municipal Council, Beed, by his letter No.BHP/KV/Aastha/2/1304, dated 26.02.2002 against the petitioner, the said authority appointed the District Enquiry Officer, Beed. In his report dated 15.03.2005, the petitioner was held guilty of committing breach of Section 259 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, and for the act of misconduct for causing breach of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979. Therefore, it is cleared that the Chief Officer, Municipal Council, Beed has not submitted the correct report and the statements made in the said report are contrary to the report of the District Enquiry Officer, Beed and the said report is given in collusion with the petitioner, with mala fide intention to protect the petitioner.

9. It is submitted that many employees on completion of more than 12 years service in the Municipal Council became entitled for the time bound promotion, are deprived from their legitimate and legal rights to get the promotion, due to the indulgence of the petitioner and therefore, the intervenor Union has filed a complaint against the petitioner. It is submitted that the Sub-Divisional Officer, Beed has rightly submitted his report to the District Collector, Beed, by specifically mentioning in the said report that as per the report of the District Enquiry Officer, Beed, the petitioner was held guilty of misconduct, and therefore, he needs to be transferred elsewhere to the other Municipal Council instead of Beed Municipal Council. It is submitted that the assertion of the petitioner that on the basis of the report of the District Enquiry Officer, Beed, the action was already taken against the petitioner, is not correct. On the contrary, due to vested interest, the office bearers of the Municipal Council, Beed, have illegally protected the petitioner and did not propose to initiate any action in view

of the enquiry report of the District Enquiry Officer, Beed. Further more, the so-call Resolution No. 125 (1) 2006-2007 dated 20.07.2006 annexed with the Petition, purported to be passed in the general body meeting of the Municipal Council, Beed, seems to be fabricated document, as in the said Resolution names of the proposer and seconder are not mentioned. Beside this, the general body of any Municipal Council has no jurisdiction to decide the action against the guilty employee, whose services are regularised in the State cadre. The Competent Authority to decide the action/punishment against the guilty employee of the State cadre level is the District Collector and not the Municipal Council. The Municipal Council did not propose any action against the petitioner, therefore, the Sub Divisional Officer, Beed, has concluded in his report dated 04.12.2015 that the action against the petitioner is warranted.

10. It is submitted that the representation submitted by the petitioner to the Sub Divisional Officer, Beed, dated 16.03.2016 is nothing but an attempt to escape from the action likely to be initiated against the petitioner for his misconduct, which is proved in the Department Enquiry No. 31/2002. In the said representation, the petitioner has stated that the enquiry may be reviewed, however, no grounds for the said Revision are mentioned by the petitioner in the said representation and the said representation is not filed keeping in view the procedure and rules for filing such representation. The said representation is filed by the petitioner after the impugned communication is issued by the Divisional Commissioner, Aurangabad. It is submitted that, in fact, instead of only transferring the petitioner, major punishment should have been imposed and his services ought to have been terminated by the Municipal Council Beed, however, in collusion with the interested office bearers of the Municipal Council, fabricated documents are created to show that the petitioner has been exonerated by the general body, which is not Competent Authority. It is submitted that the petitioner did not challenge the report of the District Enquiry Officer, Beed in Department Enquiry No.31/2012, and therefore, it attained finality and therefore the impugned order of Sub-Divisional Officer needs to be acted upon and rightly acted upon by the Divisional Commissioner, Aurangabad. Therefore, relying upon the averments in the affidavit-in-reply, annexures thereto, the learned counsel for added respondent no.4 submits that the Petition may be rejected.

11. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, the learned counsel appearing for respondent no.4 and also the learned AGP for the respondent - State. With their able assistance, perused the pleadings and grounds taken in the Petition, annexures thereto, reply filed by respondent no.4 i.e. intervenor and also rejoinder affidavit filed by the petitioner. It is true that this petition takes exception to the inter se communication between the Divisional Commissioner, Aurangabad, and the District Collector, Beed. Therefore, there is much force in the contention of the learned counsel for the intervenor - respondent no.4 that it is not explained by the petitioner that how the petitioner got possession of the copy of the said communication between two administrative authorities of the

State Government.

12. There is also considerable force in the arguments of the learned counsel for the petitioner that this Petition takes exception to the inter se communication between two authorities, and same may not be entertained. At the outset it needs to be clarified that this Petition raises various disputed questions of facts including whether the petitioner was exonerated or otherwise from the Department Enquiry No.31/2002, which was conducted against the petitioner and he was held guilty by the Enquiry Officer. Respondent no. 4 has disputed the authenticity of the copy of general body Resolution placed on record by the petitioner on the ground that no name of the proposer or seconder is mentioned in the said Resolution and also general body is the Competent Authority to take decision when the employees held guilty in the Department Enquiry to sit over the report of the Enquiry Officer and either to confirm the order of the Enquiry Officer or exonerated the concerned employee.

13. Upon careful perusal of the contents of the impugned communication, there is no reference of letter written by Shri. Vinayak Mete, MLC, to the District Collector or to the Divisional Commissioner. It appears that there is reference to the complaint made by the intervenor and the application filed by the intervenor on 19.01.2016. Prima facie, it appears that the complaints against the petitioner are in the nature of not clearing the pending proposals of the employees for getting benefits on completion of 12 years period in the service. In the impugned communication, there is specific mention about the charge in the Department Enquiry No.31/2002 conducted against the petitioner in respect of filing of false birth certificate and the action proposed by the Enquiry Officer for the said misconduct. It further appears from the documents placed on record that the Sub Divisional Officer has conducted enquiry and thereafter, after adhering to the principles of natural justice, has submitted report to the District Collector and the Divisional Commissioner. Therefore, in substance, the basis for writing the impugned letter by the Divisional Commissioner to the District Collector is the report submitted by the Sub-Divisional Officer, Beed. What is proposed by the impugned letter against the petitioner is his transfer from the Beed Municipal Council to any other Municipal Council. It is not in dispute that in the year 2011, the petitioner's services have been transferred under the State Establishment. Even otherwise also transfer is an incident of service. The Maharashtra Civil Services (Conduct) Rules provide for transfer of the employees. It is not in dispute that the petitioner is serving at Beed for a considerable period of about 17 years.

14. Therefore, viewed from any angle in our considered opinion the impugned communication needs no interference. However, at this juncture, it would be relevant to mention that the respondent State Authorities shall apply the relevant Rules of transfer of other employees of the Municipal Council like applied in the cases of the Government servants on rendering services for a particular period. Keeping in view the facts and circumstances of the present case and the

documents placed on record, prima facie, it appears that the rivalries between the employees? groups or Union hampers the smooth working of the Municipal Councils, and therefore, it is desirable that the respondent State Authorities should apply transfer policy in accordance with the relevant procedure/rules/ Government Resolutions even in the cases of the Municipal council employees so as to avoid any hindrance/disturbance to the smooth functioning of day to day work of the Municipal Councils. These observations cannot be construed as mandatory direction issued by this Court, but it is for the authorities to introspect on the above aspect and take necessary steps.

15. Upon perusal of the averments in the rejoinder affidavit, it is alleged that the order dated 06.05.2016 allegedly issued by the office of the Divisional Commissioner, Aurangabad, wherein it is mentioned that the petitioner is transferred from Beed Nagar Parishad to Sillod Nagar Parishad, Sillod, is fabricated document and no such order is issued by the office of the Divisional Commissioner. In that respect, the office of Divisional Commissioner, Aurangabad or the office of the District Collector, Beed, as the case may be, will cause necessary enquiry and find out the truth and if the said authority comes to the conclusion that the said appointment letter is fabricated document, take appropriate action against such persons who have created such fabricated document, including initiation of criminal proceedings against such persons. However, it is for the State Authorities to initiate/take appropriate action in that respect.

16. In the light of discussion in the foregoing paragraphs, we are not inclined to entertain this Writ Petition, hence the Writ Petition stands rejected.