



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 153 OF 2018

The Municipal Commissioner)
Pune Municipal Corporation,)
Pune 41 005) ..Petitioner

Versus

1. Ms Safia Abdul Salam Shaikh)
Age:-Adult, Occu:- Service)
R/at:- House No.373, Gharonda)
Housing Society, Phule Nagar,)
R.T.O. Yerawada, Pune 411006)

2. Maharashtra State Minorities)
Commission)
Badriddin Tayyabji Road, Near CST)
Behind J. J. School of Arts,)
Mumbai 400 001)
Through its chairman) ..Respondents

Mr. Rishikesh M. Pethe for Petitioner.
Ms Atiya Memon for Respondent No.1.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 8th AUGUST 2024

ORAL JUDGMENT (PER K. R. SHRIRAM J.) :

1 Rule. Rule made returnable forthwith and heard.

2 Petitioner is challenging the order communicated on 8th August 2016 passed by the Chairman, Maharashtra State Minorities Commission, Mumbai-respondent no.2, directing petitioner to promote respondent no.1 by giving a deemed date promotion with effect from her completing the Graduation (B.A.), i.e., 14th June 2014 alongwith all monetary benefits.

Meera Jadhav

3 Respondent no.1, at the time of filing of the petition, was working as a peon with petitioner. Since 28th August 2019 respondent no.1 has been promoted to the position of junior clerk. Respondent no.1's husband was working as peon and was attached to the Octroi Department of petitioner. He unfortunately died on 21st November 1995. On or about 25th June 1999 respondent no.1 applied to petitioner for compassionate appointment in place of her deceased husband. At that time respondent no.1 had studied only up to 12th Std. After respondent no.1 obtained the succession certificate on 4th September 1999 from the Civil Court, Pune, respondent no.1 again applied on 19th August 2003 for considering her application for compassionate appointment in place of her deceased husband. An affidavit was also submitted showing her willingness to work in the available post. Accordingly, on or about 3rd June 2004 petitioner through its Establishment Department issued appointment order and appointed respondent no.1 to the post of peon on probation. It is Petitioner's case that probation period was for three years and it is in consonance with the rules in force for appointment on compassionate basis and considering respondent no.1's educational qualification.

4 On or about 14th June 2004, the University Pune issued a certificate to respondent no.1 declaring her as graduated in Arts faculty. Factually, therefore, respondent no.1 became a graduate only on 14th June 2004, about 11 days after her appointment.

Meera Jadhav

5 Respondent no.1 applied for the post of junior clerk with immediate effect which was not granted. We are not going into that aspect in this petition because short point which is required to be considered by us is whether respondent no.2 could have passed the impugned order that was communicated on 8th August 2016 directing petitioner to appoint respondent no.1 as clerk with immediate effect from the date respondent no.1 graduated, i.e., on 14th June 2004 and to grant all consequential financial benefits within one month. An affidavit in reply has been filed opposing the petition and justifying the action of respondent no.1.

6 Mr. Pethe submitted that respondent no.2 or its chairman had no power conferred upon it under the Maharashtra State Minorities Commission Act, 2004 (the Act) to make any such adjudication on a matter of this nature. Mr. Pethe submitted that there is no adjudicatory power conferred on the chairperson and, therefore, by recording findings the chairperson could not have issued the order or any directions as recorded in the impugned order. Therefore the impugned order is without jurisdiction.

7 Ms Memon went on the merits of the matter and also submitted that clauses (b), (e), (i) and (j) of sub-section (1) of Section 10 of the Act empowered the chairman to pass the orders as has been done in the present case.

8 Section 10, which provides for functions of the Commission reads as under:

“10. Functions of Commission:- (1) The functions of the Commission shall be as follows:-

(a) to examine the working of various safeguards provided in the Constitution of India and in the laws passed by the State Legislature for the protection of minorities;

(b) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards;

(c) to monitor the working of the safeguards provided in the Constitution, laws enacted by the Parliament and the State Legislature, and policies and schemes of the State Government for minorities;

(d) to conduct studies, research and analysis on the questions of avoidance of discriminations against minorities;

(e) to make a factual assessment of the representation of minorities in the services of the Government, Government undertakings, Quasi-Government bodies, Municipal Corporations, Municipal Councils, Zilla Parishads, Panchayat Samitis and Village Panchayats and in case, the representation is inadequate, to suggest ways and means to achieve the desired level;

(f) to make recommendations for ensuring, maintaining and promoting communal harmony in the State;

(g) to make periodical reports at prescribed intervals to the Government; (h) to study any other matter which, in the opinion of the Commission, is important from the point of view of the welfare and development of minorities, and to make appropriate recommendations;

(i) to consider the grievances of the minorities and to suggest appropriate solution, from time to time;

(j) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities;

(k) to co-ordinate and supervise the implementation of the Prime Minister's 15 Points Programme for Welfare of Minorities :

Provided that, if any matter specified in sub-section (1) is undertaken by the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992), the State Commission shall cease to have jurisdiction in such matters.

(2) The Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of such recommendations.”

9 In our view, on a plain reading of Section 10 of the Act, it is clear that there is no power conferred on respondent no.2 to adjudicate upon any dispute or a lis and to pass any executable order, much less to make an adjudication on legality and validity of the terms of employment in Pune Municipal Corporation. Since respondent no.1's counsel has relied upon clauses (b), (e), (i) and (j) of sub-section (1) of Section 10 of the Act, we would restrict our views only to these provisions.

Under clause (b), the functions of commission is to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards. Under clause (e), the functions of commission is to make a factual assessment of the representation of minorities in the services of the GovernmentMunicipal Corporations, and Village Panchayats and in case, the representation is inadequate, to suggest ways and means to achieve the desired level. Under clause (i) the functions of commission is to consider the grievances of the minorities and to suggest appropriate solution, from time to time, and finally under clause (j), the functions of commission is to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities. None of these functions empowered respondent no.2 to adjudicate upon any dispute or lis or to pass any executable order. Even on the other provisions, our views will be the same. In our view, respondent no.2 has

purported to exercise powers while passing the impugned order, which were not vested in him.

10 We find support for our view in a judgment dated 6th April 2017 of this court in Writ Petition No.6569 of 2016 in the case of Darul Falah Educational & Welfare Trust Vs. The State of Maharashtra & Ors.

11 Rule is made absolute in terms of prayer clause (b) which reads as under:

“(b) Quash and set aside the order forwarded with the covering letter dated 8th August 2016 passed by the Chairman, Maharashtra State Minorities Commission, Mumbai at Exhibit I by issuing appropriate writs, orders and directions.”

12 We make it clear that we have made no adjudication on the issue of additional claims lodged before respondent no.2. If respondent no.1 has any other remedy to enforce the rights, respondent no.1 may take such steps in accordance with law. We express no opinion.

(JITENDRA JAIN, J.)

(K. R. SHRIRAM, J.)