

A AURANGABAD MUNICIPAL CORPORATION
 THR. ITS COMMISSIONER ETC.

v.

JAYANT S/O SARVOTTAMRAO KHARWADKAR ETC. & ORS.

B (Civil Appeal No. 8908-8910 of 2019)
 NOVEMBER 21, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND
AJAY RASTOGI, JJ.]**

- C *Service Law: Reversion – First Respondent was appointed as a Junior Engineer in Engineering Department of appellant-Corporation – He was transferred to the Planning Department on temporary basis in the post of Planning Assistant – In the seniority list published in 1992, he was shown as Planning Assistant in Planning Department – After the appellant-Corporation converted*
- D *the post of Administrative Officer to that of Town Planner, the first respondent was promoted on 29.6.1998 as Town Planner – A writ petition was filed before the Bombay High Court by one 'SD' challenging the promotion which was granted to the post of Deputy Engineer in the Engineering Department – Respondent was not a party to the proceedings – High Court allowed the writ petition and set aside the promotion order – In final seniority list, the first respondent was shown at Serial No.13 as sectional Engineer as on 1.1.1995 (w.e.f. 27.12.1990) – Thereafter, a provisional seniority list of Deputy Engineers was published in which the first respondent was shown as a Deputy Engineer w.e.f. 7.12.1998 –*
- F *On objection to the seniority list, his name was deleted on the ground that Town Planning Department to which first respondent belonged was a separate Department – However, the very next day, i.e. on 28.8.2002, he was reverted to the post of Sectional Engineer – First respondent challenged order of reversion before High Court*
- G *– High Court dismissed the writ petition holding that the promotion granted to the first respondent was illegal inasmuch as it was in violation of the principle of seniority-cum-merit – Special leave petition filed by respondent dismissed – First respondent filed review petition which was allowed by High Court – Review petition of appellant was dismissed – Hence these appeals – Held: The*
- H

Municipal Commissioner's decision to revert the first respondent from the post of Town Planner which he had held since his appointment on probation on 29.6.1998 and after his confirmation in service on the completion of probation on 29.5.1999 was without hearing the respondent – Reversion of an employee is a matter of substantive prejudice – Hence, an opportunity of hearing is required to be afforded before an order of reversion is passed – Municipal Commissioner on 27.8.2002 issued an order deleting the name of the first respondent from the seniority list of Deputy Engineers, noting that the Town Planning Department to which the first respondent belongs was a distinct department of the Municipal Corporation – The reversion of the first respondent from the post of Town Planner was without furnishing either a notice to show-cause or an opportunity of being heard to the first respondent – This is manifestly contrary to law – Natural justice.

Allowing the appeals, the Court

HELD: The Municipal Commissioner's decision to revert the first respondent from the post of Town Planner which he had held since his appointment on probation on 29 June 1998 and after his confirmation in service on the completion of probation on 29 May 1999 was without hearing the respondent. Reversion of an employee is a matter of substantive prejudice. Hence there can be no gainsaying the fact that an opportunity of being heard is required to be afforded before an order of reversion is passed. The Municipal Commissioner issued an order deleting the name of the first respondent from the seniority list of Deputy Engineers, noting that the Town Planning Department to which the first respondent belongs was a distinct department of the Municipal Corporation. The reversion of the first respondent from the post of Town Planner was without furnishing either a notice to show-cause or an opportunity of being heard to the first respondent. The order of reversion is set aside on the ground that the order was passed in manifest violation of principles of natural justice. [Paras 16, 17] [993-C-E-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8908-8910 of 2019

From the Judgment and Order dated 20.10.2012 of the High Court of Judicature at Bombay, Bench at Aurangabad in Civil

A

B

C

D

E

F

G

H

- A Application No. 10396 of 2003, order dated 12.06.2014 in Writ Petition No. 1082 of 2003 and order dated 13.02.2015 in Review Application Stamp No. 31972 of 2014

Sudhanshu S. Choudhari, Yogesh Kolte, Mahesh P. Shinde, Advs. for the Appellants.

- B C. U. Singh, Sr. Adv., Suresh Pandey, Mayank Pandey, Ms. Bharti Chawla, Nishant R. Katneshwarkar, Anoop Kandari, Advs. for the Respondents.

The Judgment of the Court was delivered by

- C **DR. DHANANJAYA Y. CHANDRACHUD, J.**

1. Delay condoned.
2. Leave granted.

3. These appeals arise from three decisions of the High Court

- D of Judicature at Bombay:

(i) An order dated 20 October 2012 allowing a review petition arising from its judgment dated 29 September 2003 by which the writ petition filed by the first respondent was dismissed;

- E (ii) A judgment dated 12 June 2014 by which the writ petition filed by the first respondent was allowed; and
(iii) An order dated 13 February 2015 dismissing the review petition filed by the appellant.

- F 4. The first respondent was appointed as a Junior Engineer in the Engineering Department of Aurangabad Municipal Corporation on 27 July 1985. On 11 May 1988, he was transferred to the Planning Department on a temporary basis in the post of Planning Assistant. In the seniority list which was published on 12 July 1982 and 16 March 1992, the seniority of the first respondent was shown as a Planning

- G Assistant in the Town Planning Department with a remark that he had opted for the cadre of Planning Assistant from 11 May 1988.

5. Recruitment rules for various posts in the Municipal Corporation were published, on being approved by the State government under Section 455(i) of the Bombay Provincial Municipal Corporations

- H Act, 1949 under a Government Resolution dated 16 May 1994.

6. The Schedule to the recruitment rules, includes the post of Junior Engineer/Assistant Engineer/Sectional Engineer at serial No.15 and the post of Town Planning Assistant at serial No.36. A

7. The first respondent was transferred from the Town Planning Department as a Junior Engineer in the Water Supply Department on 13 June 1995. Between July 1996 and September 1997 he was deputed to work with the Minister of Transport. He was repatriated to the Town Planning Department in September 1997. On 25 September 1997, the first respondent was deputed as Assistant Town Planner in the Town Planning Department. After the Municipal Corporation converted the post of Administrative Officer to that of Town Planner, the first respondent was promoted on 29 June 1998 on probation to the post. On 24 May 1999 he was confirmed as a Town Planner. B

8. A writ petition was filed before the Bombay High Court by Sakharam Dhondiba Panzade¹ challenging the promotion which was granted to the post of Deputy Engineer in the Engineering Department. The respondent was not a party to the proceedings. The High Court, by a judgment and order dated 3 August 2001, set aside the promotion orders of the second and third respondents and issued the following direction: C

“...We direct the Municipal Corporation to reconstitute the selection committee to consider the case of the petitioner along with all eligible Sectional/Junior Engineers as in August 1989, for the post of Dy.Engineer, on the basis of the principles of seniority cum merit afresh and all the vacant posts, at that time, shall be filled in accordingly. If any of the respondents are not found to be eligible for promotion by the selection committee constituted pursuant to this order, no recovery shall be made from their salaries as they have already worked in the higher post. In case the petitioner is found to be eligible for promotion, he shall be given a deemed date of promotion with effect from 3rd of August, 1989 and his seniority in the post of Dy. Engineer shall be counted from that date. The newly constituted selection committee to complete the selection process for the post of Dy.Engineer as E

F

G

H

¹ WP No. 2156/1988

- A expeditiously as possible and in any case within two months from today.”
9. A final seniority list of diploma holding engineers was published in which the first respondent was shown at serial No.13 as Sectional Engineer as on 1 January 1995 (w.e.f. 27 December 1990). Thereafter, B on 13 August 2002 a provisional seniority list of Deputy Engineers was published in which the first respondent was shown as a Deputy Engineer w.e.f. 7 December 1998. An objection was raised to the seniority list. The Municipal Commissioner by an order dated 27 August 2002 issued a final seniority list by deleting the name of the first respondent on the C ground that the Town Planning Department to which the first respondent belonged is a separate department. However, on the very next day (27 August 2002), an order was passed by the Municipal Commissioner reverting the first respondent to the post of Sectional Engineer. This purportedly was in compliance with the order passed by the High Court D in Writ Petition No.2156/1988.

10. The order of reversion was challenged by the first respondent before the High Court. On 29 September 2003; the High Court rejected the writ petition with the following order:

- E “Heard Shri V.J. Dixit the learned counsel for the petitioner, who has assailed the order dated 28.8.2002, passed by the Commissioner, Municipal Corporation, Aurangabad, by which the promotion granted in favour of the petitioner as per the General Body resolution No.223/2, dated 20.04.2000 was cancelled and F from the post of Town Planner he was brought back to the post of Sectional Engineer.

- G Admittedly the resolution dated 20.4.2000 was in utter disregard to the principal of seniority-cum-merit for granting promotion to a post in Class II from a post in Class III. This was made known to the Corporation vide our judgment dated 3.8.2001 in Writ Petition No.2156/1988. The Corporation has accordingly reconsidered all the promotions granted to Class II posts and as per our directions, fresh promotion orders have been issued, which were also challenged in Writ Petition No.1535/2002. The H said petition was decided by us on 1.8.2003. The prayer made

in this petition is substantially challenging the impugned order A
dated 28.8.2002.

We are satisfied that the promotion granted to the petitioner to the post of Town Planner was itself illegal inasmuch as it was in violation of the principle of seniority-cum-merit and, therefore, no fault could be found with the impugned order. B

We also clarify that so far as the seniority of the petitioner is concerned, the same has to be considered from the initial date of joining under the Corporation and in the respective categories along with other candidates holding the same qualifications and equivalent posts. If the petitioner feels that he should be retained in the Town Planning Department in the post he held prior to the resolution dated 20.04.2000, he may make such a representation to the Commissioner and the same shall be considered on its own merits. Petition is rejected summarily save and except the directions set out earlier.” D

11. A Special Leave Petition filed by the respondent was dismissed on 17 October 2003 by this Court². A review petition was filed by the first respondent. The review petition was allowed by the High Court on 20 October 2012. Thereafter on 12 June 2014, the writ petition was allowed on merits. A petition by way of review which was moved by the appellant was dismissed on 13 February 2015. This has given rise to the proceedings before this Court in these appeals. E

12. While issuing notice on the Special Leave Petitions, this Court hadby an order dated 17 April 2015 stayed the operation of the order of the High Court. F

13. Assailing the order of the High Court, the Municipal Corporation urged before this Court that upon the dismissal of the Special Leave Petition against the order of the High Court on 29 September 2003 are view was not maintainable. On merits, the judgment of the High Court has been assailed on several grounds. In the view which we propose to take, it may not be necessary to consider these grounds at this stage. G

² SLP (C) No.18986 of 2003

- A 14. The submissions urged in support of the appeals by Mr. Sudhanshu S. Choudhari, learned counsel have been countered by Mr.C.U.Singh, learned Senior Counsel. Mr.Singh urged that the appointment of the first respondent in the Town Planning Department since 1988 has not been called in question as is evident from the fact
- B that the seniority lists since July 1989 reflect the name of the first respondent in the Town Planning Department. Moreover, it was submitted that the first respondent was promoted as an Assistant Town Planner on the completion of five years in terms of a GO dated 7 July 1997 and as Town Planner on 29 June 1998. Subsequently, the first
- C respondent was confirmed as Town Planner. Mr.C.U.Singh submits that the proceedings before the High Court in Writ Petition No 2156/1988 had no relevance to the appointment of the first respondent to the Town Planning Department nor was his promotion as Town Planner in issue. The first respondent was not a party to the writ proceedings which dealt
- D with a dispute over promotion as between three persons in the Engineering Department. Hence it was urged that the decision of the High Court dated 3 August 2001 had no bearing on the service of the first respondent in the Town Plannnig Department. On 27 August 2002, the Municipal Commissioner passed an order clarifying that the name of the first respondent would be deleted from the seniority list of
- E the Engineering Department since his name was borne on the cadre of the Town Planning Department. Despite this position, it has been urged that on the very next day, the Municipal Commissioner proceeded to revert the first respondent, without affording to him an opportunity of being heard. On the maintainability of the review petition, Mr.Singh
- F urged that since the order passed by this Court in the Special Leave Petition was a non speaking order, a review petition was maintainable having regard to the settled principles of law that hold the field. Moreover, the Municipal Corporation accepted the order in the review dated 20 October 2012 and urged submissions on the merits of the
- G petition and it was only thereafter, upon the declaration of the judgment on 12 June 2014 and the rejection of the review petition that this Court was moved under Article 136 of the Constitution.
15. For the purpose of the present appeals, we have proceeded on the basis that the order passed by this Court in the Special Leave
- H Petition on 17 October 2003 did not foreclose the avenue of a review

petition which was open to the first respondent. By the order passed by this Court, the Special Leave Petition was not entertained. Neither was leave granted nor was there any expression of reasons which would suggest that the view which weighed with the High Court was affirmed by this Court in the course of disposal of the Special Leave Petition. In that view of the matter, a petition by way of review was maintainable. A B

16. The order passed by the Municipal Commissioner on 28 August 2002 suffers from a fundamental error. The Municipal Commissioner's decision to revert the first respondent from the post of Town Planner which he had held since his appointment on probation on 29 June 1998 and after his confirmation in service on the completion of probation on 29 May 1999 was without hearing the respondent. Reversion of an employee is a matter of substantive prejudice. Hence there can be no gainsaying the fact that an opportunity of being heard is required to be afforded before an order of reversion is passed. The Municipal Commissioner on 27 August 2002 issued an order deleting the name of the first respondent from the seniority list of Deputy Engineers, noting that the Town Planning Department to which the first respondent belongs was a distinct department of the Municipal Corporation. The reversion of the first respondent from the post of Town Planner was without furnishing either a notice to show-cause or an opportunity of being heard to the first respondent. This is manifestly contrary to law. The order dated 28 August 2002 ought to have been set aside on that ground alone. In this view of the matter, it was unnecessary for the High Court to delve into several facets that have entered into the decision which has been ultimately rendered by the High Court. C D E F

17. Hence, we are inclined to quash and set aside the order passed by the Municipal Commissioner on 28 August 2002 on the ground that the order was passed in manifest violation of principles of natural justice. We order accordingly. Hence, it is unnecessary for this Court to enter upon the reasons which have weighed with the High Court. Since the order of reversion has been set aside on the above ground, we clarify that it will be open to the Municipal Corporation to take recourse to its remedies in accordance with law and, in that event, none of the reasons which are contained in the impugned decision of the High Court. G H

- A Court shall be regarded as binding or an adjudication of the rights and contentions of the parties.
 - 18. Learned counsel, however, submitted that in the event that the Municipal Corporation seeks to initiate action, some time schedule may be laid down for the early completion of the proceedings so as to
- B obviate the future prospect of the first respondent being left in a state of uncertainty.
- C 19. We clarify that it would be open to the first respondent to initiate steps within a period of two months from the receipt of a certified copy of this order and to complete the process within a period of four months from today.
- 20. The appeals are accordingly allowed to the aforesaid extent. The order of the Municipal Commissioner dated 28 August 2002 is quashed and set aside. There shall be no order as to costs.

Devika Gujral

Appeals allowed.