

## **D.M. Bharati vs L.M. Sud And Ors on 19 September, 1990**

**Equivalent citations: 1991 AIR 940, 1990 SCR SUPL. (1) 580, AIR 1991 SUPREME COURT 940, 1991 LAB. I. C. 423, 1991 (2) SCC(SUPP) 162, (1990) 4 JT 622 (SC), 1991 SCC (L&S) 1193, (1991) 17 ATC 310, (1991) 62 FACLR 227, (1991) 1 SERVLR 195**

**Author: A.M. Ahmadi**

**Bench: A.M. Ahmadi**

PETITIONER:

D.M. BHARATI

Vs.

RESPONDENT:

L.M. SUD AND ORS.

DATE OF JUDGMENT 19/09/1990

BENCH:

RANGNATHAN, S.

BENCH:

RANGNATHAN, S.

AHMADI, A.M. (J)

CITATION:

1991 AIR 940                      1990 SCR Supl. (1) 580  
1991 SCC Supl. (2) 162 JT 1990 (4) 622  
1990 SCALE (2) 677

ACT:

Service Law: Bombay Municipal Corporation--Deputation from one Establishment to another--Promotion obtained in the Establishment deputed to--Whether confers any right for higher posts in the parent department, on reversion.

HEADNOTE:

The appellant was appointed as a Tracer in the Municipal Corporation in 1955. with the appointment of a Town Planning Officer in 1957. the appellant came to be appointed as a Tracer in the Town Planning Establishment. Later, the post of Junior Draftsman fell vacant in the Town Planning Establishment. Respondent No. 6 was posted to fill the vacancy. However, his appointment was cancelled shortly thereafter

and the appellant was appointed as Junior Draftsman with effect from 4.12. 1959.

The next higher post of Surveyor-cum-Draftsman fell vacant in 1962.. Meanwhile, the appellant was suspended. The Industrial Court granted approval for his removal from service, but suggested that he may be reappointed. Accordingly, the appellant was appointed afresh as junior Draftsman in the Estates Department of the Municipal Corporation where he was previously working.

Aggrieved, the appellant filed a writ Petition before the High Court. Setting aside the order, the High Court remanded the matter to the Industrial Court for fresh disposal. The Special Leave Petition preferred by the employer, viz., the Municipal Corporation against the High Court's order was dismissed.

The Industrial Court reheard the matter and declined approval for the removal of the appellant from service. The appellant was reappointed as Junior Draftsman in the Town Planning Establishment which was abolished subsequently, and he was reverted to the service of the Municipal Corporation as a Tracer, and not as a Junior Draftsman. The appellant filed an appeal against the said order, but it was rejected on the ground that direct recruits were already working as Junior Draftsmen and that there was no vacancy against which the appellant could be appointed.

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The appellant moved the High Court by way of a Writ petition, contending that since he had been appointed as junior Draftsman in the Town Planning Establishment, he could not be repatriated to a lower post, viz.. Tracer in the Municipal Corporation. It was also contended that the Deputy Municipal Commissioner, was a person lower in rank than the appointing authority viz., the Municipal Commissioner and hence the order passed by him was without jurisdiction.

The High Court proceeded on the footing that the appellant was on deputation from Municipal Corporation to the Town Planning Establishment and dismissed the writ Petition. The appellant has preferred this appeal against the High Court's order dismissing his Writ Petition. Dismissing the appeal, this Court.

HELD: 1. I The appellant's promotion as junior Draftsman and proposed promotion as Surveyor-cum-Draftsman in the Town Planning Establishment cannot confer any rights on him in his parent department. When he left the Municipal Corporation and joined the Town Planning Establishment he was a Tracer and he can go back to the Estate Department or any other Department of the Municipal Corporation only to his original post i.e.. as Tracer, subject to the modification that, if in the meantime he had qualified for promotion to a higher post, that benefit cannot be denied to him.

1.2 The order dated 16.8. 1965 was passed in pursuance of the recommendation of the Industrial Court, while approv-

ing the appellant's removal, that he may be reconsidered for appointment. In view of this order of the Industrial Court, the appellant had to be given a posting and since he had been discharged from service when he was a Junior Draftsman. orders were passed appointing him as junior Draftsman. This again was made as an order of fresh appointment and the appellant's representation that he should be given seniority was rightly not accepted. There is also the further fact that the appellant was relieved from this post with effect from October 1, 1967. There has been, apparently, no challenge to this order. Moreover, these orders lost their basis once the petitioner was restored to his post in the Town Planning Establishment. In these circumstances the order dated 16.8.65 or the determination of his seniority in 1966 are of no relevance to the present case.

2.1 What the appellant is really attempting is to challenge the

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appointments of Respondents 6 to 11, which had been made in 1963-64, by a Writ Petition filed in 1978, more than a decade after the above selections and appointments had been made. It is true that, at that time the appellant, was under a cloud because he had been suspended and subsequently removed from service. But all the same, if he had desired to challenge those appointments, he should have taken immediate steps. Anyhow, these obstacles had disappeared when the tribunal, on remand by High Court, had and disapproved the appellant's removal from service by the order dated 13.5.1964. At least in 1971, when the order was passed restoring him to the position of Junior Draftsman in the Town Planning Establishment, he could and should have taken steps to Obtain his "pro-forma" promotion in the parent department. The fact remains that he took no effective steps to challenge the appointment of respondents 6 to 11 from 1963-64 right upto 15.2.1978, when he filed the Writ Petition or atleast upto 1.10.1976, when he made a representation against the order of reversion.

2.2 S. 54(2) of the Municipal Act, dispenses with the Staff Selection Committee when it is proposed to fill the appointment from among persons already in municipal service. But the nature of the recruitment that took place is not known. That apart, the constitution of a Staff Selection Committee to decide upon the selections cannot be said to be illegal even though not mandatory in the situation. The High Court has found that respondents 6 to 11 had been directly selected as Junior Draftsmen after proper scrutiny by the Staff Selection Committee. Admittedly there was a circular among the Municipal employees in regard to these appointments and selections. The appellant should have made an application for selection at that time or, if he thought it more appropriate, should have challenged the constitution of Staff Selection Committee and the direct recruitment and put forward his claim for promotion as Junior Draftsman by

virtue of his seniority. That he failed to do at the crucial time. It may be that this was because he had certain difficulties facing him by way of suspension and subsequent expulsion from service. But even in 1971, after his original order of suspension and removal had been set aside, he took no immediate steps to claim his rights in the parent department. He was apparently satisfied with his restoration as Junior Draftsman in the Town Planning Establishment. Having regard to the circumstances of the appointment of respondents 6 to 11, the appellant was not entitled to any promotion in preference to them and he cannot claim appointment as Junior Draftsman when there was no such post in 1976 to which he could be appointed.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1213 of 1979.

From the Judgment and Order dated 24.4. 1978 of the Gujarat High Court in L.P.A. No. 97 of 1978.

Appellant in person.

H.S. Parihar for the Respondents.

The Judgment of the Court was delivered by RANGANATHAN, J. The appellant, D.M. Bharati, challenges the validity of an order dated 30.9. 1976 passed by the Deputy Municipal Commissioner of the Municipal Corporation of the City of Ahmedabad. By the said order, the Deputy Municipal Commissioner, consequent on the staff of the Municipal Corporation working in the Town Planning Establishment having to be absorbed in the Municipal Corporation, "reverted" the appellant from the post of junior draftsman in the Establishment and appointed him to act in the post of a tracer in the Town Development Department of the Corporation. The High Court rejected his writ petition and hence the present appeal.

It is necessary to state the relevant facts. The appellant had been appointed as a tracer in the Estate Department of the Municipal Corporation on 26.6. 1955 and worked there till 18th February, 1957. It appears that the Government appointed a Town Planning Officer under the provisions of section 31 of the Bombay Town Planning Act. 1954. The Town Planning Officer had to be supplied with an establishment. The establishment of the Town Planning Officer was admittedly temporary. An arrangement was entered into between the two authorities that the arbitrator in the planning office could select such persons from the Corporation for his establishment as he thought fit. The Town Planning Officer demanded the services of the appellant and he was appointed as a tracer in the Town Planning Establishment on 22.2. 1957. It is not clear whether the appellant went therein by way of transfer or by way of deputation as the original order dated 22.2. 1957 is not available with us. However, the High Court and the appellant have proceeded on the footing that the appellant was deputed from the Municipal Corporation to the Town Planning Establishment. Sometime later, the

post of a junior draftsman fell vacant in the Town Planning Establishment. The appellant tells us that he was asked to take charge of that post on 4.12. 1959. It appears that Mr. Yevla (Respondent No. 6 in the W.P.) was posted to fill in that vacancy but, on 21.4. 1960, his appointment was cancelled and the appellant was appointed as junior draftsman in the Town Planning Establishment w.e.f. 4.12. 1959. The appellant tells us that he had also been subsequently recommended for appointment to the post of Surveyor-cum Draftsman, which was a higher post and which had fallen vacant on 28.2. 1962. But before this proposal could materialise the appellant was suspended on 5th December, 1962 by the Corporation and was removed from service on 13.5.64. The Industrial Court granted approval to the removal of the appellant from service but made certain observations suggesting that he may be re-appointed to the said post. The appellant filed a writ petition against the order of the industrial court. The High Court eventually, set aside the order of the industrial court on 1.2. 1969 and remanded the matter for fresh disposal to the industrial court. The Municipal Corporation preferred S.L.P. 48/71 in this Court which was dismissed on 27.1.71. The industrial court re-heard the matter pursuant to the order of the High Court and declined approval to the order of removal of the appellant from service with the result that the order of removal dated 13.5.64 stood vacated and an order was passed on 3.3.71 by the Municipal Commissioner that the appellant was reappointed as a junior draftsman in the Town Planning Establishment.

In the meantime, on 16.8. 1965, consequent on the recommendations of the industrial court, the appellant was appointed as junior draftsman in the Estates Department of the Municipal Corporation where he had been previously working. This purported to be a fresh appointment and so the appellant made a representation that he should be appointed in this post according to his seniority. No orders were passed on this representation except a direction that the appellant should join service within a week of receipt of the memo and then represent his case for seniority, if he so desired. Thereupon the appellant accepted the order re-appointing him as junior draftsman in the Estates Department and took charge of his office. The order of the High Court has found that the appellant was relieved from service on 1.10.1967 because of retrenchment.

When the above proceedings in the case of the appellant were taking place respondents 6 to 11 were directly selected as junior draftsmen by the Staff Selection Committee and promoted to the said post. The appellant did not appear before the Staff Selection Committee perhaps because of the various proceedings above referred to, as a result of which he was under suspension from 5.12. 1962 to 13.5. 1964, when he was removed and then again till 16.8.65, when he was re-

appointed as a draftsman. Once the proceedings against the appellant came to a close, the Municipal Commissioner passed order on 3.3. 1971, cancelling the order dated 13.5. 1964 removing the appellant from service. He was re-appointed as a junior draftsman in the Town Planning establishment. Subsequently, however, the Town Planning Establishment was abolished, and the appellant was served with the order dated 30.9. 1976, by which he was reverted to the services of the Municipal Corporation. On such reverter, however, as we have seen, he was posted as a tracer and not as a junior draftsman. The appellant filed an appeal against the said order before the Standing Committee but his appeal was rejected on 15.3. 1977 on the ground that in the Corporation direct recruits were already working as junior draftsmen, and that there was no post of junior draftsman vacant in the Corporation, to which the appellant could be appointed. The appellant thereupon

filed a writ petition and, as already stated, he was unsuccessful therein and hence this present appeal. The appellant's contention before the High Court was two fold. The first contention was that since he had been appointed as junior draftsman in the Town Planning establishment by the order dated 21.4. 1960, he could not be repatriated as a tracer in the Municipal Corporation, that is, to a lower post. It was also contended that the order dated 30.9. 1976 has been passed by the Deputy Municipal Commissioner, who is a person lower in rank than the person who appointed him, namely, the Municipal Commissioner and that, therefore, the order dated 30.9.76 was passed by an officer without jurisdiction. These two arguments have been reiterated before us also. So far as the second contention is concerned it may at once be pointed out that if the order dated 30.9.76 is an order of reversion by way of punishment, the appellant's contention may be correct in view of the provisions contained in sections 53 and 56 of the Bombay Provincial Municipal Corporation Act. However, if the order dated 30.9.76 has merely given effect to the abolition of the Town Planning establishment and restored the appellant to the post he can properly hold in the Municipal Corporation then no element of reversion would be involved and the Deputy Commissioner would be quite competent to pass the order in question. The only question therefore that survives for consideration is regarding the validity of an order dated 30.9.76 in so far as it purported to appoint the appellant as a tracer in the Municipal Corporation instead of as a junior draftsman. We may mention here that a point was also made that the appellant should not have been appointed as an "acting" tracer but it has been explained by the Corporation that it was a verbal inaccuracy and that the appointment of the appellant in the Municipal Corporation is not an acting but a substantive one. This point, therefore, does not survive.

We shall proceed on the assumption that the appellant went to the Town Planning establishment (which was a temporary one) by way of deputation from the Municipal Corporation. There is some controversy as to whether the appellant was properly promoted as junior draftsman in the Town Planning establishment. There is a suggestion that both the demand by the Town Planning establishment for the services of the appellant as well as his promotion therein were not acceptable to the Corporation and that they were the consequence of undue favour shown to the appellant by the Arbitrator who was the appointing authority. We do not think it is necessary to go into this controversy here because it is quite clear that the appellant's promotion as junior draftsman and proposed promotion as Surveyor-cum Draftsman in the Town Planning Establishment cannot confer any rights on him in his parent department. When he left the Municipal Corporation and joined the Town Planning establishment he was a tracer and he can go back to the Estate Department or any other Department of the Municipal Corporation only to his original post i.e., as tracer, subject to the modification that, if in the meantime he had qualified for promotion to a higher post, that benefit cannot be denied to him. In the present case, unfortunately, what happened was that when junior draftsmen were recruited by the Municipal Corporation in 1959-60 and in 1963-64, persons were selected and appointed to the said posts through the machinery of a Staff Selection Committee. The appellant submits that he had been wrongly overlooked and that the respondents had been wrongly promoted as junior draftsmen. He points out that, under the regulations, junior draftsmen had to be appointed by promotion on the basis of seniority-cum-fitness and that the question of Staff Selection Committee did not at all arise. According to him, the procedure for selecting by Staff Selection Committee would not come into force when the recruitment was restricted to persons in the municipal service. In the present case,

however, all the persons, who were appointed as junior draftsmen during the appellant's absence were from the municipal service. The appointment should, therefore, have been made directly by promotion without the intervening machinery of the Staff Selection Committee and the appellant being the seniormost tracer should have been appointed as junior draftsman in preference to respondents 6 to 11.

There are considerable difficulties in accepting this case of the appellant. In the first place, what he is really attempting is to challenge the appointments of respondents 6 to 11, which had been made in 1963-64, by a writ petition filed in 1978, more than a decade after the above selections and appointments had been made. It is true that, at that time the appellant, was under

a cloud because he had been suspended and subsequently removed from service. But all the same, if he had desired to challenge those appointments, he should have taken immediate steps. Anyhow, these obstacles had disappeared when the tribunal, on remand by High Court, had disapproved the appellant's removal from service by the order dated 13.5. 1964. At least in 1971. when the order was passed restoring him to the position of junior draftsman in the Town Planning establishment, he could and should have taken steps to obtain his "pro-forma" promotion in the parent department. The appellant says he was making some representations but this was not enough. The fact is that he took no effective steps to challenge the appointment of respondents 6 to 11 from 1963-64 right upto 15.2.1978, when he filed the writ petition or atleast upto 1.10.1976, when he made a representation against the order of reversion.

Quite apart from the above consideration, there is no material before us to show that the appointments of respondents 6 to 11 were made irregularly and that the constitution of a Staff Selection Committee for selecting junior draftsmen did not conform to the regulations and the provisions of the Bombay Provincial Municipal Corporations Act. The Corporation has stated that they have been directly recruited. The High Court has pointed out that the relevant regulation gave a discretion to the Commissioner to make the appointments by promotion or by direct recruitment. S. 54(2) of the Municipal Act, on which the petitioner relies, no doubt dispenses with the Staff Selection Committee when it is proposed to fill the appointment from among persons already in municipal service. But the nature of the recruitment that took place is not known. That apart, the constitution of a Staff Selection Committee to decide upon the selections cannot be said to be illegal even though not mandatory in the situation. The High Court has found as a fact at more than one place in the judgment that the respondents 6 to 11 had been directly selected as junior draftsmen after proper scrutiny by the Staff Selection Committee. Even the appellant stated before us that there was a circular among the municipal employees in regard to these appointments and selections. The appellant should have made an application for selection at that time or, if he thought it more appropriate, should have challenged the constitution of Staff Selection Committee and the direct recruitment and not forward his claim for promotion as junior draftsman by virtue of his seniority. That

he failed to do at the crucial time. It may be that this was because he had certain difficulties facing him by way of suspension and subsequent expulsion from service. But even in 1971, after his original order of suspension and removal had been set aside, he took no immediate steps to claim his rights in the parent department. He was apparently satisfied with his restoration as junior draftsman in the Town Planning establishment. We are in agreement with the High Court that, having regard to the circumstances of the appointment of respondents 6 to 11, he was not entitled to any promotion in preference to them and that he cannot claim appointment as junior draftsman when there was no such post in 1976 to which he could be appointed. It is not his case that any posts of junior draftsmen became vacant after his reversion to the parent department to which he could have been promoted.

The appellant contends that the fact that his eligibility for appointment as a junior draftsman in the parent department had been accepted by the order dated 16.8.1965 referred to earlier. It is also pointed out that subsequently a question arose of the seniority as between the appellant and one Kavadia. This was gone into and the Municipal Corporation accepted the position that the appellant possessed qualifications required for the post of junior draftsman and that he was senior to Mr. Kavadia. This was sometime in 1966. We, however, find that this aspect of the matter does not help the appellant because the order dated 16.8. 1965 was passed in pursuance of the recommendation of the industrial court, while approving the appellant's removal-

al, that he may be reconsidered for appointment. In view of this order of the industrial court, the appellant had to be given a posting and since he had been discharged from service when he was a junior draftsman, orders were passed appointing him as junior draftsman. This again was made as an order of fresh appointment and the appellant's representation that he should be given seniority was not accepted, rightly, for the reason mentioned above. There is also the further fact that the appellant was relieved from this post with effect from October 1, 1967. There has been, apparently, no challenge to this order. Moreover, these orders lost their basis once the petitioner was restored to his post in the Town Planning Establishment. In these circumstances the order dated 16.8.65 or the determination of seniority between appellant and Kavadia in 1966 do not help the appellant's case.

Learned counsel for the Municipal Corporation submitted to us that the appellant had not joined his post as a tracer in compliance with the order dated 30.9.76 and that by now he has also reached the age of superannuation. We are not here concerned in this appeal with the consequences of "non acceptance" of the order dated 30.9.76 by the appellant. We are only concerned with the question whether the appellant was rightly appointed as tracer on his reversion to the Municipal Corporation and that question we have answered in the affirmative. We do not express any opinion on the questions raised by the learned counsel for the respondent.



In the circumstances, we are of the opinion that there are no grounds to interfere with the order of the High Court. We, therefore, dismiss this appeal but, in the circumstances, we make no order as to costs.

G.N.  
missed.

Appeal dis-