

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 32602 OF 2022

Rutuja Ramesh Latke ... Petitioner

Versus

The Municipal Corporation of
Greater Mumbai & Ors. ... Respondents

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Mr. Vishwajeet Sawant, Senior Advocate with Mr. Nikhil Patil, Mr. Veerdhaval Kukade, Mr. Shekhar Mane i/b. Prabhakar Jadhav for the Petitioner.

Mr. A.Y. Sakhare, Senior Advocate with Mr. Sandeep Patil, Ms. Rupali Adhate and Mr. Rohan Mirpury for Respondent Nos. 1 to 3- Municipal Corporation of Greater Mumbai.

Ms. Tejashree Kamble, Joint Chief Personnel Officer.

Mr. Umesh Gurav, Administrative Officer (Chief PO Department).

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 13 OCTOBER 2022

P.C. :

The Petitioner, who is working in a clerical post in Respondent No.1- Municipal Corporation, has filed this petition aggrieved by the fact that the Respondent – Municipal Corporation, her employer has not issued a letter of acceptance in respect of the resignation tendered by her. The Petitioner has sought a direction to Respondent No.1-

Municipal Corporation to issue a letter of acceptance in respect of the resignation tendered by her.

2. The learned Senior Advocate appearing for the Respondents seeks time to file a reply.

3. The learned Senior Advocate for the Petitioner submits that if a direction is not issued to the Respondent - Municipal Corporation regarding the acceptance of resignation, the Petitioner would be gravely prejudiced as the Petitioner faces a deadline of 14 October 2022, which is the last date of filing nomination for the election the Petitioner is desirous of contesting.

4. We could have finally disposed of the petition today, but it has to be adjourned at the request of the Respondents. If the interim order is akin to a final order, it cannot be refused; if not granting it in the circumstances would amount to a severe prejudice. Thus, we have heard the learned Counsel for the parties at length on the interim order to be passed.

5. The service conditions governing the resignation by an employee of the Municipal Corporation are in the Regulation 28 of the Mumbai Municipal Corporation (Service) Regulations, 1989.

6. The Petitioner joined the services of the Respondent -

Municipal Corporation of Greater Mumbai on 15 June 2006. The Petitioner is working as a clerk in the establishment of the Municipal Corporation. The Petitioner's husband was an elected member of the 166 Andheri East Assembly Constituency. The Petitioner's husband expired on 11 May 2022. The Petitioner addressed a letter to the Respondent - Municipal Corporation on 2 September 2022 stating that the Petitioner intends to contest the election that may be declared, and the Petitioner would have to resign from the post of clerk. Therefore, till the result of the election, the condition barring the Petitioner from contesting the election as an employee of the Municipal Corporations be relaxed. This communication dated 2 September 2022 was not immediately replied to. A note was put up on 21 September 2022, and, according to the Petitioner, the Petitioner was informed about the rejection of the Petitioner's communication dated 2 September 2022 on 29 September 2022. After that, on 3 October 2022, the Election Commission of India issued a press note regarding a by-election to fill the vacancies in the Assembly Constituency, which included 166 Andheri East Assembly Constituency. In the schedule for the by-election, 14 October 2022 is the last date for submitting the nomination.

7. The Petitioner, on the same day, that is, on 3 October 2022, wrote to Respondent No.3 stating that the Petitioner intends to contest the Assembly Election and she is tendering her resignation with effect from 3 October 2022. She specifically requested that

one-month notice be waived in view of the election schedule. Thereafter, the Petitioner deposited an amount of Rs. 67,590/-, one month pay in lieu of notice period, which was accepted by the Municipal Corporation with endorsement as notice period of an employee in the municipal treasury.

8. Since no communication was received from the Respondent - Municipal Corporation regarding the resignation and the deadline of 14 October 2022 was approaching, the Petitioner filed this petition on 12 October 2022. The petition was mentioned on 12 October 2022 for urgent admission, which was kept today.

9. The petition came up in the morning session today when it was sought to be argued on behalf of the Respondent - Municipal Corporation as to whether to waive the notice period or notice pay under Regulation 28 of the Regulations of 1989 is a discretion of the Municipal Commissioner. To our query as to why it is not being exercised, the learned Senior Advocate for the Respondent - Municipal Corporation submitted that decision is not yet taken. Considering the urgency, we directed the Municipal Commissioner to inform his decision as to whether the resignation is being accepted or rejected so that position is made clear and the matter can be taken forward. Thereupon, the hearing was adjourned to second session.

10. When the matter was called in the second session, the learned Senior Advocate for Respondents submitted that decision was not yet taken since there is a complaint against the Petitioner which will have to be examined, and it would at least take another week to take a decision. In the context of the case where the Petitioner is facing a deadline, it was akin to a rejection; therefore, we have heard the parties further.

11. According to the Petitioner, the resignation was duly submitted on 3 October 2022 and the notice period of one month is not sacrosanct. If the employee resigns before the expiry of one month, the employee has to pay one month's salary (notice pay) in the treasury. The Petitioner contends that the Municipal Commissioner, under Regulation 28 of the Regulations of 1989, can waive both, the one month's notice and deposit of one month's pay. The Petitioner has asserted that there is no departmental enquiry pending against the Petitioner nor any dues, and Petitioner has already deposited one month's pay. It is contended that in these circumstances, not accepting the resignation is arbitrary and perverse. The learned Counsel submitted that the Commissioner has routinely granted permissions in the case of other employees wanting to contest the election. The Petitioner contends that for the extraneous reason with sole object to block the Petitioner from contesting the election deliberately, the Respondent - Municipal Commissioner is putting forth its technical arguments, which as an employer he is not expected to do.

12. The Learned Senior Advocate for the Respondents submitted that the letter of resignation given by the Petitioner is not as per the Regulations. Merely because the notice pay is accepted does not mean that the resignation is deemed to have been accepted. First the resignation has to be accepted and then the second part of Regulation 28(a) of the Mumbai Municipal Corporation (Service) Regulations, 1989 regarding remitting the amount of notice pay would arise. It is submitted that, in this case, no decision is taken. The learned Counsel submitted that the Municipal Commissioner has a discretion whether to waive the notice period and that there has to be an order in writing with special reasons. The learned counsel submitted that a writ cannot be issued to direct Respondent No.1 to decide in a particular manner. It is submitted that complaint has been received against the Petitioner, and the same will be examined, and the decision will be taken in around seven days. The learned counsel for the Respondents also submitted that nothing stops the Petitioner from contesting the election irrespective of the resignation, and the consequences can be considered subsequently. The learned counsel also submitted that the Petitioner has no legal right to seek relief. The petition is premature. The learned counsel for the Respondents relied upon the following decisions: *Dr. Rai Shivendra Bahadur v/s. Governing Body of the Nalanda College, Bihar Sharif and Ors.*¹; *Mani Subrat Jain and Ors. v/s. State of Haryana and Ors.*², *State of Bihar and Ors. V/s. Amrendra Kumar Mishra*³ ; *State*

1 AIR 1962 SC 1210

2 (1977) 1 SCC 486

3 (2006) 12 SCC 561

*of Manipur and Ors. v/s. Y. Token Singh and Ors.*⁴ ; *Oriental Bank of Commerce v/s. Sunder Lal Jain and Anr.*⁵ ; *Rajasthan State Industrial Development and Investment Corporation and Anr. v/s. Diamond & Gem Development Corporation Limited and Anr.*⁶

13. What is before us is a case where a clerical employee of the Municipal Corporation wants to resign to contest an election. A matter purely of employer- employee relationship, complicated needlessly by the stand of the Respondents. Under Regulation 6 of the Regulations of 1989, the Petitioner cannot contest an election or take part in politics and become a member of a political party while being an employee of the Municipal Corporation. Under Article 191 of the Constitution of India a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly if he holds any office of profit as specified. Therefore the Petitioner must determine the status of her employment with the Municipal Corporation before contesting the elections.

14. The Petitioner, on 2 September 2022, first made a representation which was not immediately responded to. The Petitioner was informed that it was rejected on 23/29 September 2022. Thereafter on 3 October 2022, the Petitioner tendered a letter of resignation, which was also not responded to by the Employer Corporation.

4 (2007) 5 SCC 65

5 (2008) 2 SCC 280

6 (2013) 5 SCC 470

15. Though it is correct that the Municipal Commissioner has the discretion to waive the notice period and waive a substantial part of Regulation 28 of the Regulations of 1989, the discretion is placed upon the Commissioner as an employer. The factors that could be considered in the exercise of this discretion are the exigencies of administration and not any outside criteria. It is settled that when a discretion is conferred on an authority, it has to be used in a bona fide manner and for the purpose for which it is entrusted. Even if the circumstances for the exercise of discretion are present and discretion is withheld for no germane reasons then such refusal to use discretion would be an arbitrary and ultra vires. Therefore judicial review is maintainable as regards this discretion to be exercised by the Municipal Commissioner.

16. Regarding the Respondent's argument that the court can only direct a decision to be taken and not the outcome, we had directed the Municipal Commissioner to communicate a decision to the Court. We had expected the Commissioner to communicate the decision; instead, the Municipal Commissioner declined to take a stand as to whether the resignation is accepted or rejected and only sought deferment of the decision. The Municipal Commissioner is fully aware that in view of Regulations, the Petitioner cannot contest the election while in service of the Municipal Corporation, and unless a decision on the resignation is taken, the Petitioner continues

in Municipal Service. At least after the Court asked the Municipal Commissioner to decide regarding a clerical employee, a final decision should have been taken, saving judicial time. In this context, we had examined the matter further.

17. The Petitioner's assertion that no dues are pending against the Petitioner nor any disciplinary enquiry is instituted, is not controverted. The Petitioner is working as a clerk, and there are no doubt a large number of employees working in a clerical cadre. The Petitioner is not shown to be irreplaceable. The Petitioner had specifically requested Respondent No.1- Commissioner on 3 October 2022 to exercise the discretion to curtail the notice period. In view of the elections schedule announced, which gives her less than 15 days, the Petitioner had no option but to make this request. The Petitioner has placed on record that the Commissioner has exercised such discretionary power in the cases of the other employees seeking to contest the elections.

18. As regards the complaint which was sought to be placed before us in the second session by the Respondents, less said the better about the same. Firstly we note that it is a legal notice issued by one advocate on behalf of a person who has made some general allegations. There are no particulars whatsoever in this complaint, and it only states that there should be an investigation and enquiry against the Petitioner. This complaint is inwards on 12 October

2022, i.e. the date on which the petition is filed. As regards the date of this notice, there are erasers. Respondent No.1, as an employer, has to take an impartial stand about its employees. In the ordinary course, unless complaint has some basic facts, it would not be made a foundation. We find considerable merit in the contention of the Petitioner that the complaint is got up only to defeat the petition. Therefore, no valid reason is placed before us as to why the Municipal Commissioner is not accepting the resignation.

19. This is a simple case where a clerical employee of the Municipal Corporation has tendered resignation and requested a reduction of the notice period in view of the election schedule. Respondent No.1 has a discretion which Respondent No.1 is refusing to exercise without any justifiable reasons. Even after granting time to take a decision, deferment is sought, nullifying the petitioner's request. Considering the fact that the Petitioner is contesting the assembly election, Respondent No.1 ought to have considered the case of the Petitioner on a different footing as has been done in respect of other employees contesting the elections.

20. There is no merit in the Respondent's contention that the resignation letter is faulty. If the resignation is tendered from a particular date, as to which date it is to be accepted, is with the employer. That would not make the resignation bad in law. Furthermore, if that could have been the position, considering the

urgency for the Petitioner, the least that was expected from the Respondents -employer was to immediately inform the Petitioner, enabling her to submit a proper application. We also do not find any merit in the Respondent's contentions that if any direction is issued in this petition to the Municipal Commissioner, it will apply to all the employees. The discretion conferred on the Municipal Commissioner is to be exercised in the facts of each case and our discussion is in the facts of this case. Therefore no legal position uniformly applicable to all employees is laid down in this order.

21. Merely because the discretion is conferred on the authority, it does not mean that the judicial review is not permissible. Discretion is not to be used at the sweet will of the authority and in a whimsical manner. If, in the given facts and circumstances, the Court finds that there is a failure of justice, the writ court has the power to issue necessary directions. An entirely avoidable situation is created by the Municipal Corporation, the employer of the Petitioner, causing great prejudice to the Petitioner. Nothing is shown how the respondents are prejudiced if the Petitioner's resignation is accepted after waiving the period as has been done in the case of other employees. Therefore, we find merit in the submission made by the Petitioner that the action/inaction of the Respondent. No.1 is based on extraneous considerations and not the ones germane for the exercise of discretion. According to us, in these facts and circumstances, it will be a failure of justice if we do not intervene and

issue the directions as sought by the Petitioner.

22. Accordingly, we direct Respondent No.1-Municipal Commissioner and/or the concerned Competent Authority to issue a letter of acceptance of resignation tendered by the Petitioner, by 11.00 a.m. on 14 October 2022 to the Petitioner.

23. Since the order is dictated in presence of the learned Counsel for the Municipal Corporation, the effect be given to the order without waiting for the complete order.

24. Stand over to 20 October 2022.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)