

MUNICIPAL CORPORATION OF GREATER BOMBAY
& ORS.

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v.
MRS. KALPANA SADHU KAMBLE & ORS.

AUGUST 30, 1988

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[E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

Civil Services: Municipal Corporation of Greater Bombay—Resolution No. 567 dated 12.9.1975—Reservation of posts for backward classes—Held, applicable only prospectively—Service conditions of employees cannot be modified and rights acquired taken away except under a valid law.

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The Government of Maharashtra passed a resolution on 23.5.1974 providing for reservation for certain sections of backward classes at the stage of promotion in the services under the State. The D appellant Corporation adopted that reservation policy in its Resolution No. 567 dated 12.9.1975. That resolution, however, could not be brought into force immediately. The Corporation passed Resolution No. 1652 on 4.3.1977 making the Resolution No. 567 applicable with effect from 23.5.1974.

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Respondent No. 1, who belonged to one of the backward classes, was promoted to the higher post on 21.3.1977 in pursuance of the said resolution. She instituted a writ petition in the High Court seeking a direction to the appellant Corporation to promote her with effect from 23.5.1974, which was accepted by the Single Judge. An appeal therefrom was dismissed by the Division Bench.

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In this appeal by special leave it was contended for the appellant Corporation: (i) that the High Court was wrong in issuing direction to promote the first respondent with effect from 23.5.1974 since that would have the effect of disturbing the promotions made between 23.5.1974 and 21.3.1977, and (ii) that in any event the promotions made prior to 12.9.1975 could not be disturbed and that the first respondent could not be promoted from a date earlier than 12.9.1975.

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Modifying the writ issued by the High Court,

HELD: The 1st respondent shall be deemed to have been pro-

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A **moted with effect from 12.9.1975 and not from 23.5.1974, as directed by the High Court. [684C-D]**

B **The Government Resolution dated 23.5.1974 did not come into force as far as the services under the Corporation were concerned on the date on which it was passed by the Government. It could only come into effect after the Corporation passed its resolution on 12.9.1975. When once the Corporation passed the resolution dated 12.9.1975 any promotion made thereafter in the services of the Corporation could only be made subject to the reservation policy adopted by the Corporation. [683B-C]**

C **The mere fact that there was some delay in the collection of statistics and other particulars necessary for giving effect to the resolution dated 12.9.1975 could not have the effect of denying the benefit of the reservation to the employees belonging to the backward classes concerned with effect from 12.9.1975. [683D]**

D **Though service conditions of employees could be modified retrospectively, no modification which would have the effect of depriving them of their vested rights can be made retrospectively except under a valid law. No such law is placed before the Court in the instant case. The seniority of the employees who had been lawfully promoted between 23.5.1974 and 12.9.1975, therefore, cannot be disturbed. [684B-C]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2616 of 1983.

F **From the Judgment and Order dated 20.12.1982 of the Bombay High Court in Appeal No. 709 of 1982.**

V.A. Bobde and D.N. Mishra, Adv. for the Appellants.

R.F. Nariman and P.H. Parekh, Advs. for the Respondents.

G **The following Judgment of the Court was delivered by**

H **VENKATARAMIAH, J. The Municipal Corporation of Greater Bombay (hereinafter referred to as 'the Corporation') and some of its officers have filed this appeal by special leave against the Judgment and Order dated 20.12.1982 passed in Appeal No. 709 of 1982 on the**

file of the High Court of Bombay affirming the Judgment dated 23.11.1982 of the learned Single Judge in Writ Petition No. 579 of 1981 in which the learned Single Judge had issued a writ in the nature of mandamus directing the Corporation to implement its Resolution No. 567 dated 12.9.1975 directing reservation of certain vacancies while making promotions from a lower cadre to a higher cadre for the employees of the Corporation belonging to certain sections of backward classes with effect from 23.5.1974.

The Government of Maharashtra passed a resolution on 23.5.1974 providing for reservation for certain sections of backward classes at the stage of promotion in the services under the State. Under that resolution the Government provided that in Class I, Class II and Class III posts in which the element of direct recruitment did not exceed 50 per cent where promotion was to be made on the basis of seniority subject to fitness, 13 per cent of vacancies should be reserved for the Scheduled Castes and the Scheduled Castes converts into Budhism, 7 per cent for the Scheduled Tribes including those living outside the specified areas and 4 per cent for Denotified Tribes and Nomadic Tribes. In order to implement the above scheme the Government directed the maintenance of a roster of 50 vacancies in which Sl. Nos. 1, 9, 17, 25, 33, 41 and 49 were to be reserved for the Scheduled Castes and the Scheduled Castes converts into Budhism, Sl. Nos. 2, 16 and 30 were to be reserved for the Scheduled Tribes including those living outside the specified areas and Sl. Nos. 3 and 28 were to be reserved for Denotified Tribes and Nomadic Tribes. The State Government's resolution was not applicable to the services under the Corporation on its own force. The Corporation, therefore, passed the Resolution bearing No. 567 dated 12.9.1975 which read as follows:

“That in partial modification of the orders passed under the Corporation Resolution No. 364 dated the 11th August, 1966 *sanction be given to the policy, regarding reservation of posts for Backward Community as adopted by the Government of Maharashtra and explained in the letter*, being adopted by the Corporation and reservation of posts being made in the matter of direct recruitment *except those filled in by the Corporation and other individual specified posts of officers whose number in any category is not more than three as well as in promotion posts*, as proposed and the Commissioner be authorised to inform the Government accordingly.”

(emphasis added)

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A Although the above resolution was passed on 12.9.1975 it was not brought into force immediately as it is alleged that the Corporation had to collect statistics to ascertain the number of vacancies that were available at the promotional stage since 23.5.1974. The Corporation passed another resolution being Resolution No. 1652 on 4.3.1977 which read as follows:

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“That in modification of the orders passed under the Corporation Resolution No. 567 dated the 12th September, 1975, sanction be given to the policy regarding reservation of posts for Backward Classes in the matter of direct recruitment and at the stage of promotion, as adopted by

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the Government of Maharashtra under their Resolutions, General Administration Department No. BCC. 1072-ECR/J dated the 23rd May, 1974

So far as it relates to reservation of the posts in the matter of promotion for certain sections of the Backward classes being given from the date of passing of Government Resolution dated the 23rd May, 1974 referred to above, as proposed;

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Pursuant to the said resolution Respondent No. 1 Mrs. Kalpana Sadhu Kamble, who belonged to one of the backward classes, was promoted from the cadre of Assistant Teacher to the higher post of

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Deputy Head Mistress on 21.3.1977. Feeling aggrieved by the Corporation not giving effect to her promotion with effect from 23.5.1974, on which date the Government resolution was passed, she instituted Writ Petition No. 579 of 1981 on the file of the High Court of Bombay requesting the High Court to issue a direction to the Corporation to promote her with effect from 23.5.1974. The learned Single Judge,

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who heard the case, issued a writ as prayed for. Against the judgment of the learned Single Judge the Corporation went up in appeal before the Division Bench of the High Court in Appeal No. 709 of 1982 which was dismissed at the stage of preliminary hearing. This appeal by special leave is filed against the judgment of the Division Bench of the High Court.

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It is urged on behalf of the Corporation (i) that the High Court was wrong in issuing a direction to the Corporation to promote the 1st respondent with effect from 23.5.1974 since the direction would have the effect of disturbing the promotions made between 23.5.1974 and 21.3.1977, on which date the 1st respondent was actually promoted and (ii) that in any event the promotions made prior to 12.9.1975, on

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which date the Corporation passed the resolution giving effect to the Government resolution dated 23.5.1974, could not be disturbed and that the 1st respondent could not be promoted from a date earlier than 12.9.1975.

It is not in dispute that the Government resolution dated 23.5.1974 did not come into force as far as the services under the Corporation were concerned on the date on which it was passed by the Government. It could only come into effect after the Corporation passed its resolution on 12.9.1975. When once the Corporation passed the resolution dated 12.9.1975 any promotion made thereafter in the services of the Corporation could only be made subject to the reservation policy adopted by the Corporation. No doubt, the Corporation took some time to give effect to the said resolution and it gave effect to it in the case of the 1st respondent and others only after it passed its resolution dated 4.3.1977. The mere fact that there was some delay in the collection of statistics and other particulars necessary for giving effect to the resolution dated 12.9.1975 could not have the effect of denying the benefit of the reservation to the employees belonging to the backward classes concerned with effect from 12.9.1975. We are, therefore, of opinion that all promotions made subsequent to 12.9.1975 in the services of the Corporation would be subject to the reservation policy adopted by the Corporation on 12.9.1975.

The next question is whether the 1st respondent is entitled to claim that her promotion should be treated as one made on 23.5.1974 when the Government passed the resolution and that she should be accorded seniority over and above those promoted between 23.5.1974 and 12.9.1975. It is no doubt true that in the resolution of the Corporation dated 12.9.1975 it is proposed to give effect to the policy of reservation with effect from 23.5.1974 but the said resolution cannot have any effect on the promotions which had already been made by 23.5.1974 because those promotions had been made in accordance with the prevailing rules and were not made subject to any future resolution which the Corporation would make. In the circumstances, it would be wholly unjust to disturb the promotions made prior to 12.9.1975 only because the Government had passed the resolution on 23.5.1974 and the Corporation had passed the resolution on 12.9.1975 to give effect to the policy of reservation adopted by it with effect from 23.5.1974. It is true that the Corporation cannot ordinarily take a place which will be inconsistent with its own resolution by which it proposed to give effect to the policy of reservation with effect from 23.5.1974. But having regard to the fact that a large number of innocent emp-

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- A loyees who had been lawfully promoted between 23.5.1974 to 12.9.1975 would be affected prejudicially, if retrospective effect is given to the resolution of the Corporation with effect from 23.5.1974, we feel that it would be unjust to issue a direction to review all promotions made between 23.5.1974 and 12.9.1975. The rights acquired by them cannot be taken away merely by the passing of a resolution as it has been done in this case. While it may be true that service conditions of employees may be modified retrospectively, no modification which would have the effect of depriving them of their vested rights can be made retrospectively except under a valid law. No such law is placed before us in this case. The seniority of those who had been promoted during that period cannot also be disturbed. In the circumstances the writ issued by the High Court has to be modified by directing the Corporation to give effect to the promotion of the 1st respondent from 12.9.1975. The 1st respondent shall, therefore, be deemed to have been promoted with effect from 12.9.1975 and not from 23.5.1974 as directed by the High Court.
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- D The appeal is allowed to the above extent. There will, however, be no order as to costs.

P.S.S.

Appeal allowed.