IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1697 of 2020

With
R/SPECIAL CIVIL APPLICATION NO. 3177 of 2020

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CHIEF OFFICER

Versus

DECD. SHREE SOLANKI KANUBHAI DANABHAI THROUGH LEGAL HEIRS MANJULABEN W/O KANUBHAI SOLANKI

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Appearance:
MS. DHARA SHAH, ADVOCATE FOR MR SHIVANG M SHAH(5916) for the Petitioner(s) No. 1
MR PRABHAKAR UPADYAY(1060) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 27/06/2022

ORAL ORDER

1 Heard Ms.Dhara Shah, learned advocate for the petitioner and Mr.Prabhakar Upadhyay, learned advocate for the respondent workmen in both these petitions.

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2 Challenge in these petitions is to the awards of the Labour Court dated 04.12.2018 and 05.12.2018 in respective references filed by the employees of Patan Nagarpalika. For the purposes of this order, the facts of Special Civil Application No. 1697 of 2020 are taken into consideration. Kanubhai Danabhai Solanki, who was working with the Patan Nagarpalika raised an industrial dispute before the Labour Court inter alia contending that the stand of the petitioner – Nagarpalika in

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retiring them at the age of 55 on and from 30.09.2007 is bad.

2.1 It was his case that he was entitled to continue till the age of 60. The stand of the Municipality before the Labour Court was in exercise of powers under Rule 5 of the Rules framed under Sec.271 of the Gujarat Municipalities Act, the Municipality had power to retire a municipal servant at any time on or after he attains the age of 55 years on giving him three months notice.

2.2 Perusal of the awards of the Labour Court would indicate that reliance was placed on a decision of this Court rendered in Special Civil Application No. 3235 of 2006. In the reasonings set out by the Labour Court, the sole reason on which the references have been allowed is based on the observations made by this Court in the aforesaid petitions in paras 21 to 23 which have been quoted in the award.

2.3 Letters Patent Appeal was filed by the Municipality being Letters Patent Appeal No. 1078 of 2006. However, Ms.Dhara Shah, learned counsel for the petitioner would submit that since the respondents therein otherwise retired on attaining the age of 60, the same was withdrawn.

3 Placed for consideration by Ms.Shah, learned counsel, was a decision of the Division Bench of this Court in context of the same municipality dated 03.03.2020 rendered in Special Civil Application Nos. 22332 of 2005 and allied petitions. The challenge by the employees there

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was to a similar order of discharging them on attaining the age of 55. The prayer of the petitioners was to quash and set aside those orders by virtue of which the petitioners were made to compulsorily retire on attaining the age of 55. After recording the submissions of the respective counsels appearing, for the petitioner and the municipality, the Division Bench of this Court held as under:

> *"11. Having heard learned advocates appearing for the respective parties and having gone through the material on record, it appears prima facie to this Court that these petitioners have been made to compulsorily retire way back in and around 2005-2006 and throughout, there seems to be no interim protection envisaged to them. Even the docket-sheet also evidently makes it clear that there is hardly any interest shown by the petitioners in challenging the action of the Municipality over the period so vigorously and as such, these petitioners are out of services right from the year 2005-06.*
>
> *12. Additionally, it is also reflected from the record and pleadings that these persons whose employment was subjected to certain basic conditions and if these conditions which are reflecting on page 52 onwards are looked into, they would indicate that their service can be put to an end by giving one month salary as the same is based upon a contract. It appears that discontinuing their service on account of compulsory retirement does not seem to be a penal measure. Considering this circumstance also, it appears prima facie to this Court that with a view to bring the establishment expenditure below 45%, such a measure is taken by the Municipality against the petitioners, which cannot be said to be arbitrary or malafide in any manner.*
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> *13. Further, it appears to this Court that Rules which are framed in exercise of the powers under Section 271 of the Gujarat Municipalities Act are the Rules framed well within the competence and which have also been approved by the State authorities and as such, resultant effect is that the Municipality is competent enough to take measure of compulsory retirement. Proviso to Rule 5 reflecting on page 4 indicates that this kind of*

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action can be taken by the Municipality against an employee, when an employee reaches the age of 55 years. The only drawback appears to be that instead of three months, one month's salary has been paid. But, learned counsel appearing on behalf of the petitioners has not been able to make out any case as to whether one month's salary as contained in the appointment order is to be paid or three months' salary to be paid. In absence of canvassing the said point, without going much into that aspect, we may observe that the stand taken by the Municipality in the affidavit filed by the Chief Officer, affirmed on 15.12.2005, deserves consideration. The said affidavit, reflecting on page 24 of the petition compilation, states that even if strict compliance is to taken in aid, then Municipality can be directed to pay two months' salary in addition to one month's salary as agreed and for that, during the course of hearing, one of the learned advocates appearing on behalf of the Municipality has shown readiness and willingness to pay two months' salary to these petitioners, so as to set right the controversy which is prevailing since long as said stand does not appear to have been resisted.

14. Having perused the further stand of the Municipality put forth through learned senior counsel Shri S.N. Shelat by inviting our attention to some of the documents attached with further affidavitin-reply, reflecting on page 56 of the petition compilation, it appears that the said data which has been provided, indicates clearly that the action has been initiated keeping in mind the financial structure of the Municipality and to minimize the establishment expenditure. Since we deem it proper to consider this stand of the Municipality, we reproduce such averments made on oath by the Municipality hereunder:-

> *"3. With reference to para 4, I say it is not true that the Nagar Palika has employed 50 employees after passing resolution on 31st December 2005. I say in all only 30 employees discharging different types of statutory duties and essential services required to run the administration of the Nagar Palika were required to be appointed purely on contract basis and on fixed salary that to for a limited period upto 31st March 2006 or 30th June 2006. I say that the employees so appointed are either drivers, bore operators or labourers/ Safai Kamdars who have agreed to work on a fixed salary purely on temporary adhoc basis for a limited period. For instance, Patel Dilip Gangaram is*

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appointed as a Driver at a salary of Rs.3000/- per month upto 31st March 2006 on heavy JCB Type vehicle of the value of Rs.18.00 lacs while the other drivers are appointed on a fixed salary of Rs.2500/- per month in order to run the every day used vehicles of Nagar Palika. I say that these appointments were made for meeting with the exigencies and urgent needs and as per the direction of the State Government issued in recent circulars which provide, inter alia, that appointments to Class III can be made only on contract basis and appointments of Class IV can be made only on a daily wage basis and for a limited period of 3 to 6 months. I crave leave to refer to and rely upon those circulars at the time of hearing of the petition. I say that the following financial aspects of the matter will show that Municipality has tried to reduce its liabilities.

(i) The Nagar Palika is indebted at present to the tune of Rs.32 to 34 crores payable to GEB, Water Supply Sewerage Board and to other creditors.

(ii) The Nagar Palika is saving Rs.3.00 lac per month which it was paying to the employees who were already relieved at the age of 55 years and has further saved Rs.1,24,740/- per month by relieving the present petitioners (13 in nos.), the Nagar Palika has reduced monthly pay bill of Rs.4.20lacs by resorting to Rule 5.

(iii) By appointing drivers, bore operators, labourers, etc on a fixed remuneration, the Nagar Palika will incur expenses of Rs.1,64,000/- per month only with no future financial liability as per terms of their appointments.

Accordingly, the main object of reducing the expenses in present and future is maintained. I crave leave to produce the statement of pay bill giving details of the employees appointed on contract basis and daily wagers at Annexure-II. I say that the labourers and Safai Kamdars are appointed on daily wage of Rs.97 to 98 per day as per the requirement. I say accordingly, in place of petitioners who were earning monthly salary of Rs.7000 to Rs.10000/- each, the Nagar Palika has engaged persons for Rs.1800 to 2500/- per month. I deny that there is any modus operandi of the Nagar Palika in selecting the persons as alleged in this para. I say,

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so far as the persons who are continued in service are concerned, I have already stated that these employees are continued either because of the binding settlement as per Award of the Labour Court approved by the High Court made as far back in 1997-98 while some of them are continued because of interim court orders and that they are otherwise continued in service because they have not reached to the age of 55 years as has happened in the case of the petitioners."

15. Keeping in view the aforesaid circumstances and the situation of the Nagar Palika, we are satisfied with the submission that the measures appear to have been taken to keep the establishment expenditure under control and to maintain the interest of the Municipality.

16. Insofar as challenge to the Rule is concerned, precisely Rule 5, we are not impressed by the submission made by learned counsel for the petitioners about its ultra viresness. We found no proper pleading at the first instance in the petitions and apart from that, comparison which is tried to be made is also not germane in view of the fact that under the provisions of the Gujarat Municipalities Act, every Municipality is given power under Section 271 to frame its own Rules keeping in view the status and affairs of the Municipality and these Rules are always subjected to approval of the State Government and as such, it is not open for the petitioners to insist for applying the service conditions of the State Government, otherwise there will not be any sanctity in entrusting the power to frame the Rules in the Municipality by virtue of Section 271. That being the situation, there is hardly any case made out by the petitioners to challenge the validity of Rule 5. Apart from that, once having accepted the service conditions and once the power entrusted with the Municipality is validly exercised and is in consonance with the interest of the Municipality, the challenge to the Rule does not appear to have been so succinctly established and fails in the considered opinion of this Court. The object of enacting the Gujarat Municipalities Act, 1963 is to consolidate and amend the law relating to the Municipalities in the State of Gujarat so as to give them wider powers in the management of the ministerial affairs and as such, keeping in view this object of entrusting the wider power in respect of its management, Section 271 of the Municipalities Act has specifically entrusted a function in Municipality to make/frame the Rules which

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may not be inconsistent with the Act and the Rules made by the State authority. A bare reading of Section 271 of the Municipalities Act, is giving specific power to make Rules with regard to mode of appointment and conditions of services of the Municipal servants and as such also, a conjoint reading of this entire provision of Section 271 clearly establishes that the averments with regard to challenge to the same are completely missing and as such, there is no considerable force at all in the challenge to the Rules made in the petitions and as such, we are not inclined to accept the said submission.

17. So far as the judgments which are relied upon are altogether on different facts and circumstances and as such, we are unable to apply the same as a straitjacket formula. While going through the decisions cited by learned counsel in detail, we reminded ourselves with the proposition of law laid down by the Apex Court on the issue of precedent, which postulates that if the facts are different, even one additional fact would make a world of difference in applying the ratio. That being the principle, we are afraid to apply these decisions which were pressed into service in a peculiar background of the present case. Hence, the said decisions are of no avail to the petitioners. As a result of this, no case is made out by the petitioners.

18. Additionally, we have also been posted with the facts that this very Rule, viz. Rule 5, was under challenge in past in the form of Special Civil Application No.11865 of 2008 filed by some of the employees, in which learned Single Judge by order dated 24.9.2008 has categorically not accepted the challenge to the action of compulsory retirement and the said decision is not disturbed even by the Division Bench of this Court and as such, simply because a leverage is kept open by the Court in past to challenge the validity of Rule 5, same ipso facto is not permitting the petitioners to casually bring the challenge in the present group of petitions. Hence, in absence of any proper pleadings and in absence of any submissions in respect of ultra-viresness, we are unable to consider the reliefs prayed for in the petitions with regard to it. As a result of this, there is hardly any case made out to entertain the challenge.

19. In view of the aforesaid situation and in view of the facts and circumstances prevailing on record, we are of the considered opinion that no case is made out by the petitioners. Except the fact

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that since the Municipality has shown readiness and willingness to pay two months' salary to each of the petitioners in addition to one month's salary, which has been already granted, we allow the petitions in part with following directions, which would meet the ends of justice:- (1) Present petitions are partly allowed by directing the respondent Municipality to pay two months' salary additionally to each of the petitioners within a period of FOUR WEEKS from the date of receipt of the writ of this Court by issuing account payee cheques in the names of the petitioners. In case some of the petitioners have expired, the benefit may be extended to their legal heirs within the same time as allowed above."

3.1 The Court held that it was within the powers of the municipality in exercise of powers under Sec.271 to frame rules. Proviso to Rule 5 indicates that the action can be taken by a municipality against an employee where employee reaches the age of superannuation. This, of course, is subject to he being given three months notice and notice pay in lieu thereof.

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3.2 Perusal of the order of the Division Bench, therefore, indicates that the Court negated the challenge of the employees holding that the section gives specific powers to make rules and the operation of Rule 5 and consequential retirement was held valid.

4 Mr.Prabhakar Upadhyay, learned counsel for the respondents, would press into service para 19 and submit that the petitioners therein were directed to be paid two months salary additionally which ought to be given to the present respondents.

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5 In context of the challenge in these petitions, the scope is to examine the validity of the awards of the Labour Court. When having found that there was sufficient compliance of Rule 5, inasmuch as, notice of three months was given, the submission of Mr.Prabhakar Upadhyay, learned counsel deserves to be negated.

6 Accordingly, the petitions are allowed. The awards of the Labour Court in Mehsana, Reference (LCM) No. 952 of 2008 dated 04.12.2018 and in Mehsana Reference (LCM) No. 954 of 2008 dated 05.12.2018 are hereby quashed and set aside. The petitions are allowed, accordingly.

In accordance with the operation of the Rule, when the workmen have been retired at the age of 55, if any dues are outstanding, the same may be paid to the respondents.

(BIREN VAISHNAV, J)

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