

(2015) 03 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No. 718 of 2014

Arjun P. Patel and Others

APPELLANT

Vs

Rajkot Municipal Corporation and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 454, 457, 458
Constitution of India, 1950 — Article 14, 226

Citation : (2016) GLH 1 231 : (2015) 2 GLR 1694

Hon'ble Judges : C.L. Soni, J.

Bench : Single Bench

Advocate : Riddhesh Trivedi, for the Appellant; Asmita V. Patel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—The petitioners, who are serving as Additional Assistant Engineer, have preferred this petition under Article 226 of the Constitution of India for the following prayers:

"9(A) To quash and set aside the impugned resolution at Annexure-A dated 6.1.2014 bearing General Board Resolution No. 55 passed by the respondent-Rajkot Municipal Corporation to the extent it provides for initial period of 3 years of ad-hoc appointment with fixed salary of Assistant Engineer to be considered for the purpose of eligibility to the post of Deputy Executive Engineer declaring the same to be illegal and unconstitutional.

(B) To direct the respondent Rajkot Municipal Corporation to implement the resolution dated 7.12.2011 bearing General Board Resolution No. 27 at Annexure-D and consider promoting the petitioners for the post of Deputy Executive Engineer according to the vacancies and in accordance with law;"

2. The case of the petitioners is that they are appointed as Additional Assistant Engineers on permanent basis against the sanctioned set up and they have

rendered their services for a duration between 10 to 15 years. The basic qualification required for the post of Additional Assistant Engineer is Diploma in Engineering. There is another post of Assistant Engineer for which the qualification required is degree in Engineering. Respondent Corporation recruits Assistant Engineer by two methods. One is regular appointment as against the regular set up wherein the Assistant Engineers are appointed on permanent basis against the sanctioned strength, and another appointment is purely on ad-hoc basis for a period of three years with fixed salary to be regularized subject to the outcome of the evaluation of their performance. The Assistant Engineers appointed on ad-hoc do not get any service benefits for first three years including that of leave, seniority etc.

3. It is averred in the petition that the next promotion avenue for Additional Assistant Engineer as also the Assistant Engineer is the post of deputy executive engineer. Eligibility criteria for Additional Assistant Engineer is of 7 years experience and for Assistant Engineer is that of five years wherein initial tenure of three years of ad-hoc services are not considered whereas no such condition exists for Additional Assistant Engineer. It is further averred in the petition that the ratio between the Additional Assistant Engineer and the Assistant Engineer for promotion to the post of deputy executive engineer is 60:40 but such ratio was put in abeyance by resolution dated 7.12.2011 with a view to promote qualified and eligible Additional Assistant Engineer who were otherwise deprived of promotional avenues for one or the other reason and since it was considered that no eligible Assistant Engineer would be available till 2018. However, the respondent Corporation under political pressure and in colourable exercise of the powers, passed the impugned resolution to change the conditions of service of the Assistant Engineer only for the purpose of making them eligible for promotion to the post of Deputy Executive Engineer by deciding to consider the initial period of three years ad-hoc service on fixed salary for the purpose of promotion only and not for any other purpose. Though the Assistant Engineer has to have the experience of 3+5 years for the purpose of becoming eligible to the promotional post, however, now he becomes eligible for promotion after rendering service of only five years. It is the case of the petitioners that the petitioners are eligible for promotion after seven years of service and the Assistant Engineers (ad-hoc) were eligible after eight years of service but by impugned resolution, the Assistant Engineer is considered eligible for promotion only after regular service of two years on completion of ad-hoc period of three years. It is also the case of the petitioners that the impugned resolution is in violation of section 457 and 458 of the Bombay Provincial Municipal Corporations Act, 1949 ("the Act").

4. The petition is opposed by affidavit in reply filed on behalf of the Corporation mainly stating that if three years period of ad-hoc appointment of Assistant Engineer is not considered for promotion, a person with diploma will become entitled to promotion to the post of Deputy Executive Engineer after seven years of experience whereas a person with higher qualification of Bachelor Degree will

not be eligible till the completion of eight years (5+3) of service and in light of such discrimination and to remove injustice to the employees holding the degree qualification, the Corporation has passed resolution No. 55 in General Board. Such resolution is passed after due process of law and object for passing such resolution as mentioned therein is self-explanatory. The Corporation is competent to take such decision under the provisions of the Act and such decision is taken in public interest.

5. I have heard the learned Advocates for the parties. Learned Advocate Mr. Yagnik appearing with learned Advocate Mr. Trivedi for the petitioners submitted that the impugned resolution is given retroactive effect just with a view to accelerate the promotion chances of the Assistant Engineers. Mr. Yagnik submitted that by such retroactive effect, the Assistant Engineers who would just complete two years of regular service become eligible for promotion by considering their three years ad-hoc service. Mr. Yagnik submitted that by the impugned resolution, right of the petitioners to get promotion is affected in as much as by resolution No. 27 dated 7.12.2011, the Corporation has already decided to fill up the posts of Deputy Executive Engineer from qualified and eligible Additional Assistant Engineers. However, now, the Assistant Engineers who were otherwise ineligible for promotion to the higher post of Deputy Executive Engineer on account of non-consideration of 3 years ad-hoc service, would get their chances of promotion accelerated. Mr. Yagnik submitted that the feeder posts for promotion to the post of Deputy Executive Engineer are of Additional Assistant Engineer as also the Assistant Engineer between whom the ratio of 6:4 is fixed and since there is a common seniority in the higher cadre, if any Assistant Engineer not eligible on account of non consideration of three years ad-hoc service is promoted, it will adversely affect the seniority of the Additional Assistant Engineers on the promotional posts. Mr. Yagnik submitted that the Corporation is exercising delegated powers under section 457 and 458 of the Act which do not authorize the Corporation to change the rules with retrospective effect and, therefore, the impugned resolution made by the Corporation would not stand scrutiny of the said provisions. Mr. Yagnik submitted that the benefit decided to be given by the impugned resolution could be given only prospectively so that the rights accrued to the petitioners to get promotion to the higher post on the basis of their eligibility under the recruitment rules are not affected. Mr. Yagnik submitted that in fact, the impugned resolution tantamount to relax the recruitment rules in favour of the Assistant Engineers which is not permissible. Mr. Yagnik submitted that for ad-hoc Assistant Engineers, a clear condition is stipulated that they shall not claim benefit of ad-hoc service for any purpose. However, the impugned resolution changes the service condition of the Assistant Engineers with retroactive effect which would result in taking away vested right of the petitioners to get promotions before them. Mr. Yagnik submitted that the Assistant Engineers appointed on ad-hoc basis are bound by their service condition and if they had come before this Court for consideration of their ad-hoc services for the purpose of promotion, the Court would not have entertained

their petition. Similarly, it would not be open for the Corporation to consider ad-hoc services rendered by the Assistant Engineers for the purpose of promotion.

6. Learned Advocate Mr. Yagnik submitted that the argument is not that the recruitment rules are changed with retrospective or retroactive effect but it is in the context of clause 4 of the order of ad-hoc services of the Assistant Engineer as per which the fixed pay services of three years is not to be counted for any service benefit. Therefore, in the context of the provision made in the recruitment rules for five years experience when on literal interpretation, such five years experience starts only after regular appointment if three years ad-hoc service is considered, it could be said that the impugned resolution shall have retroactive effect so as to include the ad-hoc service rendered prior to regular service which would, since adversely affect the rights of the petitioners for promotion, not stand the test of Article 14 of the Constitution of India. Mr. Yagnik submitted that neither the Corporation has explained rational or logic for passing impugned resolution nor even there are express power with the Corporation to make change in the recruitment rules. Mr. Yagnik has relied on the judgment in the case of State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, ; Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, ; J.S. Yadav Vs. State of U.P. and Another, ; High Court of Delhi and Another Vs. A.K. Mahajan and Others, .

7. As against the above arguments, learned Advocate Mr. Desai and Ms. Patel appearing for the respondents submitted that there is no change in the recruitment rules for basic requirement of experience by the impugned resolution. There is also no change made in the ratio for promotion between the Additional Assistant Engineer and the Assistant Engineer. Mr. Desai and Ms. Patel submitted that what is provided by the impugned resolution is to consider the ad-hoc services rendered by the Assistant Engineers only for the purpose of eligibility criteria of five years experience for promotion to the post of Deputy Executive Engineer. Mr. Desai and Ms. Patel submitted that it is not correct to say that the impugned resolution is given retroactive effect. Mr. Desai and Ms. Patel submitted that by such consideration of three years ad-hoc service, right of the petitioners for consideration of their cases as per the ratio fixed for them for promotion to the higher post is not affected. Mr. Desai and Ms. Patel submitted that the impugned resolution is made for all posts and in public interest. Mr. Desai and Ms. Patel submitted that the ad-hoc appointments of the Assistant Engineers were made after following due selection procedure, however, at the relevant time in the year 2011, since the Assistant Engineers with five years experience were not available, Additional Assistant Engineers were given 100% benefits of promotion to the posts of Deputy Executive Engineer though they were not entitled to get promotion beyond the ratio of 60% of the vacant posts to be filled in by promotion. Mr. Desai and Ms. Patel submitted that since the Corporation found that the injustice has been done to the Assistant Engineer in the matter of getting promotion to the post of Deputy Executive Engineer though they are degree holders, and in order to maintain the ratio between the

Additional Assistant Engineers and the Assistant Engineers for their promotion, the Corporation has rightly passed the impugned resolution would not contravene the provisions of section 457 and 458 of the Act. Mr. Desai has relied on the judgments in the case of Union of India (UOI) and Another Vs. Harish Chander Bhatia and Others, ; State of Maharashtra Vs. Vithalrao Ganpatrao Warhade, ; M.P. Palanisamy and Others Vs. A. Krishnan and Others, .

8. Having heard the learned advocates for the parties, it appears that before the recruitment rules were made under the General Board Resolution No. 73 dated 19.6.1999 by the Corporation for filling up the posts of Deputy Executive Engineer and other posts of equivalent pay scale by direct selection and promotion in the ratio of 1/3 and 2/3 respectively, no promotions were given to the post of Deputy Executive Engineer and other posts of equivalent grade but they were being filled in by direct selection through staff selection committee as found mentioned in resolution No. 73, copy whereof is placed with the Civil Application No. 10293 of 2014. By the said resolution, earlier rules were cancelled and new recruitment rules for the post of Deputy Executive Engineer and other posts were brought into force. Under such recruitment rules, channel of promotion to the post of Deputy Executive Engineer and the other posts of equivalent pay scale (Assistant Town Planner, Deputy Town Development Officer, Survey Officer) is made available to the Assistant Engineer as also to the Additional Assistant Engineer in the ratio of 6:4. The Educational qualification required for promotion is of Degree or Diploma in the concerned branch and the experience required is of five years in case of degree holder and 7 years in case of diploma holders.

9. Subsequently, in 2009, amendment was made in the recruitment rules by further resolution No. 20 dated 15.8.2009 whereby some modification as regards filling up different posts including the posts of Assistant Engineer, Additional Assistant Engineer, Deputy Executive Engineer etc., in the ratio between direct selection and promotion was made and for consideration of seniority for the posts other than the posts of Assistant Engineer, Additional Assistant Engineer, Deputy Executive Engineer. However, no change was made so far as the promotional ratio fixed between the Assistant Engineer and Additional Assistant Engineer to the higher post is concerned.

10. It appears that since Assistant Engineers were appointed on fixed pay for three years, and on account of non-availability of Assistant Engineers with five years experience, the corporation decided to fill in the vacant posts of Deputy Executive Engineers by Additional assistant engineers who had completed requisite experience of seven years and, therefore, the Corporation passed General Board Resolution No. 27 dated 7.12.2011 referred as circular No. 10, copy whereof is placed at annexure-B, whereby it was decided to fill up the promotional posts of Deputy Executive Engineer (Civil) from the cadre of Additional Assistant Engineer (Civil) till the eligible Assistant Engineers (Civil) for promotion were available and for this purpose, it was decided to give relaxation

in the recruitment rules. By this resolution, it was decided to fill all vacant posts of Deputy Executive Engineer against promotional quota by the Additional Assistant Engineer though as per the recruitment rules, they were to get only 40% of the vacant posts of Deputy Executive Engineer. It is pointed out that under this resolution, more than 11 Additional Assistant Engineers have been promoted.

11. It is pertinent to note that the relaxation in the recruitment rules was made in the same manner by general board resolution and the reasons for relaxation mentioned in General Board Resolution No. 27 dated 7.12.2011 are that the posts of Assistant Engineer (Civil) were filled in by fixed pay with effect from 25.8.2011 and considering fixed pay service of three years with five years experience, if total eight years are counted, no Assistant Engineer (Civil) would become eligible for promotion to the post of Deputy Executive Engineer till 2018 and the posts of Deputy Executive Engineer meant to be filled in by promotion from the cadre of Assistant Engineer (Civil) as per the ratio provided in the recruitment rules would remain vacant which would not be in the interest of administration. The petitioners want that this resolution should continue to be implemented so that the vacant posts of Deputy Executive Engineer (Civil) to be filled in through promotional channel could be made available to them. However, it appears that the Corporation decided to formulate a policy for consideration of fixed pay service period of its employees for the purpose of promotion to do justice to them and to see that such employee may not leave the job. The Corporation has therefore passed the impugned resolution.

12. It appears from the copy of the order at Annexure C of appointment of one of the Assistant Engineers that while appointing such Assistant Engineer in regular pay scale on probation, it is provided therein that the three years service on fixed pay shall not be counted for any purpose of service. Therefore, the incumbent of such service may not be entitled to ask for utilization of such service for any purpose as a matter of right. However, the Corporation is not restrained to consider such three years service if it finds that in public interest or to remove injustice, it needs to consider such three years service. If the Corporation can unilaterally incorporate the above condition for not considering the three years service, it can very well lift such condition to meet the necessity of promoting degree holder on the posts of Deputy Executive Engineer. Learned Advocate Mr. Yagnik has failed to point out any legal restriction on the Corporation which would prevent the Corporation from considering the period of fixed pay service for promotion purpose, except submitting that the decision through impugned resolution is in contravention or de-hors section 457 and 458 of the Act and that the decision cannot be given retroactive effect.

13. Section 457 of the Act provides for the matters in respect of which rules may be made. Amongst the other matters, it provides for the powers of the Corporation for laying down the qualifications and method of appointments to different posts. For such purpose, section 454 of the Act enables the Corporation

to add to Schedule-A which comprises different Chapters and under Chapter III the Rules for method of appointment of Municipal Officers and servants and their duties could be made. However, such powers of the Corporation are not to be inconsistent with the provisions of the Act or the Rules made by the State Government.

14. Section 458 of the Act provides for making of bye-laws by the Corporation not inconsistent with the Act or the Rules in respect of the matters provided therein. Section 458 of the Act does not take in its sweep making of any bye-laws with respect to the matter concerning qualification, method of appointment or in any way connected with the service of the officers or servants of the Corporation.

15. Therefore, as per section 454 read with section 457 of the Act, the Corporation has got delegated powers to add to the rules which would include amendment to the rules for qualification, method of appointments etc. of the service of the officers or the servants of the Corporation which should not be inconsistent with the provisions of the Act or the Rules made by the State Government under which any provision is made as regards service condition of any employee. However, present is not the case where the Corporation has made change in the recruitment rules framed under the above referred resolution of 1999 and amended in 2009 for the post of Deputy Executive Engineer much less any amendment in the rules under Schedule-A. Therefore, it is not correct to say that the impugned resolution is in contravention of or de-hors the powers available to the Corporation under section 454 read with section 457 of the Act. What is not in dispute is that the ratio fixed for promotion between the Assistant Engineers and the Additional Assistant Engineers is not affected by the impugned resolution. Eligibility criteria of experience is also not changed by the impugned resolution. In fact, by resolution dated 7.12.2011, when the recruitment rules were relaxed so as to provide for filling up all the vacant posts of Deputy Executive Engineer against the promotion quota with the eligible Additional Assistant Engineers, the Additional Assistant Engineers since were benefited, had no grievance against the relaxation in the recruitment rules. Now, when the Corporation has decided to consider 3 years fixed pay service of the Assistant Engineers for the purpose of promotion in public interest without in any way changing the recruitment rules, the petitioners have raised grievance by the present petition. The Corporation has in its affidavit stated that the present petition is filed with a view to take undue advantage of earlier resolution No. 27 dated 7.12.2011 wherein 100% vacant posts of Deputy Executive Engineer meant for promotion were decided to be filled in by the eligible Additional Assistant Engineers on account of non-availability of the eligible Assistant Engineers.

16. Learned Advocate Mr. Yagnik however submitted that the Corporation has no authority to give effect to the resolution retrospectively and retroactively under the delegated powers and no vested right could be taken away by giving

retroactive effect to any decision taken by the employer. However, the Court finds that the Corporation has neither exercised its delegated powers under sec. 454 read with section 457 of the Act so as to make change in the recruitment rules with retrospective effect nor the impugned resolution could be read to have any retroactive effect so as to affect any vested right of the petitioners. It is required to note that the ratio provided for Additional Assistant Engineers under the recruitment rules for promotion to the post of Deputy Executive Engineer and to other posts of equivalent pay scale is not affected by the impugned resolution and, therefore, it cannot be said that by the impugned resolution, right of the petitioners to get promotion is in any way affected. What is sought to be done by the impugned resolution is to consider three years fixed pay service of Assistant Engineers for the purpose of promotion. The Corporation has provided rational and logic in its impugned resolution for consideration of such 3 years fixed pay service of Assistant Engineers. By the impugned resolution, the Assistant Engineers are not going to get promotion beyond their quota nor are they going to get promotion before completing five years experience, therefore, if any right accrued or vested to the petitioners or to any Additional Assistant Engineers by operation of the recruitment rules, same would remain intact in absence of any change in the recruitment rules.

17. In the case of Mahabir Vegetable Oils (P) Ltd. (supra), it is held and observed by the Hon'ble Supreme Court that a subordinate resolution can be given retrospective effect and retroactive operation if power in that behalf is contained in the main Act. Rule-making power is a species of delegated legislation. However, the question about retrospective effect or retroactive operation would arise only when it is found that the concerned authority has exercised the powers under the subordinate legislation. Such question would not arise in the present case. The Court finds that since such question does not arise in the present case, the judgment is of no help to the petitioners.

18. In the case of State Bank's Staff Union (Madras Circle) (supra), the Hon'ble Supreme Court has considered the dictionary meaning of and explained the expression "retrospective" and "retroactive" and explained the same in para 21 to 24 as under:

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol.4

"Retroactive- Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999)

"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed

before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion..... The foundation of these concepts is the distinction between completed and pending transactions...." (T.C. Hartley, The Foundations of European Community Law 129 (1981).

Retrospective- Looking back; contemplating what is past.

Having operation from a past time.

"Retrospective" is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regards as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol.44 Halsbury's Laws of England, Fourth Edition, page 570 para 921)."

22. The question of retrospectively affecting the award is factually of academic interest. It was admitted before the High Court that all amount payable under the award for the prior period has been paid.

23. In Harvard Law Review, Vol. 73, p. 692 it was observed that

"it is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called "small repairs". Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus the interest in the retroactive curing of such a defect in the administration of Government outweighs the individual's interest in benefiting from the defect". The above passage was quoted with approval by the Constitution Bench of this Court in the case of The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., . In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors have to be considered. It was observed in the case of Stott v. Stott Realty Co. (284 N.W. 635) - as noted in Words and Phrases, Permanent Edn., Vol.37-A, p. 2250 that:

"The constitutional prohibition of the passage of "retroactive laws" refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right,

equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right." 24. Craies on Statute Law (7th Edn.) at p. 396 observes that:

"If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right." Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation."

19. In the case of High Court of Delhi and another versus A.K. Mahajan and others (supra), the Hon"ble Supreme Court has held and observed in paragraph 28, 37 and 38 as under:

"28. At this juncture itself, we must make it clear that such was not the challenge. We have already clarified that it is difficult to find out any lack of benefits on the part of either the Committee or the Hon"ble the Chief Justice. The amendments were necessitated on account of the imbalance in between the three parallel posts of Private Secretaries, Court Masters and the Superintendents. The statistics itself suggested that out of the 9 existing Assistant Registrars, 7 were from the category of Private Secretaries. Once these three posts were held to be the parallel posts, it was thought unfair that only one category of Private Secretaries, sheerly on the basis of their number, could walk away with the maximum number of promotional posts. We do not see anything wrong in such thinking on the part of the High Court. It was perfectly reasonable to make the efforts to remedy the imbalance in between the three posts, which were on the same level. As we have already pointed out, there could be no question about the bona fides in bringing about these amendments. That was the need of the day and was rightly done.

37. Last but not the least, there was no mandamus issued by this Court in the aforementioned judgment in S.B. Mathur. Completely erroneous observation has been made that a mandamus was issued by this Court and that the same could not be nullified by resorting to the Rule-making power by respondent Nos. 1 and 2 (therein) since there was no change in the circumstances. A further observation is also incorrect that the amendment could only be made when there is a change in circumstances. The need for the amendment could even be felt because of the change of the policy. If the High Court came to the conclusion that there was any need for amendment on the factual situation, the amendment could always be made.

38. In the present case, the amendment was necessitated on account of the statistics of promotions to the three categories, where the Private Secretaries had almost monopolized the same. Therefore, there was nothing wrong with the amendments. This Court had also not given any mandamus that the promotions would only be in the light of the existing Rules and in no other. The Court had simply approved of the Rules, as they then stood, providing for the equal status

of the three categories and the combined seniority list for them. This did not mean that this Court directed that there could be no change in the modality or that there could be no three separate seniority lists from the three categories. In our opinion, the judgment is completely misunderstood by the High Court."

20. However, in the said judgment it was found that no one's right was affected. In fact, this judgment clearly lays down that the retrospective amendment is permissible to correct the imbalance in the existing promotion policy.

21. In the case of J.S. Yadav (supra), the Hon"ble Supreme Court has observed in paragraph 21, 22 and 24 as under:

"21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. and Ors. v. Ganges Rope Co. Ltd.).

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. (Vide: Roshan Lal Tandon v. Union of India and Ors., State of Mysore v. Krishna Murthy and Ors., Raj Kumar v. Union of India and Ors., K.C. Arora and Anr. v. State of Haryana and Ors., and State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors.,)."

22. As stated above, the petitioners at the most could be said to have a right to be considered for promotion within their ratio subject to their fulfilling the eligibility criteria but there is no vested right for promotion irrespective of and de-hors the recruitment rules. If the Corporation has decided by the impugned resolution to consider three years fixed pay service of Assistant Engineers for their promotion within their ratio, it could neither be said to have affected any vested right of the petitioners nor could it be said that the impugned resolution has given any retroactive operation to the decision taken by the Corporation so as to take away any right vested or accrued to the petitioners.

23. Learned Advocate Mr. Yagnik however submitted that by the impugned resolution, chances of promotion of the Assistant Engineers have been accelerated which would affect the common seniority in the promotional cadre. Such contention cannot be accepted. It is required to note that if the Corporation could provide for relaxation in the recruitment rules so as to give 100% benefits of promotion to the Additional Assistant Engineer in absence of availability of eligible Assistant Engineers by passing the resolution, why could later on the Corporation not issue the impugned resolution providing for consideration of three years fixed pay service for promotion of Assistant Engineers to have persons with degree qualification on higher posts in public interest within their ratio.

24. If by the impugned resolution, rights of the petitioners for being considered for promotion are not affected, how would their seniority on the promotional posts be affected when such seniority for the promotional posts is to be reckoned from the date of appointment on the promotional posts.

25. The Court has gone through the judgments cited by Mr. Desai and since finds that they are not applicable for deciding the issue involved, they are not discussed.

26. In view of the above, the Court finds that since the impugned resolution does not contravene the provisions of the Act especially section 454 read with section 457 of the Act nor does it affect any so called vested right of the petitioners nor could it be said to have operated retroactively so as to take away any benefits accrued to the petitioners nor even amounts to taking away their rights of being considered for promotion to the higher posts under the recruitment rules, it could not be said that the impugned resolution is in any manner hit by Article 14 of the Constitution of India.

27. For the reasons stated above, the petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

After the pronouncement of the judgment, learned Advocate Mr. R.K. Trivedi requests to continue the interim relief. In the facts of the case, request is rejected.