(1967) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 523 of 1967

Chandra Shekhar Khamparia APPELLANT

Vs

L.P. Tiwari, Administrator, Municipal Corporation and Another RESPONDENT

Date of Decision : 21-12-1967

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 427, 430, 431, 58, 60(3)
Madhya Pradesh Municipal Corporation Law (Extension) Act, 1961 — Section 7(2)

Citation : AIR 1968 MP 140 : (1971) ILR (MP) 476 : (1968) JLJ 833 : (1969) 1 LLJ 844 : (1968) 13 MPLJ 217 : (1968) MPLJ 217

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; R.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

The petitioner in this case, who is employed as a compounder in the Jabalpur Municipal Corporation, challenges the validity of an order passed by the Administrator, Municipal Corporation, with regard to his proposed retirement from service

The facts and circumstances in which this application has been filed are that in 1963 the State Government raised the age of superannuation of Government servants from 55 to 58. Following this action of the State Government the Municipal Corporation also decided tp raise the age of retirement of its employees from 55 to 58. On 24th April 1963 the Standing Committee of the Corporation passed a resolution deciding to raise the age of retirement in conformity with the Government decision. On 20th May 1966 the Corporation made a bye-law in exercise of the power u/s 427 read with Section 56 of the Madhva Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act) regulating the conditions of service of officers and servants of the Corporation, the period of their service, leave etc. That bye-law is as follows:--

"Subject to the provisions of the Madhya Pradesh Municipal Corporation Act, 1965 and rules or bye-laws made thereunder the Fundamental Rules, the General Book Circulars and the Civil Service Regulations shall apply mutatis mutandis to the officers and servants of the Municipal Corporation, Jabalpur in the same way as they were applicable to the Government servants of the former State of Madhya Pradesh immediately before the 1st November, 1956."

On 10th October 1967 the State Government promulgated an Ordinance intituled the Madhya Pradesh Shasakiya Sevak (Adhi-varshiki Ayu) Adhyadesh 1967, fixing the age of superannuation of Government servants at 55. That Ordinance has now been replaced by an Act in terms similar to those of the Ordinance. On 25th August 1967 the Corporation published a draft of the bye-laws intended tp be made u/s 427 read with Section 58 of the Act for regulating the conditions of service of its employees, grant of leave, their period of service etc. and intending to repeal the bye-law notified in the Gazette dated 20th May 1966. It is not necessary to refer in detail to the intended new bye-laws. It is sufficient to say that by the proposed bye-laws it is intended to provide that the Fundamental Rules, he General Book Circulars and tht Civil Service Regulations made from time to time shall apply mutatis mutandis to the officers and servants of the Corporation as they apply to the Government servants of the State other than the members of the Indian Administrative Service. The new bye-laws have not yet been confirmed by the Government and published in the Gazette as required by Sections 430 and 431 of the Act.

On 6th November 1967 the Secretary of the Corporation addressed the following letter to the petitioner

"You have attained the age of 55 years on 31-7-67. A.s per instructions contained in Finance Department Notification No. 1196-IV-R-I Bhopal dated 25-9-67 published in M. P. Gazette dated 25-9-67, the date of compulsory retirement from Govt. Service shall be 15-12-67 You will also be entitled to such leave as may be due for a period not exceeding 120 days and then stand retired on the date next following the date of completion of such leave. As such you may take leave preparatory to retirement from 15-12-67 else you will be retired from this date. You should apply for leave on or before 15-11-1967. In case, you do not apply for leave, it would be presumed that you have voluntarily forgone your entitlement for leave. You are therefore requested to send your formal application for pension to this office so that pension papers may be prepared and sent to the Examiner. Local Fund Accounts. Gwalior, M. P."

During the course of the hearing of this petition, we were informed by learned counsel for the applicant that the petitioner has proceeded on leave preparatory to retirement and that on the expiry of the leave he will stand retired from the municipal service.

It was argued by Shri Gulab Gupta learned counsel appearing for the petitioner, that neither the instructions issued by the Finance Department of the State

Government, nor the ordinance, nor the Act replacing it were proprio vigors applicable to the employees of the Municipal Corporation: that so long as the bye-law notified on 20th May 1966 stood and was not repealed by any other bye-laws, the age of retirement of municipal employees would be according to that bye-law 58 as mentioned in Rule 56 of the Fundamental Rules as was in force on 20th May 1966; that this age of retirement could only be altered by fresh bye-laws made u/s 427 read with Section 58 and as the draft bye-laws published in the Gazette dated 25th August 1967 have not yet been confirmed and published in the Gazette, the age of retirement, namely 58 as provided by the bye-law notified on 20th May 1967 still continued to prevail.

Shri Dabir, learned counsel for the Corporation, did not dispute that the instructions issued by the Finance Department, the Ordinance and the Act replacing it were not by their own force applicable to the employees of the Corporation. He, however, said that according to the bye-law notified on 20th May 1966 the age of retirement was 55 as provided by Fundamental Rule 56 as it existed before 1st November 1956. Learned counsel further contended that in view of Section 7 (2) of the Madhya Pradesh Municipal Corporation Law (Extension) Act, 1960, it was not competent for the Municipal Corporation to frame any bye-law under Sections 427 and 58 of the Act fixing the age of retirement of its employees and that, therefore, the bye-law published on 20th May 1966 was ultra vires. It was also urged in the alternative that the letter issued to the petitioner by the Serectary on 6th November 1967 was a notice to him u/s 60 (3) (b) of the Act terminating his service after a month''s notice and the petitioner having accepted the notice and having proceeded on leave, his services stood lawfully terminated.

The question raised for determination in this case involves a consideration of the provisions of the Act dealing with the matter of fixing the age of retirement of the employees of the Corporation. Section 58 (1) of the Act in so far as it is material here is as follows: --

"58. Appointment and Salary of City Engineers, etc.--(1) Subject to the provisions of this Act the Corporation shall appoint a City Engineer, a Health Officer, a Revenue Officer, a Municipal Secretary and a Municipal Accountant and may appoint a Deputy Municipal Commissioner and such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act and may assign to them such duties and pay them such salaries and allowances, pensions and gratuities and make on their behalf such payments to the provident or annuity funds as the Corporation may determine by byelaws made in this behalf u/s 427:

Provided that -

(1) the power of appointing any person on a municipal post which carries a maximum monthly salary exceeding 150 rupees shall vest in the Standing Committee;

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It will be seen from the substantive part of Section 58 (1) that it is the Corporation which has the power to determine by bye-laws made u/s 427 pensions and gratuities payable to its officers and servants. The power to determine the amount of pension and gratutities clearly includes power to fix the age of retirement. The first proviso to Section 58 (1) only gives to the Standing Committee the power of appointing any person on a municipal post carrying a maximum monthly salary exceeding Rs. 150/-. Under that proviso, the Standing Committee has not the power of fixing the age of retirement or fixing the amount of pension and gratuity payable to any employee on his retirement The Standing Committee is one of the municipal authorities as is clear from Section 6 of the Act which says that the municipal authorities charged with carrying out the provisions of the Act shall be-

(a) the Corporation,

(b) the Standing Committee, and

(c) the Commissioner.

Section 69 of the Act says that the functions of the several municipal authorities shall be such as are prescribed in the Act. There is no provision in the Act giving to the Standing Committee the power to fix the age of retirement of the employees of the Corporation.

Now, Section 427 gives to the Corporation the power to make bye-laws. Sub-clauses (b) of Clauses (1-c) of Section 427 confers on the Corporation the power to make bye-laws in the matter of the conditions of service of Corporation officers or servants; Sub-clause (h) of that clause gives to the Corporation the power to frame bye-laws with regard to the period of the service of Corporation officers and servants. Thus, it is abundantly plain that the Corporation has the power to frame bye-laws fixing the age of retirement of its officers and servants. In fact, as has been provided u/s 58 (1), it is only by framing bye-laws u/s 427 that the Corporation can regulate the amount of pension and gratuities and thus fix the age of retirement

The foregoing discussion is sufficient to show that the resolution which the Standing Committee passed on 24th April 1963 deciding to raise the age of retirement of municipal employees to 58 so as to accord with the age of retirement fixed for Government servants in 1963 was not by itself legally effective for raising the age. The age of retirement could only be raised by a bye law framed to that effect u/s 427 This was done on 20th May 1966 when a bye-law making, inter alia, the Fundamental Rules applicable mutatis mutandis to the officers and servants of the Corporation "in the same way as they were applicable to the Government servants of the former State of Madhya Pradesh immediately before the 1 st November, 1956"

On 20th May 1966 when the bye-law was notified, the age of superannuation as stated in R. 56 of the Fundamental Rules as they existed on 20th May of 1966 was 58. Thus this bye-law validly raised the age of retirement of the employees of the Corporation to 58. The contention advanced by learned counsel for the Corporation that the bye-law notified on 20th May 1966 made the Fundamental Rules applicable to employees of the Corporation as they existed before 1st November 1956 and in the period before 1st November 1956 the age of superannuation provided by the Fundamental Rules was 55, cannot be accepted. The direction in the bye-law that "the Fundamental Rules .... shall apply mutatis mutandis ..... in the same way as they were applicable to the Government servants of the former State of Madhya Pradesh immediately before the 1st November 1956" only means that the mode of application of the Fundamental Rules as existing on 20th May 1966 will be the same as the mode of applicability of the Rules to the Government servants of the former State of Madhya Pradesh immediately before 1st November 1956. It does not carry the meaning that the Fundamental Rules operating before 1st November 1956 in the former State of Madhya Pradesh shall be applicable.

The further contention of Shri Dabir, learned counsel for the Corporation, that the bye-law notified on 20th May 1966 is invalid in view of Section 7(2) of the M. P. Municipal Corporation Law (Extension) Act, 1960, is unsubstantial. The M. P. Municipal Corporation Law (Extension) Act, 1960, came into force on 20th May 1961 which was the date appointed by a notification issued u/s 3 of the Extension Act for the coming into force of that Act. Section 3 of the Extension Act extended to the entire State of Madhya Pradesh, the Madhya Bharat Municipal Corporation Act, 1956, as in force in the Madhya Bharat region immediately before 20th May 1961. By Section 4 of the Extension Act the citation of the Madhya Bharat Municipal Corporation Act, 1956, was changed from 20th May 1961 by providing that from that date it would be cited as the Madhya Pradesh Municipal Corporation Act, 1956, which then, according to Section 4, became the principal Act. Now, Section 7(2) of the Extension Act lays down:

"Notwithstanding anything contained in the principal Act or any rule or bye-law made thereunder, the conditions of service, pay and allowances existing in respect of all permanent officers and servants of the Corporation of the City of Jabbulpore immediately before the appointed day, shall as from the appointed day, be deemed to be their conditions of service, pay and allowances under the principal Act."

This provision only saves "the conditions of service, pay and allowances" existing in respect of the employees of the Corporation of the City of Jabalpur immediately before 20th May 1961 and deems them to be the conditions of service, pay and allowances under the principal Act, namely, the M. P. Municipal Corporation Act, 1956. This was necessary as before 20th May 1961 the Madhya Bharat Municipal Corporation Act, 1956, was clearly not applicable to the City of Jabalpur. This "deeming" is notwithstanding anything contained in the principal Act or any Rule or bye-law made thereunder. The words "any Rule or bye-law made thereunder" occurring in the non obstante expression means any Rule orebye-law already existing on the date of the coming into force of the Extension Act and clearly refers to any Rule or bye-law made under the Madhya Bharat Municipal Corporation Act, 1956. It does not in any way control or take away the power given to the Corporation by Section 427 of the Madhya Pradesh Municipal Corporation Act, 1956, to frame bye-laws in the matter of period of service of Corporation officers and servants. In our judgment, the bye-law notified on 20th May'' 1966 is in no wav invalid.

It is common ground that the bye-law notified on 20th May 1966 has not been replaced by new bye-laws having the effect of reducing the age of retirement to 55 and that the draft bye-laws published in the Gazette dated 25th August 1967 have not yet been confirmed by the Government and published in the Gazette as required by Sections 430 and 431 of the Act. The position then is that so long as the bye-law notified on 20th May 1966 stands, the age of retirement for municipal employees is 58. On this view, the communication addressed to the petitioner on 6th November 1967 by the Secretary of the Municipal Corporation on the basis of instructions issued by the Finance Department of the State Government, informing him that in terms of those instructions he should proceed on leave from 15th December 1967. preparatory to retirement or else he would be retired from that date was wholly unwarranted.

The argument of learned counsel for the Corporation that the communication addressed to the petitioner on 6th November 1967 was nothing but a notice u/s 60(3) of the Act terminating his service after a month''s notice is untenable and cannot be accepted. Section 60 speaks of discharge and infliction of penalties on any municipal officer or servant. Sub-section (1) of Section 60 says that any municipal officer or servant may be discharged--

(a) during a period of probation;

(b) if holding a temporary appointment, on the expiration of the period of appointment;

(c) if engaged on contract, in accordance with the terms of the contract; and

(d) on account of the abolition of the post held by him or on account of a reduction in the strength of a cadre of municipal officers and servants.

Sub-section (3) deals with the notice to be given to a municipal officer or a servant when he is to be discharged from service. It lays down, inter alia, that if a municipal officer or servant has not been engaged on a written contract, he shall be entitled to one month''s notice of the termination of his services or one month''s salary in lieu of notice. This provision has no applicability whatsoever here for the simple reason that the petitioner is not being discharged in any of the circumstances mentioned in Section 60(1).

For the foregoing reasons, this petition is allowed and the respondents are restrained from retiring the petitioner in terms of the instructions of the Finance

Department or in pursuance of the communication addressed to him on 6th November 1967 by the Secretary of the Municipal Corporation. The petitioner shall have costs of this application. Counsel''s fee is fixed at Rs. 150. The outstanding amount of the security deposit shall be refunded to the petitioner.

