
(1998) 09 MP CK 0025
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1489 of 1998

Hari Khanoomal

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 430

Citation : (1998) 2 MPLJ 604

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; P.D. Bidua, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Shrivastava, J.

Heard learned counsel for the parties.

Perused the record.

Feeling aggrieved by an order dated 7-10-1997 passed by the Commissioner, Nagar Palika Nigam, Gwalior informing the petitioner that on attaining the age of 58 years on 10-9-1998, he has to retire from service w.e.f. 30-9-1998, the petitioner has now approached this court seeking quashing of the aforesaid order. He has also prayed for a direction requiring the respondent to allow him to continue to remain in service till his attaining the age of 60 years.

The learned counsel for the petitioner has heavily relied upon in support of the writ petition on the provisions contained in Ordinance No. 1/98 being M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 1998 issued by the State Government, whereunder Rule 56 of the Fundamental Rules was amended providing extension of the age of the superannuation to 60 years subject to certain conditions.

The contention of the petitioner is that by virtue of byelaw No. 3 of the Gwalior

Municipal Corporation Service Byelaws, 1978, the age of superannuation so far as the petitioner is concerned has to be treated as having been automatically extended from 58 years to 60 years of age and as such the impugned order has the effect of curtailing the security of tenure of service of the petitioner provided under the aforesaid byelaw which had the statutory force and such curtailment being not permissible in law, the petitioner is entitled to be retained in service till his attaining the age of 60 years.

Learned counsels for the petitioner in the aforesaid connection has asserted that although prior to the enforcement of Section 58 of the Municipal Corporation Act, 1956, as it exists now with the amendment in the year 1995, the age of superannuation of an employee of the Corporation falling in the category of the petitioner was only upto the age of 58 years, but in view of the amendment made in the fundamental rules the petitioner has become entitled to the extension of the period of his service upto the age of 60 years.

It is, however, not been disputed that Section 58 of the M. P. Municipal Corporation Act, 1956 was drastically amended in the year 1995 and the new provision which was substituted in place of the old Section 58 clearly envisages that subject to the rules made by the State Government in respect of the Set up, Strength, Recruitment, Appointment, Pay-Scales Allowances and other conditions of Service of Officers and Servants of the Corporation, the Corporation shall appoint such Officers and servants as may be necessary for the efficient performance of the functions of the Corporation provided that the power of appointing any person on a municipal post which carries a maximum scale of pay as the State Government may, from time to time, by an order in writing specify, shall vest in the Standing Committee or the Commissioner.

A bare perusal of the aforesaid provisions indicates that the appointing authority so far as the petitioner is concerned is the Standing Committee. Under the Byelaws relating to the service condition which had been approved by the State Government vide the notification dated 23-1-1978, the period of tenure secured to an employee of the category of the petitioner was upto his attaining the age of 58 years. The effect of notification dated 23-1-1978 was that the M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Adhinyam, 1967, as it stood prior to the amendment of Section 58 of the Act, as adopted in the Byelaws by the Corporation continued to remain in force regulating the tenure of the employee of the Corporation.

It may be noticed that the provision contained in the byelaw No. 3 of the Gwalior Municipal Corporation Service Byelaws, 1978, which came into force w.e.f. 23-1-1978 was as follows :

"3. Application of Fundamental Rules. - Subject to the provisions of Madhya Pradesh Municipal Corporation Act, 1956 and the rules or byelaws made thereunder, the Fundamental Rules, 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 learned counsel for the petitioner strenuously urged that since it was provided in the aforesaid byelaw that the fundamental rules 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 member of the Indian Administrative Service, the altered service conditions as contemplated under the M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 1998 extending the age of superannuation to 60 years will get automatically applicable to the Officers of the Corporation falling in the category of the petitioner and consequently the service tenure could not be curtailed on the strength of the impugned order.

The aforesaid submission though it appears to be attractive, yet on a close scrutiny, it is clearly without any substance.

In the aforesaid connection, it may be noticed that the service conditions of the Officers of the Municipal Corporation are to be regulated by the byelaws made by the Corporation in this behalf as provided for u/s 427 of the Act. u/s 427(1-C(b)) of the Act, the Corporation stood authorise to frame byelaws regulating the service conditions of the Corporation Officers or Servants. However, the aforesaid byelaws, as contemplated u/s 430 of the Act, have to be confirmed by the Government as otherwise in the absence of confirmation the byelaw made by the Corporation under the act could not have any validity.

In the present case, the Gwalior Municipal Corporation Service Byelaws, 1978 regulating the conditions of service of the Officers and Servants of the Corporation have not been amended so far. The confirmation of the State Government is only in regard to the fundamental rule as contained in the M. P. Shashkiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967 as it stood in the year 1978. The provisions contained therein prescribed the age of attaining the superannuation to be only 58 years. In the Ordinance of 1998, it has been clearly provided that the provisions contained in M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967 were being amended. The application of the aforesaid Adhiniyam however stood confined to only the Government Servants other than a Class IV Government Servant. In the absence of the amendment in the byelaws framed by the Municipal Corporation, the provisions contained in byelaw No. 3 could not by their own force alter the service conditions on the strength of the ordinance in question, the benefits hereof were available to the government servants only which could not be deemed to be extended to the Officers and the Servants of the Corporation, specially when byelaw No. 3 is itself subject to the provisions of the Municipal Corporation. The amendment of the byelaw and its confirmation by the State Government in my opinion was absolutely necessary in view of the clear provision in byelaw No. 3 itself to the effect that the fundamental rule made from time to time shall apply to the Officers of the Corporation only subject to the provisions of the M. P. Municipal Corporation Act, 1956. This obviously attracted the provisions of Section 430 of the Act requiring

the confirmation of the State Government for any modification in the byelaw having the effect of altering the service condition.

The aforesaid byelaws which were applicable to the petitioner have not been amended so far. The byelaw No. 3 referred to hereinabove clearly envisages that the fundamental rules could be made applicable to the employees of the Corporation only subject to the provisions of the M. P. Municipal Corporation Act, 1956 and the rules and byelaws made thereunder. The aforesaid byelaw relating to the service condition of the petitioner including the service tenure upto only 58 years of age only has not been amended as yet.

Much stress has been laid on the expression "the fundamental rules made from time to time shall apply" as occurring in byelaw No. 3. The contention is that in view of the aforesaid expression, any amendment made in the M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967 will get automatically extended to the Officers and servants of the Corporation and they will get an automatic extension.

This submission is totally without any merit as such an interpretation will render the rider "subject to the provisions of the M. P. Municipal Corporation Act, 1956" contained in the byelaw No. 3 of the Beylaws of 1978 nugatory.

Since it is not disputed that the byelaws of 1978 have not been amended so far, the confirmation of the State Government as required u/s 430 of the Municipal Corporation Act cannot be deemed to exist authorising the extension of the tenure of the service as claimed.

However, learned counsel for the petitioner urged that the Corporation has passed a resolution No. 1105 dated 29-6-1998 adopting therein the amended Rule 56, extending the service tenure upto the age of 60 years.

Learned counsel for the contesting respondent has pointed out that under the provisions contained in Section 58 of the M. P. Municipal Corporation Act, the Corporation is not authorised to pass any such resolution. It is the appointing authority i.e. the Standing Committee which is competent to pass any resolution which has not been passed so far. In fact, it was pointed out that the Commissioner, Nagar Nigam Gwalior has sent the resolution No. 1105 passed by the Nagar Nigam seeking its approval from the State Government vide the letter dated 14-7-1998 but the approval sought for has not been received as yet.

The alteration in the age of superannuation will result in the extension of the period of service. The extension of service as sought for in the circumstances of the case involves saddling the Corporation with the additional financial burden. Nothing has been pointed out which could indicate that the State Government has approved of the extension of the service tenure by extending the age of superannuation as sought for and the likely expenditure to be incurred in this regard has been approved of by the State Government.

In my considered opinion, the expression "the fundamental Rules made from

time to time shall apply" refers to only such amendment in the fundamental Rules made from time to time which are adopted by the Corporation with the confirmation of the State Government as envisaged u/s 430 of the Act and not the amendment made in the fundamental Rules, 1956 as contained in the M. P. Shaskiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967, the application whereof stood confined to the government servants. An interpretation to the above effect, it seems to me, will obviate the situation where an additional financial burden is sought to be cast upon the Municipal Corporation without the prior approval of the State Government as contemplated u/s 430 of the Act.

In the aforesaid view of the matter, taking into consideration the facts and circumstances as brought on record and the ratio of the decision of this Court in the case of Ram Gopal Bhujang v. State of M. P., W. P. No. 1418/98 decided on 31-8-1998, no justifiable ground has been made out for any interference by this court while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

This writ petition is accordingly dismissed summarily.