

(2011) 07 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 5590 of 2010

Kirankumar B. Patel

APPELLANT

Vs

Ahmedabad Municipal Corporation

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0006

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Paresh Upadhyay, for the Appellant; Hameshcnaidu, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Paresh Upadhyay appearing on behalf of Petitioner and learned advocate Mr. Himesh Naidu appearing for Respondent in all petitions.

2. In all three petitions, prayer made by Petitioner is to quash and set aside order/action of reducing pay of Petitioner and further meanwhile interim relief is also prayed by Petitioner. Against present petitions, affidavit in reply is filed by Respondent against which rejoinder is also filed by Petitioner. There is some history/background in these matters because initially notice has been issued by this Court on 4/5/2010 and thereafter on 28/6/2010 following order is passed by this Court granting interim relief in favour of Petitioner in terms of para-7(c) which is quoted as under:

Rule. Learned advocate Mr. H.C. Naidu waives service of notice of Rule on behalf of the Respondent. Heard learned advocates for the parties.

2. The question is whether the directions while applying the benefit of 6th Pay Commission the applicant's case treating the same as a direct recruit would be applicable to the present case in light of the fact that the benefit of 6th Pay Commission came to be applicable from 1st January 2006 when undisputedly the Petitioner was working as Technical Supervisor and came to be appointed as

Assistant Engineer with effect from 3rd October, 2006 and whether anomaly created can be resolved by resorting to provisions of stepping up in the GCS Rs. The downward revision in the Petitioner's remuneration has been effected as if the Petitioner is working on the post of Assistant Engineer as on 1st January, 2006 or prior thereto which, prima facie does not seem to be correct. Undisputedly the persons junior to him in both the cadres are getting more remuneration than the Petitioner. Hence, interim relief in terms of para 7(c).

3. Aforesaid order passed by this Court has been challenged by Respondent Corporation before Division Bench of this Court while filing Letters Patent Appeal No. 263 of 2011, 264 of 2011 and 265 of 2011 wherein Division Bench of this Court has passed an order on 27/4/2011 which is quoted as under:

Heard learned Counsel for the parties. All these appeals have been preferred by the Ahmedabad Municipal Corporation against common interim order dated 28th June 2010 passed by the learned Single Judge in Special Civil Application Nos. 5590 of 2010, 5591 of 2010 and 5592 of 2010. By the said order, learned Single Judge granted interim relief, after hearing the parties as per prayer made in paragraph 7(C) whereby the Appellant Corporation was directed to continue to pay to the Respondent Petitioners the pay which was being paid to them up to March 2010 with all consequential benefits.

We have heard learned Counsel for the Appellant Corporation and the counsel appearing for the Respondent writ Petitioners.

From the writ petition it will be evident that the Petitioners have not enclosed copy of any decision whereby the Corporation decided to reduce the pay of the writ Petitioners. In absence of any such order, there is no question to set aside the decisions. However, from the impugned interim order dated 28th June 2010 passed by the learned Single Judge as we find that the interim order as was sought for in paragraph 7(C), having granted amounts to grant of final relief, as prayed in writ petition at paragraph 7(A), and the same is not permissible, the common order dated 28th June 2010 passed by the learned Single Judge in Special Civil Application Nos. 5590 of 2010, 5591 of 2010 and 5592 of 2010 is set aside.

It is ordered to list these writ petitions before appropriate Court on 14th June 2011 within five cases. Appeals and Civil Applications stand disposed of. No costs.

4. In light of this background, the question which has been raised by Petitioners is that Petitioners were initially appointed on the post of Technical Supervisor in grade of Rs. 4500-7000 on 8/7/2003. Thereafter on 6/6/2006 Respondent corporation invited application from persons working with corporation for post of Assistant Engineer and in response to that advertisement all Petitioners had filed applications which were considered by corporation and accordingly all three Petitioners were appointed on post of Assistant Engineer with effect from 3/10/2006 in pay scale of Rs. 6500-10500. Page-45 of present petition is produced by Respondent corporation being a Staff Selection Committee

Resolution No. 11 dated 3/10/2006. The name of Mr. Brijesh Prabhudas Dave is on waiting list and all three Petitioners were selected in post of Assistant Engineer in direct selection. It is necessary to note that Mr. Brijesh Prabhudas Dave is not higher on merits than Petitioners. Subsequently as per Annexure-E page-15 of present petition Mr. Brijesh Prabhudas Dave was promoted in post of Assistant Engineer from Technical Supervisor by order dated 13/10/2008. Now a real controversy arose between both parties because up to January, 2010 salary of Petitioner was Rs. 13,610/- as reflected in monthly salary slip which has been subsequently in March, 2010 has been reduced by Rs. 10,970/-. Whether such reduction is right or wrong. For that no specific reasoned order has been passed by Respondent corporation as well as before passing such order or taking such decision reducing salary of present Petitioner no reasonable opportunity of hearing is given by Respondent corporation to Petitioner. Therefore in light of this background according to my opinion let this confusion or dissatisfaction may be removed. For that all Petitioners may make detailed representation to Respondent corporation within a period of one month from date of receipt of copy of present order. As and when Respondent corporation receives such representation from each Petitioner it is directed to Respondent corporation to consider such representation and examine issue whether salary of present Petitioner is required to be reduced or not and if it is required to be reduced, under what provision of law or rules. For that let Respondent corporation may give a reasonable opportunity of hearing to Petitioners and thereafter pass appropriate reasoned order within a period of two months from receipt of such representation from each Petitioner and thereafter communicate decision immediately to each Petitioner. In case if representation of Petitioner is rejected or any adverse order if it is to be passed then it is open for each Petitioner to challenge same by way of filing appropriate proceedings before appropriate forum in accordance with law so long and thereafter two weeks if such decision is taken by Respondent corporation let Respondent corporation may maintain status quo in respect to salary which has been received by Petitioners on January, 2010.

5. It is made clear by this Court that while disposing of all these three petitions this Court has not expressed any opinion on merits and this order has been passed by this Court without prejudice to rights and contentions of all parties.

6. In view of above, all these three petitions are disposed of by this Court without expressing any opinion on merits. Rule discharged accordingly in each petition. Direct service is permitted.