

(2001) 11 BOM CK 0046

In the Bombay High Court

Case No : Letters Patent Appeal No. 179 of 1993 in Writ Petition No. 4600 of 1993 and W.P. No. 1961 of 1993

Sopan Genu Dhavale

APPELLANT

Vs

Pune Municipal Corporation and another

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 11 BOM CK 0046

Hon'ble Judges : Smt. Nishita Mhatre, J; R.M. Lodha, J

Bench : Division Bench

Advocate : N.H. Gursahani with S.H. Gursahani, for the Appellant; R.S. Ketkar, for the Respondent

Judgement

R.M. Lodha, J.—This judgment will dispose of Letters Patent Appeal No. 179 of 1993, writ petition No. 4600 of 1993 and writ petition No. 1961 of 1993.

2. For the sake of convenience, we shall refer to the parties as the employer and employee. In Letters Patent Appeal, the appellant is the employee and the respondents are employer while in writ petition Nos. 4600 of 1993 and 1961 of 1993, the petitioners are employer and the respondent is the employee.

3. Insofar as writ petition No. 1961 of 1993 is concerned, the learned Counsel for the employer fairly submitted that the said writ petition arises out of the suit filed by the employee seeking injunction against the employer from obstructing or preventing from performing his duties as Assistance Octroi Superintendent and now since the employee has superannuated, the suit itself had become infructuous and so also the writ petition. Accordingly, writ petition is dismissed as infructuous.

4. As regards the Letters Patent Appeal, we may observe that the said Letters Patent Appeal arises out of order dated 11-11-1999 passed by the learned Single Judge in writ petition No. 4600 of 1993, whereby the learned Single Judge

admitted the writ petition and granted interim stay by staying the operation of impugned order dated 4-1-1993 passed by the trial Court in R.C.S. No. 1629 of 1992. As we have heard writ petition No. 4600 of 1993 itself, the fate of the Letters Patent Appeal would be dependent on the order which we pass in the writ petition No. 4600 of 1993.

5. Adverting now to the writ petition No. 4600 of 1993, we may first notice few relevant facts.

The employee is working with the employer as Assistant Octroi Superintendent since 4-11-1988. The Municipal Commissioner, Pune Municipal Corporation, suspended the employee vide order dated 31-1-1989. in contemplation of disciplinary enquiry against him in relation to the inspection of two vehicles on 23-1-1989. The employee challenged the suspension order by Regular Civil Suit No-226 of 1989 and also prayed for temporary injunction therein. The employer appeared in the suit and contested the application for temporary injunction. After hearing the parties, the trial Court vide order dated 16-2-1989 restrained the employer from preventing the employee from performing his duties until disposal of the suit. The employer challenged the order of the trial Court dated 16-2-1989 in Miscellaneous Appeal which was dismissed by Additional District Judge, Pune on 29-4-1992. Aggrieved by the aforesaid two orders, the employer preferred writ petition No. 1961 of 1993, which is being disposed of today by this common judgment. But admittedly, as noted by us above, the said petition has become infructuous. It appears that in the meanwhile, on 8-3-1990, the employer appointed enquiry officer to enquire into the charges against the employee and the enquiry officer completed the enquiry and submitted his report on 27-6-1991. The Municipal Commissioner issued show-cause notice on 29-7-1992 to the employee for passing an order of punishment of dismissal. The employee challenged the said show-cause notice by filing R.C.S. No. 1629 of 1992. In the said suit, the employee also prayed for temporary injunction for restraining the employer from giving effect to the show-cause notice dated 29-7-1992. The application for temporary injunction was contested by the employer. The trial Court by order dated 4-1-1993 allowed the application made by the employee for grant of temporary injunction and restrained from acting upon show-cause notice dated 29-7-1992. It is this order dated 4-1-1993 passed by the trial Court on the application of temporary injunction which has been challenged by the employer in writ petition No. 4600 of 1993. Ordinarily, this court does not invoke its extraordinary jurisdiction under Article 226 of Constitution of India in respect of an order passed by the Civil Court which is appealable under CPC and that is what we observed during the course of arguments by the learned Counsel for the petitioners. However, the learned Counsel for the petitioners submitted that the order passed by the trial Court being grossly erroneous and contrary to statutory provisions, this Court may decide the contention raised by the employer on merits. Though he submitted that even Regular Civil Suit No. 1629 of 1992, wherein the order of temporary injunction has been passed by the trial Court, has been dismissed for default long back in the year 1997, it has not been

restored so far and as a result of which even the writ petition may not survive. We find that the principal challenge to the show-cause notice dated 29-7-1992 issued by the Municipal Commissioner in the Regular Civil Suit No. 1629 of 1992 filed by the employee is on the ground that the Municipal Commissioner had not power to issue such notice. According to the employee, the Corporation being employer, such notice could have only been issued by the Corporation. The said contention has found favour with the trial Court prima facie and based on that the order of temporary injunction was passed. We are afraid the reasoning of the trial Court in prima facie holding that the Municipal Commissioner had no power to issue such notice is wholly unsustainable and he overlooked the provisions contained in Section 67 of the Bombay Provincial Municipal Corporations Act, 1949.

6. Section 67 reads thus:

"(1) The respective functions of the several municipal authorities shall be such as are specifically prescribed by or under this Act.

(2) Except as otherwise expressly provided in this Act, the municipal government of the City vests in the Corporation.

(3) Subject, whenever it is in this Act expressly so directed to the approval or sanction of the Corporation or the Standing Committee and subject also to all other restrictions, limitations and conditions imposed by this Act or by any other law for the time being in force, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which imposes any duty or confers any power on the Corporations vests in the Commissioner, who shall also, :

(a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of all municipal officers and servants, other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and servants immediately subordinate to them, and subject to the regulations, dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances;

(c) in any emergency take such immediate action for the service of safety of the public or the protection of the property of the corporation as emergency shall appear to him to justify or to require notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of some other municipal authority or of the [State] Government;

Provided that the Commissioner shall report forthwith to the Standing Committee and to the Corporation the action he has taken and his reasons for taking the same and the amount of cost, if any, incurred or likely to be incurred in consequence of such action which is not covered by the current budget grant

under the provisions of this Act;

(d) perform the duties and exercise the powers imposed or conferred upon the Transport Manager by this Act in his absence or on failure by him to perform or exercise the same.

(4) Subject, whenever expressly so directed in this Act, to the approval of the Corporation or the Transport Committee and subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the provisions of Chapter XX vests in the Transport Manager who shall also :

(a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by this Act and perform such other duties in connection with the Transport Undertaking as may be required of him by the Transport Committee;

(b) prescribed the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and servants appointed under Chapter XX and, subject to the regulations, dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances;

(c) in any emergency, take such immediate action for the protection of human life or of the property of the Corporation or for the maintenance of the service provided to the public by the Transport Undertaking as the emergency."

7. For the purposes of the present case by reading clause (b) of sub-section 3 of Section 67, no doubt is left that the Municipal Commissioner is competent to issue show-cause notice dated 29-7-1992 and there is no merit in the contention of the employee that such show-cause notice could only have been issued by Municipal Commissioner after obtaining prior approval from the Corporation. The Apex Court while considering identical provision occurring in the Corporation of the City of Nagpur vs. Ramchandra (83 BLR 536) held as follows:

"It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word "control". On a parity of reasoning, therefore, the plain language of clause(b) of S. 59(3), as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity."

8. In view of what we have stated above, it is clear that the trial Court committed serious error in exercise of jurisdiction in passing the order dated 4-1-1993, however, the fact remains that the suit itself has been dismissed for default way back in the year 1997 and it has not been restored so far. In view

thereof, nothing further needs to be stated by us about the impugned order dated 4-1-1993.

9. Mr. Gursahani, learned Counsel for employee submitted that the employee was superannuated on 31-10-1992 and because of the pendency of these writ petitions and the Letters Patent Appeal, he has only been paid 90% of the pension provisionally and the pension payable to the employee is yet to be finally settled and fully paid. He also submitted that the employee has not been paid due gratuity. In our view, in the background of the fact that the employee was superannuated on 31-10-1992, there is no justification for not finally settling the pension payable to the employee. In so far as the gratuity is concerned, as the suit filed by the employee has been dismissed for default wayback in the year 1997 and that the order of temporary injunction dated 4-1-1993 passed by the trial Court is unsustainable and does not hold the field, there is no impediment in completing disciplinary proceedings pursuant to the show-cause notice dated 29-7-1992. In view of the discussion aforesaid, we pass the following order:

- i) Writ petition No. 1961 of 1993 is dismissed as infructuous.
- ii) The order dated 4-1-1993 passed by the Civil Judge, Junior Division, Pune in R.C.S. No. 1629 of 1992 is set aside being unsustainable and writ petition No. 4600 of 1993 and Letters Patent Appeal No. 179 of 1993 stand disposed of accordingly.
- iii) The employer, namely, Pune Municipal Corporation is directed to finalise the employee's pension immediately and in no case, later than two months from the date of production of order of this Court and make the payment of outstanding pension to the employee without any further delay.
- iv) In case, the Pune Municipal Corporation or for that matter, the Municipal Commissioner of the Corporation intend to pursue the proceedings pursuant to the show-cause notice dated 29-7-1992, they are directed to conclude the said proceedings within two months from the date of production of order of this Court and depending upon the result of the said proceedings, pass an appropriate order relating to gratuity claimed by the employee. In case, the Corporation or the Municipal Commissioner do not intend to pursue the proceedings to the show-cause notice dated 29-7-1992 against the employee, we direct them to make payment of the due gratuity to the employee immediately and in no case later than two months from the date of production of the order of this Court.

No costs.

Parties may be provided ordinary copy of this order duly authenticated by the Court Sheristadar on payment of usual copying charges.