
(2015) 08 BOM CK 0234
In the Bombay High Court
Case No : Writ Petition No. 3107 of 1999

Vijaykumar and Others

APPELLANT

Vs

The Director of Municipal Administration and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2016) 2 MhLj 315

Hon'ble Judges : B.P. Dharmadhikari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : R.D. Raskar, for the Appellant; M.N. Hiwase, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J—We have heard Advocate Mrs. R.D. Raskar for petitioner and Mrs. M.N. Hiwse, Assistant Government Pleader for the respondent Nos. 1 to 3. Nobody for respondent No. 4.

2. Learned A.G.P. also sought adjournment pointing out that no reply has been filed on behalf of the respondent Nos. 1 to 3 till this date. As the request for adjournment was opposed by the petitioner and our attention has been drawn to order passed by this Court earlier, we rejected the request for adjournment. In this situation, without prejudice to said request of adjournment learned A.G.P. has assisted the Court in the matter.

3. Advocate Mrs. R.D. Raskar submits that the petitioner, who expired during the pendency of the matter seeks proper pay scale from 1.1.1986. He was working as City Engineer with respondent No. 4 and after wage revision by State Government in relation to its employees w.e.f. 1.1.1986 pay scale of Rs. 2000-3500 was extended to him from 1.1.1986. However, State Government itself on 14.12.1995 substituted that pay scale of Rs. 2200-75-2800-EB-100-4000 with class one Gazetted status. It is stated that thus when Government itself has recognized a proper pay scale and substituted it for pay

scale of Rs. 2000-3500 the revised scale as corrected by State Government ought to have been extended even to the petitioner.

4. It is pointed out to this Court that the Municipal Council in fact passed a resolution on 23.7.1996 and accepted that pay scale. The proposal recommends it was accordingly forwarded to the office of the Regional Director of Municipal Administration, Office of Collector, Amravati examined the proposal and recommended it, but by impugned order dated 20th January, 2000 Regional Director of Municipal Administration has rejected it on the ground that no decision, to grant pay scale to the post held by the petitioner, was taken by the Urban Development Department. Counsel for the petitioner states that before that a query whether administrative expenses of Municipal Council were below 42% of its income was also raised and Municipal Council accordingly answered it by stating that in past 3 years, the expenditure was less than 42%.

5. Advocate Mrs. R.D. Raskar states that thus there was no legal bar to grant that pay scale to the petitioner. Our attention is also invited to order dated 19th March, 2001 passed by this Court in present writ petition while issuing rule. Though, this Court then directed the State Government to take a decision on the issue within a period of six weeks, that decision has not been taken till date, and no reply also has been filed before this Court.

6. Learned A.G.P. points out that as employment of petitioner was with Municipal Council which is looked after by Urban Development Department of State Government, the decision taken by the Irrigation Department in relation to its employees could not have been mechanically extended to the post of the petitioner. Regional Director of Municipal Administration, therefore, found that Urban Development Department ought to have applied its mind and as there was no such decision by Urban Development Department the proposal sent by the Municipal Council has been rightly turned down. She also points out that in absence of any reply-affidavit on record, the impact of any adjudication by this Court cannot be evaluated as all such engineers working with various Municipal Councils and Municipal Corporations may then become eligible to the revised scale of 2200-4000 with class one Gazetted status and, therefore, may claim further appropriate revised wage in 5th Wage Revision from 1.1.1996 and thereafter from 1.1.2006. Her submission is that the adjudication in absence of proper reply from the respondent may result in casting huge financial burden on public revenue.

7. We find that the present petition was filed on 3.8.1999. The impugned order dated 28th January, 2000 is subsequent to it and challenge thereto has been added vide amendment. The petitioner, who was about 49 years of his age then expired on 3.8.2011. Civil Application No. 3129/2014 preferred by his legal heirs has been allowed by this Court on 8.6.2015 and the petition is now being prosecuted by his widow and a minor son. Respondent/ State did not avail the liberty given to it by this Court on 19.3.2001 and also did not find it necessary to file reply. It cannot, therefore, plead its own omissions in defence, to avoid

adjudication on merit.

8. Facts on record show that the petitioner joined the services as Junior Engineer and in course of time became City Engineer. The pay scale of Rs. 2000-3500 extended to its employees by Irrigation Department was also made applicable to him as per the decision of the Urban Development Department and the order dated 7th January, 1994, where his post has been mentioned as Municipal Engineer and pay scale 2000-3500 has been sanctioned to it. It is subject to a condition that administrative expenditure of Municipal Council should be below 42% of its net income. Obviously as respondent No. 4-Municipal Council satisfied this norm pay scale 2000-3500 came to be extended to deceased petitioner from 1st January, 1986.

9. The State Government through its Irrigation Department has on 14.12.1995 revised this scale of 2000-3500 to 2200-4000 with class one status and this revised pay scale has been made effective from 1.1.1986 retrospectively. It is, therefore, obvious that had this revision been not necessary and pay scale of Rs. 2200-4000 had been recognized as appropriate corresponding pay scale initially itself, the petitioner would have received that pay scale from 1.1.1986 as per order dated 7th January, 1994. In other words, order dated 7th January, 1994 would have been mentioned this revised scale of Rs. 2200-4000 instead of Rs. 2000-3500.

10. The resolution passed by the employer of the petitioner accepting this new pay scale on 23.7.1996 and proposal accordingly forwarded by it to Regional Director of Municipal Administration on 20th August, 1996 is not in dispute. It appears that the Office of the Collector, Amravati has looked into said proposal and on 27th February, 1997 found the proposal just. It has, therefore, recommended it. This communication dated 27th February, 1997 forwarded by the Office of the Collector to Office of the Regional Director of Municipal Administration, Amravati is produced by petitioner as Annexure-IX.

11. The Office of the Regional Director of Municipal Administration has on 4.9.1997 sought information about the percentage of administrative expenditure from respondent No. 4 Municipal Council. That information in relation to past 3 years has been forwarded by Municipal Council on 15.11.1997. Its perusal shows that percentage of expenditure in 1994-95 was 39.77%, in the year 1995-96 it was 36.67% and in the year 1996-97 it was 36.57%. Thus, it was well below the ceiling of 42% envisaged by the above mentioned order dated 7th January, 1994.

12. When the impugned order dated 20th January, 2000 is perused in this background it is clear that it over looks all these facts. Failure or omission on the part of Urban Development Department to take consequential decision has been put forth as a reason by the Regional Director of Municipal Administration to deny approval to proposal forwarded by Municipal Council. The material on record shows that the respondent No. 4-Municipal Council did possess the financial capacity to shoulder the burden and was therefore, ready for it. This fact itself

was sufficient for Regional Director of Municipal Administration to accept the resolution of Municipal Council and to clear its proposal. The Regional Director of Municipal Administration was not required to consider the fixation of pay scale of entire cadre of City Engineer or the Deputy Engineer in all Municipal Councils or Municipal Corporations over the State. The norms to be met with are prescribed for each Municipal Council and hence, pay scales of said cadre in different Municipal Council may not be same. No policy decision from Urban Development Department for its uniform application all over the State was/is really warranted in present matter.

13. In this situation, we find the order dated 20th January, 2000 is unsustainable. It is accordingly quashed and set aside.

14. The respondent No. 1 is directed to grant approval to the proposal submitted by the respondent No. 4-Municipal Council.

15. The process be completed within a period of four months from today.

16. Arrears becoming payable to petitioner on account of said wage revision till 1.1.1996 shall be paid to his legal heirs within next four months.

17. Insofar as the apprehension of learned A.G.P. that the wage revision would have a cascading effect is concerned, we find that the petition has not been amended after 1996 wage revision or 2006 wage revision demanding higher corresponding pay scale. As such the benefit shall be available to petitioner only for the period from 1.1.1986 till 1.1.1996.

18. With these directions, petition is partly allowed and disposed of. No costs.