(2007) 11 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application Noa. 13512, 13981 to 14044 of 2007

V.N. Shah and Others APPELLANT

Vs

Director of Municipalities and Another RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 27 GLH 740 : (2008) 2 GLR 1450

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Amit M. Panchal, for the Appellant; Krina Calla, for Respondent 1 and Sneha A. Joshi, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—With the consent of the learned advocates appearing for both the sides the matters are finally heard today. In all the petitions common question arises for consideration they are being considered by this common order.

2. The petitioners have approached this Court for challenging the legality and validity of the order dated 16.05.2007, passed by the Director of Municipality, whereby the resolution of the municipality has been suspended, mainly because the expenses of the establishment exceeded 45 percent of the total revenue of the municipality, and it is further observed that whenever expenses of establishment are up to 45 percent of the revenue, it would be open to the municipality to move proposal for reconferment of the benefits of the fifth pay commission upon the municipal employees.

3. I have heard learned Counsel Mr. Panchal for the petitioners, Ms. Krina Calla learned AGP for the respondent No. 1 and Ms. Sneha A Joshi learned Counsel for the municipality.

4. It appears that the municipality had resolved for the conferment of the benefit of the fifth pay commission, and had continued the benefits for the year

2004-2005, and for the year 2005-2006, such benefit upon the staff of the municipality. However, since expenses of the establishment had gone above 45 percent and was not maintained up to 45 percent, the show-cause notice was issued by the Director of Municipalities, as to why the benefits conferred of the fifth pay commission should not be cancelled. The Director of Municipalities ultimately after hearing the municipality as well as concerned municipal employees- petitioners herein, passed an order dated 16.05.2007, whereby in view of the government resolution dated 9.11.1999, the action of the municipality is stayed with the retrospective effect for the year 2004-2005 and for the year 2005-2006, and it was also observed that if there is improvement in the financial condition of the municipality, and the establishment expenses falls within the limit of 45 percent, the matter can be considered for reconferment of the benefit of fifth pay commission. It is the said order of the Director of the Municipality, which is under challenged in the present petitions.

5. It appears that the government has taken the policy decision for enabling powers of the municipality to confer the benefits in the cases where in comparison to the revenue of the municipality, the expenses are not exceeding 45 percent, and in case where the expenses are exceeding 45 percent, such benefits are to be discontinued. Essentially such is the policy of the State Government, and it appears that the object to be achieved is to maintain expenses of a particular limit in comparison to revenue of the municipality, and it may also add to the improvement of the efficiency amongst the staff for increasing the revenue of the municipality so as to maintain particular level of expenses in the municipality. In any case the said policy is not under challenged in the present proceedings.

6. It appears that the respondent No. 1 after taking in to consideration the record of the municipality has passed the order, and it is an admitted position that for the accounting year of 2004-2005, and 2005-2006 for the respondent No. 2 municipality the expenses did exceed 45 percent, and they were 46.79 percent and 54.01 percent respectively. Therefore, if the Director of Municipality has taken decision based on the policy decision of the State Government, it cannot be said that any error is committed by the Director of the Municipality nor such error can be said as error apparent on the face of record. Even otherwise also conferment of the benefits of fifth pay commission as of right can not be asserted and it essentially is in the domain of the policy matter of the State or body concerned, for which the decision is to be taken objectively after taking into consideration the revenue available, the expenses to be incurred over amenities to be provided and day to day expenses etc., keeping in view of such public interest of the concerned citizens. But in any case the principle of natural justice are required to be followed, if any benefits are to be discontinued or to be withdrawn, which has been followed and the hearing has been given to the municipality as well as to the concerned employees.

7. Mr. Panchal learned Counsel appearing for the petitioners contended that one

of the interpretation of the impugned order of the director would be that the decision of the municipality for conferment of benefit of the fifth pay commission is stayed with effect from 19.11.1999 and therefore, it may cause great injustice to the petitioners.

8. I am afraid such is correct interpretation of the order of the director as sought to be canvassed by Mr. Panchal. The Director of Municipalities in view of the resolution of the Government dated 19.11.1999, has stayed the action of the municipality for conferment of fifth pay commission for the year 2004-2005 and for the year 2005-2006 only. Therefore, even otherwise also the contention of Mr. Panchal cannot be accepted as sought to be canvassed by giving incorrect interpretation in the order of the Director.

9. Mr. Panchal lastly submitted that it appears that from the communication of the municipality dated 3.5.2007, copy whereof is produced at annexure C in the present compilation that for the year 2006-2007, the establishment expenses have gone down 45 percent, and is of 43.73 percent, and he further submitted the break-up of such details are on page 53, and therefore he submitted that the benefits of fifth pay commission may be available to the petitioners, who are employees of the municipality for the year 2006-2007, and therefore this Court may make some observation for such purpose.

10. As such in the order of the Director of Municipality, there is already provision made for consideration of the issue for reconferment of the benefits of fifth pay commission, if the establishment expenses are up to 45 percent, and therefore, no additional observation are required to be made in this regard. But it may be recorded that even if expenses are maintained up to 45 percent, in view of the order of the Director of Municipalities, the respondent No. 2 municipality will have to be resolved for conferment of the benefits, and proposal will have to be forwarded to the Director of the Municipalities for according sanction.

11. Learned Counsel for the respondent No. 2, municipality submitted that in view of the improvement of the position of the municipality in the year 2006-2007, the matter may be considered by the municipality and the appropriate action for reconferment of the benefits if the conditions are complied with shall be taken and the appropriate proposal shall be forwarded to the Director of Municipalities. As such the Director of Municipalities has made provision in the impugned order for consideration of the fresh proposal in the circumstances, where the establishment expenses are maintained up to 45 percent, hence it will be for the Director of Municipalities to consider the matter at the appropriate time in accordance with law.

12. In view of the above, it cannot be said that the impugned order passed by the Director of Municipalities is illegal or arbitrary. Therefore, not required to be interfered with under Article 226 of the Constitution of India. Hence, all the petitions are dismissed subject to the observation made for the fresh proposal. Rule is discharged. Interim relief vacated. No order as to cost.