

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6865 OF 2015

Sanjay S/o Jagannath Pardeshi,
Age-49 years, Occu-Nil,
R/o Bhadgaon Road, Purnamal Chawl,
Pachora, Tq.Pachora, Dist.Jalgaon

PETITIONER

VERSUS

1. The Chief Officer,
Municipal Council, Pachora,
at Post : Pachora, Tq. Pachora,
Dist. Jalgaon,

2. The Collector, Jalgaon,
Office of District Collector,
Jalgaon

RESPONDENTS

Mr.S.P.Tiwari, Advocate for the petitioner.
Mr.D.B.Thoke, Advocate for respondent No.1.
Mr.V.S.Badakh, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 01/02/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner employee is aggrieved by the judgment and order dated 20/03/2015 delivered by the Industrial Court in Revision (ULP) No.66/2012 and 76/2012.

3. The petitioner claims to have joined duties with the respondent No.1 / Municipal Council, Pachora. The details of his services are narrated in brief as follows :-

- [a] The petitioner joined as a "Peon" on daily wages in 1991.
- [b] Mr.Shashank Pandurang Ahire was promoted thereby, creating a permanent vacancy on 26/03/1999.
- [c] By resolution dated 20/11/1999 passed by Respondent No.1, the petitioner was duly appointed on a vacant post.
- [d] By order dated 14/06/2001 passed by Respondent No.2/ District Collector, Jalgaon, the resolution appointing the petitioner was stayed and the petitioner was terminated w.e.f. 20/06/2001.
- [e] The petitioner preferred Complaint (ULP) No.101/2001 before the Labour Court at Jalgaon.
- [f] By the judgment and order dated 22/06/2012, the Labour Court allowed the complaint and directed the respondents to reinstate the petitioner in service with continuity and 50% back wages.
- [g] The petitioner preferred Revision (ULP) No.66/2012 and respondent No.1 preferred Revision (ULP) No.76/2012 before the Industrial Court at Jalgaon.
- [h] By the impugned judgment and order dated 20/03/2015, the revision petition filed by the petitioner was dismissed and the revision petition filed by respondent no.1 was allowed thereby setting aside the judgment of the Labour Court and permitting Respondent No.1 to cure illegal retrenchment by making payment of retrenchment compensation under Section 25-F.

4. Grievance of the petitioner, therefore, is that he was continued in employment for almost 10 years and by notice dated 14/06/2001, he was terminated w.e.f. 20/06/2001. He had preferred Complaint (ULP) No.101/2001 before the Labour Court at Jalgaon. The witness of the respondent / Municipal Council in her evidence below Exh.C-23 had claimed that all the complainants, who were before the Labour Court in various complaints were initially engaged on daily wages. There were sanctioned vacant permanent posts. The President of the Municipal Council was authorized by a Resolution to recruit Class-IV employees. On the basis of a circular dated 20/04/2001, issued by the Director of Municipal Administration, Mumbai, the complainants were made permanent. The District Collector by invoking powers u/s 308 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (The Act of 1965 in short) suspended the Resolution of the Municipal Council and after intimating the petitioner on 14/06/2001 terminated his service on 20/06/2000.

5. Mr.Tiwari, therefore, strenuously submits that when the President of the Municipal Council was authorized to appoint daily wagers, the Collector had no authority to stay the resolution confirming the services of the petitioner.

6. He further submits that Section 25-F of the I.D.Act and Rule 81 of the I.D.Bombay Rules, 1957 were not complied with and hence the termination is bad in law.

7. He further submits that the Labour Court had rightly allowed the complaint and had granted reinstatement with continuity and 50% back wages. The Industrial Court, by the impugned judgment, has set aside the judgment of the Labour Court and has permitted the Municipal Council to pay retrenchment compensation to the respondent. He, therefore, prays that this petition be allowed and the judgment of the Labour Court be sustained.

8. Mr.Thoke, learned Advocate has appeared on behalf of the Municipal Council. He submits that the Council had passed a Resolution authorizing the President to issue appointment orders in the Class IV category. Similar resolution was passed empowering him to confirm the services of the daily wagers. After the Collector invoked his powers u/s 308 and suspended the Resolution appointing the petitioner, the petitioner was terminated w.e.f. 20/06/2001. The Municipal Council had supported the petitioner and similar employees and had preferred an appeal before the Regional Director of the Municipal Administration by filing an appeal.

By judgment dated 20/07/2001, the decision of the District Collector was sustained and the appeal of the Municipal Council was dismissed.

9. He further submits that the petitioner had thereafter approached the Labour Court by filing the complaint which was partly allowed. The Municipal Council preferred Revision Petition No.76/2012. The petitioner also filed Revision (ULP) No.66/2012 for claiming full back wages. By the impugned judgment, the revision petition of the Municipal Council was allowed. He, therefore, submits that no interference is called for in the impugned judgment.

10. The learned AGP has appeared on behalf of respondent No.2. He submits that Section 308 empowers the Collector to suspend execution of orders and resolution of the Municipal Council on specific grounds. After such an order is passed u/s 308(1), the said order is forwarded to the Council as well as to the Director of Municipal Administration u/s 308(2). The Municipal Council is empowered to prefer an appeal u/s 308(3) before the Director. In the instant case, the Municipal Council had filed such a proceeding which was rejected by the Director u/s 308(4). The order of the Collector was, therefore, confirmed. He, therefore, submits that no

interference is called for in the light of the provisions u/s 308 and the order passed by the Director. The impugned judgment of the Industrial Court, therefore, cannot be faulted and this petition be dismissed.

11. I have considered the submissions of the learned Advocates for the respective sides as have been recorded hereinabove. It is not in dispute that there was no procedure followed by the Municipal Council while appointing the petitioner and similarly situated employees. No applications were invited by publishing an advertisement and no procedure was followed while recruiting him. The President of the Municipal Council was empowered to make such appointments and confirm them.

12. Respondent No.2/Collector has invoked his powers u/s 308 of the Act of 1965, which reads as under :-

“Powers to suspend execution of orders and resolution of Council on certain grounds :-

(1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is

unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, alongwith a copy of such order.

(3) Within [thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement preferred to in sub-section (3), if any, the Director may [within a period of six months, from the receipt of such report or within such period beyond six months as may, on the request of the Director, be extended by the Statement Government] rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications :

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him."

13. An identical situation was before the Full Bench of this Court in the matter of Sanjay Govind Sapkal and others Vs. Collector,

Dhule and others, 2003(3) BCR 550 = 2004(2) Mh.L.J. 874. The Full Bench considered the law laid down by the Division Bench in the matter of Chandrashekhar Shankarrao Zale Vs. Additional Collector, Nagpur, 1984 Mh.L.J. 821 and the judgment of the Division Bench of this Court in the case of Prakash Kutik Chaudhary Vs. Collector of Dhule, 1989(1) CLR 374 and expressly overruled both these judgments which mandated an opportunity of hearing and compliance of the principles of natural justice before the Collector exercised its power u/s 308(1).

14. It would be apposite to reproduce the observations of this Court from paragraph Nos. 35 to 44 as under :-

“35. In the instant case, the case of the Municipal Council was that the posts were not sanctioned posts; there was no necessity of making appointments of employees, there were surplus and excess employees, no prior permission of the competent authority was taken; no applications were invited; no names from Employment Exchange were called; the provisions of the Act. Rules and Regulations were not observed; and the President made the appointments of his kiths and kins in violation of statutory provisions. A prayer was, therefore, made to the Collector to exercise power under [Section 308\(1\)](#) of the Act. The Collector, by a speaking order and recording reasons, suspended the said order, once it has been held that the

Collector could exercise the power, the action cannot be held illegal on the ground of absence of authority. Declaration of law by different Division Benches of this Court in Chandrashekhar and Prakash Kutik reiterated in subsequent cases, in our considered opinion, did not lay down correct law on the interpretation of [Section 308](#). We, therefore, overrule all the decisions. We hold that even if an order or resolution passed by the Municipal Council is implemented, executed or given effect to, power under [Section 308\(1\)](#) of the Act can be exercised and execution or implementation can be suspended by the Collector if the conditions laid down in the said provision are shown to be present,

36. Whether in a given set of circumstances, such power could or could not be exercised or whether or not such power was exercised bona fide, is a question of fact and must be decided in the light of attenuating circumstances of the case. As a proposition of law, however, it cannot be laid down that once an order or resolution is executed, the authority of Collector comes to an end, in our judgment, therefore, the Court, in earlier cases, has committed an error of law and the said view deserves to be interfered with by overruling those decisions.

37. It was finally contended that in any case, such an order would adversely affect the employees inasmuch as their appointments will be set aside by the Collector. It was, therefore, obligatory on the Collector even if it is assumed that he has power to invoke Sub-section (1) of [Section 308](#) of the Act that he should comply with principles of natural justice and fair-play. In

the instant case, no notice was issued; no explanation was sought and no reasonable opportunity of hearing was afforded to the petitioners before taking an action of suspension of the order and on that ground also, the order passed by the Collector was liable to be set aside. For the submission, Prakash Kutik was relied upon. There, the Division Bench held, over and above the authority of the Collector, that while exercising statutory power, the Collector was obliged to comply with the principles of natural justice.

38. In our opinion, however, the submission of the learned Counsel for the Municipal Council is well-founded and deserves to be accepted that in the present proceedings, the question before the Collector related to the validity of an order passed by the Municipal Council, Dhule. If no action could have been taken by the Municipal Council or by the President and the action was unlawful, the same could have been suspended by the Collector and in exercise of power under [Section 308\(1\)](#) of the Act and by recording reasons, the Collector passed an order, which cannot be said to be without authority of law. If the case of employees was that the action taken by the Municipal Council was unlawful, it was open to them to take appropriate proceedings in accordance with law. But once it has been held that the Collector has power to press into service [Section 308\(1\)](#) of the Act and suspend an order or resolution of the Council, the matter must necessarily end there. In our opinion, therefore, even those observations in Prakash Kutik are not sound and we do not approve them.

39. We are supported in our conclusion by a decision of the Supreme Court in [Subhash Chandra and Ors. v. Municipal Corporation of Delhi and Anr.](#), . There, the question of observance of principles of natural justice was raised against an order passed by the State Government under the Punjab Municipal Act, 1911. In that case, since an action of the Municipal Committee in granting certain benefits to the employees was not found to be in consonance with law, the execution was suspended. The aggrieved employees approached the Supreme Court by filing a petition under [Article 32](#) of the Constitution.

40. It was contended on behalf of the employees that no opportunity was afforded to the Municipal Committee to show cause. Such opportunity could not be dispensed with. Non-compliance with natural justice rendered the order void and ineffective. Support was sought from a decision of the High Court of Madras in [Abdul Gafoor v. State of Madras](#), .

41. Negating the contention, interpreting the provisions of the Act and distinguishing Abdul Gafoor and holding that, the petitioners could not raise such contention, the Supreme Court stated :

["Section 235](#) requires the State Government to give an opportunity to the Municipality and to none else. No grievance is alleged to have been made by the Committee of the omission by the Government to give it the opportunity contemplated by [Section 235](#). It has to be borne in mind that an order under [Section 235](#) takes effect immediately and its operation is not

made dependent upon the action contemplated under [Section 235](#). Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in [Section 235](#) is complied with, it cannot be regarded as final. But want of finality does not vitiate the order under [Section 232](#). The order is, unless modified or annulled by the State Government, legally effective and binding on the Committee. The Committee can, therefore, acquiesce in it and waive the non-compliance by the State Government with the provisions of [Section 235](#). Since [Section 235](#) does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that the order is bad."

42. The above observations in Subhash Chandra apply with equal force in interpreting the provisions of [Section 308](#) of the Act as well. The Collector has passed an order and as per the requirement of Sub-section (2) of [Section 308](#), he has forwarded the said order to the Municipal Council, Dhule, affected by the said order, indicating therein the reasons for making the order. The Collector has also submitted a report to the Director along with a copy of the order. It was, therefore, open to the Municipal Council, Dhule, to invoke Sub-section (3) of [Section 308](#) of the Act and to forward a statement to the Director within 30 days from the receipt of the order of the Collector indicating that the order of the Collector should be rescinded, revised or modified. Sub-

section (3) clarifies that if no such statement is received by the Director within time, it shall presume that the Council has no objection if the order of the Collector is confirmed. Sub-section (4) of [Section 308](#) of the Act enjoins the Director on receipt of the report from the Collector, and Council's statement referred to in Sub-section (3), if any, to rescind the order or revise, modify or confirm it or direct that the order shall continue to remain in force with or without modification. The proviso to the said sub-section casts a duty on the Director to take into account the statement, if received before such an order is made by him.

43. It is thus clear that the order passed by the Collector is subject to confirmation, modification or setting aside by the Director and if the Municipal Council was aggrieved by such action or was of the view that no such order could have been made, the legislature had provided remedy and it was open to the Municipal Council to make grievance against the action taken by the Collector by invoking Sub-section (3) of [Section 308](#). The provision expressly declares that if no such communication has been sent by the Council to the Director, the latter will presume that the former has no objection if the order passed by the Collector is confirmed. It is not the case of the Municipal Council or even the petitioners that an action was taken by the Municipal Council under Sub-section (3) of [Section 308](#) and yet, the Director had failed to perform his statutory obligation under Sub-section (4) of [Section 308](#) of the Act. Nor it is the case of the Municipal Council that the procedure required by the section had not been followed and in spite of objections raised by it against

the report of the Collector, the Director, in violation of statutory provisions, confirmed the order passed by the Collector. It, therefore, cannot be said that the principles of natural justice were violated. The action taken by the respondents, hence cannot be said to be invalid, illegal or contrary to the principles of natural justice and fair-play.

44. *For the aforesaid reasons, in our opinion, the reference deserves to be accepted. We hold that the Collector has power, authority and jurisdiction to invoke Sub-section (1) of [Section 308](#) of the Act if he is satisfied that one of the eventualities mentioned in the said sub-section exists. His power, authority and jurisdiction does not come to an end even if the order or resolution is implemented, executed or effected. The reference is answered accordingly. In the facts and circumstances, however, there shall be no order as to costs.”*

(Emphasis supplied)

15. In the light of the ratio laid down by the Full Bench of this Court and in view of the declaration that the law laid down in the case of [Chandrashekhar](#) and [Prakash Kutik](#) (supra) do not lay down the correct law on the interpretation of Section 308, the issue is therefore no longer res-integra. The observations of the Full Bench in the reproduced paragraph clearly indicate that by overruling the said two judgments of the Division Bench, the Collector was not held to be under an obligation to issue a notice of hearing, before

invoking his powers u/s 308(1), to the petitioner.

16. In the instant case, the judgment of the Full Bench in the case of Sanjay Govind Sapkal (supra) was not brought to the notice of the Labour Court, which has interfered with the action of the Collector purely on the count that Section 25-F was not complied with. The Industrial Court after considering the law, has concluded that at best, the complainant could be entitled to notice pay and retrenchment compensation for the period of work that he has performed.

17. In the light of the above, I do not find that the impugned judgment would be termed as being perverse or erroneous. This petition is, devoid of merit and is, therefore, dismissed. Rule discharged.

(RAVINDRA V. GHUGE, J.)