

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 4291 OF 2015
IN
FIRST APPEAL NO. 1546 OF 2013

Mandaliya K. Lakha

.. Applicant

vs.

Brihan Mumbai Mahanagar Palika.

.. Respondent

Ms K.P. Reshma for the Applicant- Appellant.

Mr. Nagale a/w. Mrs. M.R. Bhoir for the Respondent-BMC.

CORAM : M. S. SONAK, J.

DATE : 7 MARCH 2017.

P.C. :-

1] The applicant-appellant was made to retire from his services with the Brihan Mumbai Mahanagar Palika, i.e., Municipal Corporation of Greater Mumbai (MCGM) on 5 April 2012. It is however, the case of the applicant that if correct date of birth of the applicant was to be considered, then the applicant could not have been retired before 31 July 2015. The appellant instituted a suit for this purpose, which has since been dismissed. Such dismissal is impugned in the appeal.

2] In the meantime, the appellant has taken out the civil application seeking for direction to the MCGM to release his retirement benefits and provident fund on the basis that he should have been retired on 31 July 2015. Obviously, such relief cannot be granted at this stage, particularly because, the appellant's suit stand dismissed. However, the MCGM can always be directed to release the appellant's retirement benefits and provident fund on the basis of his retirement with effect from 5 April 2012, since according to the

MCGM the appellant has rightly retired on the said date.

3] This civil application is therefore, disposed of by directing the MCGM to process the appellant's claim for retirement benefits and provident fund and to release/pay such benefits, on the basis that the appellant was retired correctly on 5 April 2012, as expeditiously as possible and in any case within a period of two months from today. It is made clear that acceptance of such retirement benefits and provident fund by the appellant shall be without prejudice to his rights and contentions in the appeal. Similarly, all rights and contentions of the MCGM are left open to be decided in the course of the appeal.

4] The civil application is disposed of in the aforesaid terms.

5] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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