

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2001 OF 2013

Vishakha Vinayak Ingale

...Petitioner

vs.

Municipal Corporation of Greater Mumbai
and Others

...Respondents

Mr. D.A. Nalawade a/w. Mr. A.M. Waradkar and Mr. R.A. Lokhande,
for the Petitioner.

Mr. S.S. Pakale a/w. Mr. H.C. Pimple, for the Respondents-BMC.

CORAM : **S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : **FEBRUARY 16, 2017**

P.C.:

1. By this Writ Petition initially an order dated 17th November, 2011 was challenged, but during its pendency, the Petitioner was served with further order dated 29th April, 2015. That order directs that the Municipal Corporation of Greater Mumbai has made overall assessment of the services rendered and till that date whereafter if decided not to continue her in Municipal services beyond 55 years of age. That would mean she cannot continue till the stipulated age of superannuation or retirement from Municipal services.

2. This order is termed as an order of compulsory retirement or retirement at the age of 55 years, but with the legal consequences that would follow by the rules themselves.

3. This Writ Petition was extensively argued before us and Rule 205 of the Mumbai Municipal (Service) Regulations, 1989 has been invoked. By that, the Municipal Corporation is empowered either to consider and accept the resignation tendered by any Municipal employee after she attains 55 years of age or Municipal Corporation can independently arrive at a conclusion that such Municipal employee needs to be retired in public interest. That satisfaction has to be recorded after which the Municipal services of such employee would come to an end. However, her total emoluments, including Provident Fund, Pension etc. are not adversely affected. For that purpose, it would be presumed that she had rendered services at par with the superannuated retired employee.

4. After this Writ Petition was argued extensively and placed for dictation of judgment in open Court, we requested Mr. Nalawade, learned counsel for the Petitioner to take instructions particularly in

the light of the language of sub rule (1) of Rule 205 and if so advised, the Petitioner can give up the challenge to the disciplinary proceeding and the order thereon dated 17th November, 2011 (Exhibit 'B').

5. This Writ Petition was kept back in the morning session so as to enable Mr. Nalawade to take appropriate instructions.

6. The apprehension of the Petitioner, as expressed by Mr. Nalawade is that if she accepts the order dated 29th April, 2015 it would mean that the Petitioner is unable to obtain any benefit of the salaries, which were otherwise payable and admissible to her. She would be forced to accept the order by which the punishment imposed on her deprived her of the pay scale that was admissible to any Municipal employee who has put in service at par with the Petitioner. Now, the Petitioner is brought to the lower pay scale and which is minimum of the pay scale of the post of a trained teacher. That being a permanent disadvantage and monetary loss, nothing would be derived according to the Petitioner if she accepts, the order passed on 29th April, 2015 putting an end to her service at the age of her attaining 55 years.

7. We have noted this limited contention of Mr. Nalawade and what we find is that the impugned order dated 17th November, 2011 confirms the earlier order passed on 3rd June, 2011. That order says that the Petitioner, though at the relevant time was serving as a teacher and entitled to pay scale commensurate with her experience, she now been brought down to the minimum pay scale of a trained teacher permanently. However, it was clarified that the yearly increases would be admissible to her on the basis of her minimum pay scale as notified and directed in that order.

8. With this clarification expressed in the impugned order itself, then we have no hesitation rejecting the argument of Mr. Nalawade. The apprehension of the Petitioner is baseless. It is not as if minimum pay scale of the trained teacher and to which she has been brought down permanently would mean no increment or benefit of increased pay can be claimed by the Petitioner. It only means that she has been brought down to a minimum pay scale of the post of trained teacher. If at that pay scale any further increments are admissible to the Petitioner, it is not as if she would be deprived of the same. She cannot be held to be deprived of the benefits because

her entitlement is not frozen to a particular figure nor she has been deprived of any increments, benefits and allowances which are admissible to a trained teacher. Therefore, while she retires at the age of 55 years in terms of the order passed that does not visit her with any stigma but the benefits available to any Municipal employee on attaining the age of superannuation would be available to her in terms of the clear language of Rule 205 and the note below it. It would be apparent that Petitioner would be paid the Provident Fund, Pension etc. in terms of the pay scale admissible to a trained teacher together with all increments and other benefits earned after the order passed by the Education Officer. There would be thus no monetary loss, neither deprivation, nor the Petitioner's entitlement is frozen.

9. In the light of the fact that there is no apprehension and as held above and the Petitioner agreeing to accept the retirement from the Municipal services at the age of 55 years, we dispose of this Writ Petition based on her acceptance but with the above clarification.

10. All concerned to act on the authenticated copy of this order.

11. If any amounts are due and payable and are not released in favour of the Petitioner, they shall be released as early as possible and within a period of four weeks from the date of receipt of copy of this order.

12. The Writ Petition stands disposed of as such.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)