

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2470 OF 2007

1. Pandharinath s/o. Manoharrao Bandawar,
Age 56 years, Occu. Service as Accountant
in Municipal Council,
Mukhed, District Nanded
2. Dinkar s/o. Sitarampant Joshi,
Age 56 years, Occu. Service as Accountant
in Municipal Council, Dharmabad,
District Nanded.

....Petitioners.

Versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
2. The Divisional Commissioner &
Regional Director of Municipal
Administration, Aurangabad
Division, Aurangabad.

....Respondents.

Mr. P.P. Deshmukh h/f. Mr. S.S. Nandewar, Advocate for petitioners.

Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 and 2.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 04, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed by two employees of Municipal Council, Mukhed and Dharmabad, District Nanded under Article 226, 14 to 16 of the Constitution of India, challenging sub-rule 1 (i) of Rule 5 contained in Government Resolution (hereinafter referred to

as 'GR' for short) No. MCO./1203/1246/CR-175/03/UD.14, dated 11th January 2007 issued by Urban Development Department, Government of Maharashtra. It is the contention of the petitioners that the said provision is ultra-virus in view of Articles 14 and 16 of the Constitution of India. Both the sides are heard.

2) The Rule from the aforesaid GR is as follows :-

(5) ***Absorption of Existing Employees in the State Service :***

(1) Every Existing Employee in Municipal Council -

(i) who has not completed 50 years of age on the appointed day;

(ii) who fulfills the respective conditions and possesses the qualification and experience laid down in Appendix II as may be relevant for absorption in the applicable Grade of a service;

(iii) whose work and conduct on a post held in a Municipal Council, immediately before the appointed day, in the opinion of the Absorption Authority, was satisfactory;

(iv) Provided that, an existing employee who was appointed in accordance with the Rules framed under the provision of sub-section (3) of Section 75 as the case may be sub-section (3) of Section 76 of the Act.

(v) against whom no departmental enquiry is pending,

shall be entitled to be absorbed in a Grade of a Service

having salary equal to the existing scale of pay in the Municipal Council; or the lower scale of pay on which the employee was appointed as per the provisions of the said sub-section (3) of section 76 of the Act.

2) *Exercise of option :-*

(a) Every eligible Existing Employee who immediately before the appointed day, was working in a Municipal Council shall have the option either -

- (i) to be absorbed in the State Services, or
- (ii) not to be absorbed in the State Services.

(b) The option under sub-rule (a) shall be exercised in writing and communicated to the respective Absorption Authority within three months from the date of publication of these rules along with a resolution of the concerned Municipal Council agreeing to relieve the Existing Employee, if he is found fit for absorption, and to pay the pension and leave salary contribution and to transfer the sums lying in the Relevant Provident Fund Account alongwith the suitable interest as may be determined by the appointing authority.

(c) If the employee fails to communicate his option to the Absorption Authority within the period specified in sub-rule (b), that employee shall deemed to have not been opted and shall be treated as unwilling for absorption.

(d) On receipt of the option, the Absorption Authority shall acknowledge the receipt thereof.

(e) The option once exercised by the Existing

Employee shall be final.

3) The Absorption Authority shall examine the eligibility of each Existing Employee as per the criteria laid down above, and where found eligible shall forward the same to the Director for inclusion in the list of eligible Existing Employees.

4) A list of eligible Existing Employees who have opted for absorption shall be prepared by the Director.

5) The interse seniority of eligible Existing Employees in each Grade of each service in which they are to be absorbed shall be determined on the basis of the period of continuous service rendered by them in the scale of pay equivalent to or higher than the scale of pay of the Grade on which they are to be absorbed.

6) The vacancies in the Service, as and when they occur, shall be filled by appointment of an Existing Employee whose name appear in the list prepared as per sub rule (4) above. Their appointment will be strictly based on the seniority in the above list, and will continue till the above list is exhausted."

3) The submissions made show that there was agitation of the employees of the Local Body who were similarly placed due to the condition of 50 years of age given in the aforesaid Rule and after that, the Government raised the age to make it 53 years. The

submissions made and the other record like the record of calling objections of the employees and also the reply of the respondents show that as the scheme was for the benefit of employees, no objection was taken. On the contrary, one objection was received which was to the effect that instead of making the age as 50 years, it should be 45 years. Thus, the scheme was for the benefit of employees of Local Body and it was rightly accepted by the employees.

4) The submissions made for the petitioners show that they have grievance that for the post of Chief Officer of Municipal Council, who could have also given similar option to the Government, there was no such age limit. The submissions made show that there was age limit created for Class III and Class IV posts only. It was a policy decision of the State Government and it can be said that for a particular group, particular age was fixed by the State Government as a condition precedent. Group of Chief Officers is totally different, involving different work which they are required to discharge and also the procedure which was adopted for their initial appointment. When such matter comes before the Court and different conditions are given for two different groups, ordinarily the Court is expected to go with the presumption that the Government had considered the suitability of the employees for absorption and it also needs to be

presumed that Government had considered the possibility of rendering unsuitable employees of particular class for such absorption after crossing a particular age. When one man goes from Local Body to the Government, he needs to have time to learn the things in new office. The experience of the man in Local Body may not be of use when he starts working in Government Department. All these factors must have been considered by the Government. Thus, it cannot be said that the aforesaid different approach of the Government for two different classes of employees is against the provisions of Articles 14 to 16 of the Constitution of India. The learned counsel for petitioners placed reliance on some observations made by the Apex Court in the case reported as **AIR 1986 SC 1035 [Indravadan H. Shah Vs. State of Gujarat and Anr.]**. In that case, in view of the facts of that case, the Apex Court held that the provisions of Rules under challenge were irrational, arbitrary and unreasonable. Those observations are of no help in the present matter as the petitioners belongs to different class and the facts of the present matter are different. In the result, the petition stands dismissed. Rule stands discharged.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]