

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 4845 OF 2019

1. Jalindar Baburao Munjal
2. Kisan Kondiba Gogawale
3. Bhau Tukaram ShindePetitioners
V/s.
The State of Maharashtra and Ors.Respondents

ALONG WITH

WRIT PETITION NO. 4859 OF 2019

- Sudam Nivrutti KondharePetitioner
- V/s.
- The State of Maharashtra and Ors.Respondents

ALONG WITH

WRIT PETITION NO. 1165 OF 2021

1. Pandurang Ramchandra Tambe
 2. Rajaram Kalu Kedari
 3. Sanjay Sadashiv Bendre
 4. Pune Mahanagarpalika Kamgar Union
(a registered trade Union through
its President)Petitioners
- V/s.
- The State of Maharashtra and Ors.Respondents

APPEARANCES :

Mr. Susheel Mahadeshwar i/by. Mrs. Ranjana Todankar, Advocate for the petitioners.

Mrs. N.M. Mehra, AGP for State-respondent no.1.

Mr. Vishwanath Patil, Advocate for respondents no.2 to 5.

**CORAM : S.V. GANGAPURWALA, ACTING CJ.
SANDEEP V. MARNE, J.**

RESERVED JUDGMENT ON : 17th APRIL, 2023.

PRONOUNCED JUDGMENT ON : 2nd MAY, 2023

JUDGMENT (Per : Acting Chief Justice)

1. The common issue involved in the present petitions is about the retirement age of Leading Fireman/Tandel working in Pune Municipal Corporation. The grouse of Petitioners is that the post of Leading Fireman/Tandel was earlier a Class-IV post and therefore age of 60 years was fixed for retirement. They are aggrieved by action of the Municipal Corporation in curtailing the age of retirement to 58 years on account of subsequent reclassification of the post as Class-III. The issue that we have been called upon to decide in the present petitions is about the exact age at which Leading Firemen/Tandel would retire from services of Pune Municipal Corporation.

2. Appearing for petitioners, Mr. Mahadeshwar the learned Counsel would submit that notification of Pune Municipal Corporation Services (Recruitment and Classification of Services) Rules, 2014 (**Recruitment Rules, 2014**) cannot have any impact on

the age of superannuation of Leading Fireman/Tandel. That the age of retirement of various municipal servants has been provided for in the Municipal Service Regulations, 1954 (**Service Regulations, 1954**) formulated under the provisions of Section 465 of the MMC Act. That the Recruitment Rules, 2014 do not have the effect of superseding the provisions of the Service Regulations 1954. Therefore the Service Regulations, 1954 still continue to subsist and operate, under which the post of Tandel is included in inferior service in Class-IV category. That therefore Leading Fireman/Tandel are entitled to serve upto the age of 60 years.

3. Mr. Mahadeshwar would further contend that Section 465(1)(g) of the MMC Act confers powers on the Standing Committee to frame Regulations laying down the age of retirement of the municipal servants. Confirmation of the Municipal Corporation is required in respect of those Regulations and not of the State Government. That the Service Regulations 1954 have been framed by the Standing Committee vide Resolution dated 27.02.1954, which came to be confirmed by the Municipal Corporation vide Resolution dated 26.03.1954. That the Municipal Corporation could formulate Recruitment Rules, 2014 only in respect of those posts where appointments can be made by the Municipal Corporation, whereas the Corporation formulated Recruitment Rules in respect of all the posts in the Corporation. That the Regulations prescribing qualifications required for appointment to posts other than the posts specified in Section 457(3) of the Act can be framed only by the Standing Committee and

that therefore the Recruitment Rules, 2014 (which are not framed by the Standing Committee) are in violation of Section 465(1)(a). That therefore the Recruitment Rules, 2014 cannot have the effect of altering the age of retirement of Leading Fireman/Tandel.

4. *Per-contra*, Mr. Patil the learned counsel appearing for the Municipal Corporation would oppose the petition. He would submit that the Recruitment Rules, 2014 supersede the Service Regulations 1954. That the post of Leading Fireman/Tandel has been classified as Class-III post under the Recruitment Rules, 2014 and therefore the age of retirement of incumbents holding that post would be 58 years. That Petitioners have enjoyed other service benefits flowing out of classification of post of Leading Fireman/Tandel as Class-III, such as higher pay-scale and therefore they cannot contend that the post would still continue to remain Class-IV. He would submit that under the Fifth Pay Commission pay scales, the post of Leading Fireman/Tandel was in the scale of 3050-7150 and that as per the Government Resolutions dated 02.07.2002 and 27.05.2016, the posts carrying the pay-scales within range of 4400 to 8999 are classified as Group-C posts. That only those posts for which pay scale is below the limit of 4399 (such as 2650-4000 or 2610-4000) are classified as Group-D posts. He would pray for dismissal of the petition.

5. Brief facts of the case as captured from pleadings filed by the parties are that the Service Regulations, 1954 came to be formulated by Pune Municipal Corporation under the provisions of

Section 465 of the Maharashtra Municipal Corporations Act, 1949 (**MMC Act**). The Service Regulations, 1954 deal with various aspects including classification of posts, age of the retirement of municipal servants, etc. While the age of retirement for municipal servants in superior service came to be fixed in the Service Regulations, 1954 at 58 years, the age of retirement for municipal servants in inferior service came to be fixed at 60 years. In the Service Regulations, 1954 the post of Tandel came to be included in inferior services. Thus, under the Service Regulations, 1954, an incumbent holding the post of Tandel would retire on attaining the age of 60 years.

6. Petitioners came to be appointed on the post of Fireman in the Pune Municipal Corporation on various dates. They were promoted to the post of Leading Fireman/Tandel during the course of their services. Since the Service Regulations, 1954 prescribed age of retirement of Tandel as 60 years, Petitioners expected their continuance in service till they attain the age of 60 years.

7. By Government Resolution dated 02.07.2008, the State Government directed various Municipal Corporations to formulate Recruitment Rules under Section 457(3) of the MMC Act. Accordingly, Pune Municipal Corporation prepared Draft Recruitment Rules for various services and placed the same before the General Body, which adopted Resolution No. 131 dated 23.08.2010 for publication of draft Recruitment Rules in the newspapers for inviting suggestions and objections. Accordingly, public notices were issued by the Municipal Corporation in various

newspapers on 02.09.2010 inviting suggestions and objections. The Municipal Corporation thereafter effected few modifications in the draft rules by incorporating the suggestions and objections so received and placed the same before the General Body, which adopted Resolution No. 119 dated 01.06.2012 sanctioning the Recruitment Rules. The Recruitment Rules so sanctioned by the General Body of the Municipal Corporation were sent for approval to the State Government.

8. By Government Resolution dated 26.08.2014, the State Government was pleased to grant approval to the Recruitment Rules under the provisions of Sections 454, 455 and 465(1)(l) of the MMC Act. This is how Pune Municipal Corporation Services (Recruitment and Classification of Services) Rules, 2014 came into effect from the date of publication in the Official Gazette.

9. Under the Recruitment Rules, 2014, the post of Leading Fireman/Tandel came to be classified as Class-III post. Despite such classification in the year 2014 itself, it appears that the Municipal Corporation did not take cognizance of change in the classification and continued applying 60 years as the age of superannuation for incumbents holding that post. Sometime in February 2019, the Municipal Corporation noticed the changed classification and the issue about the exact age of retirement for the post of Leading Fireman/Tandel was deliberated amongst its various hierarchical Officers. After deliberations, order dated 29.03.2019 came to be passed by the Deputy Commissioner (General Administration) of the

Municipal Corporation directing that the age of retirement for Leading Fireman/Tandel would be 58 years. By that order, a list of 3 Petitioners in Writ Petition No. 4845/2019, who were slated to retire during the period between 1.04.2019 to 31.03.2020 was also published.

10. Issuance of order dated 29.03.2019 triggered filing of Writ Petition No. 4845/2019 by three petitioners working on the post of Leading Fireman/Tandel. By interim order dated 29.05.2019, this Court was pleased to stay the order dated 29.03.2019, on account of which the three petitioners continued in service despite crossing age of 58 years on 31.05.2019. They continued in service till attaining the age of 60 years and retired from service during the pendency of the present petition on 31.05.2021.

11. Writ Petition No. 1165/2021 has been filed by three petitioners working on the post of Leading Fireman/Tandel. They were to retire on attaining the age of 58 years on 31.05.2021 (Petitioners No.1 and 2) and 31.08.2021 (Petitioner No.3). This Court passed interim order dated 22.04.2021 restraining the Municipal Corporation from retiring the petitioners from services. Accordingly, petitioners in Writ Petition No. 1165/2021 continued to remain in service of the Municipal Corporation and are expecting their retirements on attaining the age of 60 years for Petitioners No.1 and 2 on 31.05.2021 and for Petitioner No.3 on 31.08.2021.

12. Writ Petition No. 4859/2019 has been filed by one

petitioner (Sudam Nivrutti Kondhare) who was slated to retire on attaining the age of 58 years on 31.07.2018 and came to be retired vide order dated 8.03.2019. He has filed the petition after passing of his retirement order praying for continuation of his service till attaining the age of 60 years on 31.07.2020. Since he had already retired before filing of his petition, there was no question of granting any interim relief. During pendency of the petition, he has already attained the age of 60 years on 31.07.2020.

13. We have considered the submissions canvassed by both the sides. From the submissions advanced, there appears to be a debate about supremacy between provisions of Service Regulations, 1954 and Recruitment Rules, 2014. While Petitioners contend that Service Regulations 1954 continue to subsist and would prevail over the Recruitment Rules, 2014, it is the contention of Municipal Corporation that Service Regulations 1954 have been superseded by provisions of Recruitment Rules, 2014. Both the set of Rules and Regulations have been framed under the provisions of MMC Act. It would be therefore necessary to consider the relevant provisions of the MMC Act.

14. Section 454 of the MMC Act confers power on the Municipal Corporation to add and alter Schedule-D, which reads thus :

“454. Alteration of and additions to Schedule.

The Corporation may add to the Schedule D rules not inconsistent with the provisions of this Act (which expression shall in this section be deemed not to

include the said Schedule) to provide for any matter dealt with or for any of the purposes specified in the said Schedule; and may subject to the same limitations, amend, alter or annul any rule in the said Schedule;

Provided that if any rule regarding the punishment of an offence is altered or amended the punishment awarded under such altered or amended rule shall not exceed the maximum provided in section 468.”

15. Section 455 of the MMC Act confers power on the Municipal Corporation to make rules and reads thus :

455. Power to make rules subject to sanction of State Government.

(1) The power to make, add to, alter or rescind any rule under section 454 shall be subject to the sanction of the State Government and to the condition of the rules being made after previous publication.

(2) All rules made under section 454 shall be finally published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

(3) In addition to the publication required under sub-sections (1) and (2) the Corporation may determine in each case what further publication, if any, is required for rules made or proposed to be made.

16. Section 457 of the MMC Act provides for the purposes and the matters in respect of which Rules can be made by the Municipal Corporation. For our purposes, provisions of sub-section (3) of Section 457 are relevant, which reads thus :

“457. Matters in respect of which rules may be made.

In particular, and without prejudice to the generality of the powers conferred by section 454, rules made thereunder may provide for or regulate all or any of the following purposes and matters, namely :-

(1)....

(2)....

(3) Municipal Officers and Servants-

(a) The qualifications necessary for and the method of appointment to posts the power of appointment to which vests in the Corporation;

(b) the mode of appointment to other posts;

(c) the powers and duties of the Municipal Chief Auditor and his staff;

(d) the determination of the services under the municipality to be treated as essential services for the purposes of Chapter V.”

17. Section 465 of the MMC Act provides for framing of Regulations which are not inconsistent with the Act and the Rules, but which are in consonance with any Resolution that may be passed by the Corporation. Section 465 reads thus :

“465. Regulations.

(1) The Standing Committee shall from time to time frame regulations not inconsistent with this Act and the rules but in consonance with any resolution that may be passed by the Corporation-

(a) prescribing the qualifications required for appointments to posts in municipal service other

than those specified in sub-clause (a) of clause (3) of section 457;

(b) fixing the amount and the nature of the security to be furnished by any municipal officer or servant from whom it may be deemed expedient to require security;

(c) regulating the grant of leave to municipal officers and servants.

(d) authorizing the payment of allowances to the said officers and servants, or to certain of them, whilst absent on leave ;

(e) determining the remuneration to be paid to the persons appointed to act for any of the said officers or servants during their absence on leave ;

(f) authorizing the payment of travelling or conveyance allowance to the said officers and servants ;

(g) regulating the period of service of all the said officers and servants ;

(h) determining the conditions under which the said officers and servants, or any of them, shall on retirement or discharge receive pensions, gratuities or compassionate allowances, and under which the surviving spouse or children and, in the absence of the surviving spouse or children, the parents, brothers and sisters, if any, dependent on any of the said officers and servants, shall, after their death, receive compassionate allowances and the amounts of such pensions, gratuities or compassionate allowances;

(i) prescribing the procedure to be followed in removing from service or dismissing or otherwise

punishing any municipal officer or servant other than an officer who is appointed under section 40 or 45 or who is appointed to act in the place of such officer;

(j) authorizing the payment of contributions, at certain prescribed rates and subject to certain prescribed conditions, to any pension or provident fund which may, with the approval of the Standing Committee, be established by the said officers and servants or to such provident fund, if any, as may be established by the Corporation for the benefit of the said officers and servants ;

(k) prescribing the conditions under which and, subjects to the provisions of sub-section (2) of section 50, the authorities by whom the said officers and servants or any of them, may be permitted while on duty or during leave to perform a specified service or series of services for a private person or body or for a public body, including a local authority, or for the Government and to receive remuneration therefor ;

(l) in general, prescribing any other conditions of service of the said officers and servants.

(2)

(3) (a) No regulation under sub-section (1) or under clause (a) of sub-section (2) shall have effect until it has been confirmed by the Corporation and, if made under clause (h) of sub-section (1), until it has in addition been confirmed by the [State] Government ;

(b) regulations under Clause (c) of sub-section (2) shall be made in consultation with the Chief Auditor and shall not have effect unless sanctioned by the Corporation.

18. Under Section 457(3)(a) of the MMC Act, the Municipal Corporation is empowered to make Rules *inter-alia* providing for qualifications and method of appointment to posts, where power to make appointment vests with the Corporation. As against this, Section 465 of the Act empowers the Standing Committee to frame Regulations, which are not inconsistent with the Rules, *inter-alia* prescribing qualifications required for appointment to posts other than those specified in Section 457(3)(a). Thus provisions of Section 457 (power of Municipal Corporation to make Rules) and provisions of Section 465 (power of Standing Committee to frame Regulations) operate in separate and distinct fields. Furthermore, power to frame regulations by Standing Committee under Section 465 is subject to the caveat that the same cannot be inconsistent with the Rules. Also, the Rules under Section 457 can be framed by the Municipal Corporation in respect of the four areas specified in sub-section (3) viz. (i) qualifications and method of appointment to posts, where power of making appointment vests with the Corporation, (ii) the mode of appointment to other posts, (iii) the powers and duties of the Municipal Chief Auditor and his staff; (iv) the determination of the services under the municipality to be treated as essential services for the purpose of Chapter-V. As against this, the Regulations framed by the Standing Committee under Section 465 can provide for various other conditions of service, such as grant of leave, payment of allowances, travelling allowance, regulating the period of service etc. The Regulations can also provide for qualifications in respect of posts which are excluded by Section

457(3)(a) viz. where power to make appointments does not vest with the Municipal Corporation. Thus, there seems to be no conflict between the provisions of Section 457 empowering the Municipal Corporation to make Rules and Section 465 empowering Standing Committee to frame Regulations as both operate in distinct fields.

19. It is Petitioners' contention that since Recruitment Rules, 2014 are not framed by the Standing Committee, they violate the provisions of Section 465 of the MMC Act. The contention is erroneous as Recruitment Rules 2014 have been formulated under Section 457 of the Act, where only Municipal Corporation is empowered to make the Rules. There is no involvement of Standing Committee in making of Rules under Section 457. The Recruitment Rules 2014 are thus validly made by the Municipal Corporation and sanctioned by the State Government.

20. There also appears to be difference in relation to sanction of Rules of Section 457 and the Regulations under Section 465. The Rules made under Section 457 are required to be sanctioned by the State Government under the provisions of Section 455(1) of the Act. As against this, the Regulations framed by the Standing Committee under Section 465 are required to be confirmed by the General Body of the Corporation, (except Regulations covered by Clause (h) of sub-section (1)). Accordingly, the Service Regulations, 1954 have been framed by the Standing Committee and approved by the General Body of the Municipal Corporation under Section 465 of the Act. As against this, Recruitment Rules, 2014 have

been made by the Municipal Corporation under Section 457 and are sanctioned by the State Government under Section 455 of the Act.

21. It is trite that the Court should, as far as possible, avoid a construction which results in anomalies. The statute must be read as a whole and one provision of the Act should be construed with reference to the other provision in the same Act so as to make a consistent enactment of the whole statute.

22. The Recruitment Rules, 2014 and Service Regulations, 1954 are framed under the provisions of the MMC Act. They will have to be read harmoniously in a manner both co-exist. These Rules, 2014 and Regulations, 1954 cannot be read in a manner that one is rendered a dead letter. The question as to the relative nature of the provisions has to be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims *Generalia specialibus non derogant* (General things do not derogate from special things) and *Generalibus specialia derogant* (Special things derogate from general things). If a special provision is made on certain matter, that matter is excluded from the general provision. In case the conflict between two Sections of the statute or the Regulations and the Rules framed under one statute cannot be reconciled, the Court must determine which the leading provision is, and which the subordinate provision is, and which must give way to the other.

23. In the present case, Recruitment Rules 2014 do not provide for maximum age for retirement. The same is provided for in the Service Regulations 1954. The Recruitment Rules, 2014 however provide for classification of various posts while laying down the method of filling up the posts and eligibility criteria. The posts of Leading Fireman/Tandel is Class-III post under Recruitment Rules, 2014 whereas the same is Class IV post in Service Regulations, 1954. However, as provided in Section 465, the Regulations cannot be inconsistent with the Rules and they need to be in consonance with the Resolution passed by the Municipal Corporation. The General Body of the Municipal Corporation has adopted resolution approving the Recruitment Rules, 2014. Thus, to the extent there is some overlapping in relation to classification of post of Leading Fireman/Tandel, the provisions of Recruitment Rules, 2014 would prevail over the Service Regulations, 1954. Thus for the purpose of classification of post, provisions of Recruitment Rules, 2014 would be applicable, whereas for determining the age of retirement, provisions of Service Regulations 1954 would apply.

24. The Recruitment Rules 2014, depicts Tandel as Class-III post. The age of retirement of Class-III post even as per the Service Regulations, 1954 is 58 years. In view of that, the Tandel would retire at the age of 58 years.

25. In light of the above, the Petitioners' age of retirement would be 58 years. The Petitioners have worked on the post of Tandel even after the age of 58 years under the interim orders of the

Court. The salary paid to the Petitioners for the period they worked after the age of 58 years would not be recovered from the Petitioners by the Respondents. However, for pension purpose, the services of the Petitioners shall be counted till they attained the age of 58 years.

26. In the result, the Writ Petitions are dismissed.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

27. At this stage, the learned Counsel for the Petitioners seeks continuation of interim order.

28. We have already held that the age of retirement is 58 years. In light of that the request for continuation of interim order is rejected.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)