



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11943 of 2018

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GODHRA MUNICIPALITY

Versus

INDUPRASAD JAYSHANKAR PATHAK - SINCE DECEASED THROUGH
LEGAL HEIRS

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Appearance:

MR PREMAL R JOSHI(1327) for the Petitioner(s) No. 1

DECEASED LITIGANT(100) for the Respondent(s) No. 1

MR YV SHAH(813) for the Respondent(s) No. 1,1.1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 04/02/2020

ORAL ORDER

1. Leave to add the Director of Municipality, Gujarat State as a party respondent is permitted.

2. **Notice returnable on 10.02.2020.** Learned AGP waives service of notice for and on behalf of the respondent – State.

3. The present petition is preferred seeking following reliefs:-

“(A) Your Lordships will be pleased to admit and allow the present petition;

(B) Your Lordships will be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated 26/4/2018 passed by learned Labour Court number 2, Godhara below Exh. 43 in recovery application number 97/2013 at Annexure-A to this petition;



(C) Pending admission and final disposal of this petition, Your Lordships will be pleased to stay the implementation, execution and operation of the order dated 26/4/2018 passed by learned Labour Court number 2, Godhara below Exhibit 43 in recovery application number 97/2013;

(D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.”

4. It can be noticed that the Municipality was aggrieved by the order passed in Recovery Application No. 97 of 2013 on dated 26.04.2018. The respondent-workman had claimed for the difference in pension as per the Sixth Pay Commission for the period between 01.01.2006 to 31.12.2012 amounting to Rs. 2,94,756/- with 20% increase of pension from 1980 to 1990.

4.1. The Municipality moved an application under Rule 26(A) for recalling the ex-parte order which was allowed on 12.04.2017. Thereafter, once again ex-parte order came to be passed and hence, once again an application under Rule 26(A) was preferred, which was allowed on 28.08.2017.

4.2. The respondent approached this Court by preferring Special Civil Application No. 16514 of 2017 and this Court directed the Labour Court to dispose of the application within stipulated time period. Pursuant to the said order, on 26.04.2018 the Labour Court had partly allowed the application



and directed the Municipality to pay the difference of pension of Rs. 97,920/- towards Sixth Pay Commission and additional amount of Rs. 1,43,326/- towards pension with 8% simple interest. This order has aggrieved the Municipality and is before this Court.

5. The affidavit-in-reply has been filed by the respondent - the son of the deceased, that the deceased was 94 years old and was working as Record Clerk. His Recovery Application No. 97 of 2013 was to get the difference of revised pension as per the Finance Department, Government Resolution dated 13.04.2009 and not the arrears arising out of the Sixth Pay Commission. His grievance is that second time also the restoration application was preferred by the petitioner and the Court passed an order on 26.04.2018. Thereafter, Recovery Application No. 97 of 2013 was preferred to get the benefit of revised difference of pension as granted by the Finance Department, on completion of 80-85 years 20% increase is permitted so also 30% increase for the age group of 85-90 years and 40% increase for the age group of 90-95 years. Despite representation, nothing has been paid. The Municipality has also confused the issues and misguided on the ground of establishment expenditure incurred beyond prescribed limit of 48%.



5.1. Reliance is placed on the decision of SA Safai vs. State of Gujarat, reported in 2011 (2) GLR 1223.

5.2. It is the say of the respondent that the General Board Resolution No. 142 of the Municipality is indicative of paying pension to its employees as per the provisions of BCSR and has continued to pay till the death of the employee i.e. till 15.05.2019 as per the pay scale given under the Sixth Pay Commission. This has not been challenged.

5.3. In this background, the Labour Court in Recovery Application No. 97 of 2013 has already granted the amount. Much time has flown and it is his grievance that regardless of the complaint of 10 years, the revised pension cannot be denied by the Finance Department on the ground of showing excessive establishment expenditure beyond prescribed limit of 48% . The Finance Department, Government Resolution dated 13.04.2009 is relied upon by Labour Court, Godhara. Therefore, he has insisted on implementation of the order of the Court.

6. Rejoinder affidavit also has been filed raising all disputes.

7. This Court has heard learned advocates on both the sides and also had on 24.01.2020 requested the Member Secretary, Gujarat Legal Services Authority to make a request to the retired



senior officer from the office of the Director of Pension, rendering services at the legal clinic to work out the calculations, according to whom, neither side could produce any material indicating that the implementation of this had been from the year 2009 with the sanction of the Director of Municipality. Therefore, he was not sure as to whether the resolution dated 13.04.2009 would be applicable to the employees of the Godhara Municipality.

8. Let this aspect be clarified by the State by way of affidavit of the senior officer from the Director of Municipality, on the returnable date.

(SONIA GOKANI, J)

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