2020:GUJHC:11108

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. NIKUNJ KANARA, ASST. GOVERNMENT PLEADER(1) for the Respondent(s) No. 2
MR YV SHAH(813) for the Respondent(s) No. 1,1.1

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CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 19/02/2020
ORAL ORDER

1. The petitioner – Municipality challenges the legality, validity and proprietary of the order dated 26.04.2018 passed by the Labour Court No.2, Godhara in Recovery Application No. 97 of 2013 in the following factual backgrounds.

2. The respondent was serving with the petitioner as an Office Superintendent and continued to work for 36 years. He was born on 25.07.1924 and superannuated on 01.06.1982. At the time of making an application he was 90 years old.

2.1. He moved an application stating that Sixth Pay Commission has been implemented from 01.01.2006, however, the petitioner has implemented the Sixth Pay Commission from

01.01.2010 and the benefits are made available from 01.01.2012, thus, for the period from 01.01.2010 to 01.01.2012 no payment has been made. It is the say of the petitioner that even for the period from 01.01.2006 to 31.11.2012, the difference in pension and enhancement to the tune of 20% and 30% pension in the age group of 80-85 years and 85-90 years respectively is requested for in wake of the amendment in the pension rules and the respondent is erroneously held entitled.

2.2. The respondent also made an application to the Municipality which as per the Resolution No. 142/2014 implemented the Pension Rules in the year 1961-62. According to the respondent, it is now made the law and all the benefits arising from the same should be made available to the employees. Therefore, he sought the benefit of pension from 01.01.2006 to 31.12.2012 quantifying the same at Rs.2,94,756/- and enhancement of 20% for the age group of 80-85 years being Rs. 84,078/- and 30% enhancement from the year 85-90 making it to Rs. 2,10,678/-. He also further made a request for grant of interest at the rate of 12% per annum.

3. This had been resisted by the present petitioner on the ground that there is no pre-existing right, therefore, recovery application under Section 33(C)(2) of the Industrial Disputes Act

(hereinafter referred to as the 'ID Act') is impermissible. The respondent is pensioner for past 30 years. All benefits which are otherwise available to the Central and State Government Employees and made available to the Panchayat Employees have already been given to him. It is the say of the petitioner that prayer in Recovery Application No. 97 of 2013 was to get the difference of pension as per the Finance Department's Government Resolution dated 13.04.2009 and not the arrears of the Sixth Pay Commission. According to the petitioner, the respondent – pensioner has claimed difference in pension for the period between 01.01.2006 to 31.12.2012. The Urban Housing and Urban Development Department, State of Gujarat, Gandhinagar vide its Government Resolution dated 03.09.2010 resolved to extend the benefit of Sixth Pay Commission on certain conditions. The same had been granted by the Director of Municipality vide its order dated 18.10.2011 and the benefit of Sixth Pay Commission thus were permitted to be given to the employees of Godhara Municipality. This has been implemented from 01.01.2012 to all employees which has included the respondent.

4. It is the say of the petitioner – Municipality that it, vide its resolution dated 13.07.2013, postponed the benefits since

establishment expenditure exceeded 48%. However, once again from 01.10.2015, the benefits to all employees have continued. According to the petitioner, the employee has already died. It is one Mr. Vibhakar Induprasad Pathak – son of the deceased who is a practicing advocate at Godhara has filed the recovery application.

5. Before this Court also in affidavit-in-reply, it is admitted that the employee has already passed away, however, he is entitled to get the 20% revised difference of pension granted by the Finance Department on his completion of 80-85 years as per the resolution dated 13.04.2009. With an advancement of the age from 85-90 years, the increase is 30% and 40% increase for the age group of 90-95 years. The respondent expired on 15.05.2019. His nominee in the bank is his daughter.

6. This Court notices that after hearing both the sides, the Court issued recovery certificate for the amount of Rs. 2,41,246/-. This has been seriously disputed by the petitioner herein as according to the petitioner, the Sixth Pay Commission benefits have already been made available from the year 2011 therefore, there does not arise any question of asking for such benefit from 2006. It is only after the Director of Municipality approves the resolution which has been passed by the

Municipality on the sanction granted by the Finance Department, its implementation can start. It is not in dispute that the implementation has already started from 01.01.2012, so far as the Municipality is concerned after the Director of Municipality granted the sanction on 18.10.2011.

7. The Trial Court noticed that sum of Rs. 2,94,756/- as has been requested for by the former employee as a difference of Sixth Pay Commission starting from 01.01.2006 to 31.12.2012 and for the period thereafter. On the ground of his having advanced in the age, the Court held that he was wrongly disentitled for the enhanced amount at the rate of 20% and 30%. The Trial Court has calculated the amount accordingly and found the respondent entitled to the sum of Rs. 2,41,246/-. The difference has been worked out as Rs. 97,920/- as per the Sixth Pay Commission and Rs. 1,43,326/- further difference as per the increase in the age and corresponding percentages specified in the GR. The Court held that Rs.2,41,246/- is found entitled to with 8% interest and with a cost of Rs. 1,000/-.

8. In the opinion of this Court, firstly, if the aspect of maintainability of Section 33(C)(2) of the ID Act is to be taken, it is true that on merits nothing could be adjudicated by the Court. If at all, the parties are desiring for the recovery, there shall have

to be a pre-existing right and unless the adjudication under Section 10 of the ID Act is made, the parties will not be permitted to go directly for adjudication under Section 33(C)(2) of the ID Act.

9. As can be noted in the instant case, the Sixth Pay Commission has already been implemented, the State Government also has implemented it and the present petitioner after its resolution, on following the due procedure and on obtaining the sanction from the Director of Municipalities, has already implemented the same from 01.01.2012, therefore, if any amount in relation to the said resolution is left out or required to be given to the respondent, it is a matter of calculation only and there is no question of adjudicating the right of the parties and therefore, the respondent cannot be non-suited for his having preferred an application under Section 33(C)(2) of the ID Act.

10. So far as calculation is concerned, this Court notices from the chronology of the event that it is from 01.01.2012 the same has been applicable to all the employees present and past and it is not in dispute that the deceased also till he was alive has already received the amount of pension periodically. What all he is seeking is the difference in pension since he has crossed the age of 85 years and he was in the bracket of 85-90 years. The

resolution also permits this enhancement at this age. However, what requires is to be considered as to whether it can be given from 01.01.2006 till 15.05.2019.

11. Considering the fact that the Municipality has chosen to pass the resolution which has been approved by the Director of Municipality and implementation has come on 01.01.2012, no employee, present or past can insist on its implementation from 01.01.2006 as at that time the resolution had not been passed and neither accepted by the Director of Municipality nor by virtue of any other adjudicatory process permission was granted and hence, the entitlement of respondent is only from 01.01.2012.

12. The respondent shall be entitled to the enhancement of 20% on his attaining the age of 80 years and on his attaining the age of 85 years, this enhancement shall be 30% more and after 90 years, 40% slab will be applicable. Thus, according to his birth date, his age needs to be calculated and the difference would be required to be paid to the respondent.

13. Considering the fact that the respondent has already passed away and now the heirs of his are required to get the family pension, if his wife who is a family pensioner has also

attained the age beyond 80 years, she will be entitled to the additional pension. The quantum of pension and family pension available to the old pensioners and family pensioners is to be increased and calculated as per the Government Resolution of the Finance Department being No. PGR-1009-4-Pay Cell (M) dated 13.04.2009 as reproduced below for ready reference:-

Age of Pensioner / family pensioner	**Additional quantum of pension/ family pension**
From 80 years to less than 85 years	20% of revised basic pension/ family pension
From 85 years to less than 90 years	30% of revised basic pension/ family pension
From 90 years to less than 95 years	40% of revised basic pension/ family pension
From 95 years to less than 100 years	50% of revised basic pension/ family pension
100 years and more	100% of revised basic pension/ family pension

14. Let the calculations be made as per the above chart and the same shall be shared with the respondent. Any anomaly in the calculation if is found, the respondent shall be permitted to communicate to the Director of Municipality who shall oversee the entire process and the difference shall be paid to respondent within a period of 10 weeks' from the date of receipt of this order.

15. The present petition stands disposed of accordingly.

(SONIA GOKANI, J)

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