

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11201 of 2017**

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YASHVANTLAL MADHUBHAI PATEL & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR DIPAN DESAI(2481) for the Petitioner(s) No. 1,2,3,4,5,6

MS NIDHI VYAS, ASSISTANT GOVERNMENT PLEADER for the

Respondent(s) No. 1,2,3

MS. KRUTI M SHAH(2428) for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 30/04/2026****ORAL ORDER**

1. The matter was argued at length by learned advocates for the respective parties.

2. Pursuance to the order dated 03.02.2020 passed by this Court, the respondent No. 2 - Director of Municipality submitted its affidavit dated 29.01.2021, whereby informed this Court that upon proposal of respondent - Municipality, the respondent No. 2 vide its order dated 16.10.2017 passed an order whereby the Nagarpalika was directed to extend the benefit of 6th Pay Commission to its employee which includes the present petitioners. The relevant portion of the aforesaid affidavit more particularly Paragraph 9 reads as under:

" 9. I say and submit that, the office of the deponent has taken a decision on 16.10.2017 and grant the benefit of 6th Pay Commission to the all employees of the MandviNagarpalika which also

includes the present petitioners. A copy of the order dated 16.10.2017 is annexed herewith and marked as Annexure R-4."

3. As per the aforesaid order dated 16.10.2017, while permitting the Nagarpalika to extend the benefit of 6th Pay Commission to its employees the respondent No. 2 - Director of Municipality observed that the period from 01.01.2006 to 30.09.2017 would be considered as notional period for pay fixation. Since all the petitioners have retired prior to 30.09.2017, they have questioned the decision of the Director of Municipality granting the benefit notionally for the aforesaid period. This Court vide its order dated 21.09.2021 passed the following order:

"1. Learned advocate Mr. Dipen Desai for the petitioners has submitted that the State Authorities have already passed the order dated 16.10.2017 granting the benefit of 6th pay commission. However, the period from 01.01.2006 to 30.09.2017 is treated as notional. He has further submitted that the Nagarpalika is not implementing the aforesaid order.

2. Learned AGP is directed to file an appropriate affidavit explaining as to why the period from 01.01.2006 to 30.09.2017 as stated in the order 16.10.2017 is treated as notional.

3. Learned AGP shall also specifically tender explanation that whether the order dated 16.10.2017 is required to be implemented by the respondent Nagarpalika or not or the same remains only as to empty formality. In case, it is found that Nagarpalika is required to implement the orders of State Authorities, the authority should under take the necessary procedure for getting the order dated 16.10.2017 implemented by the respondent - Nagarpalika.

4. The matter is kept for hearing on 08.10.2021."

4. Apropos to the aforesaid order, the Mamlatdar, Office of the Commissioner of Municipality vide its affidavit dated 14.12.2021 submitted a sheet prepared by Chief Officer, Mandvi Nagarpalika, Dist: Surat for the period between 01.04.2017 and 31.03.2018 showing the total establishment cost of the Municipality. As per the aforesaid sheet for the year 2017-18, the establishment cost of Municipality was 90.46%, whereas the letter dated 07.02.2023 addressed by Municipality to the office of Regional Commissioner would show that for the very same year, the establishment cost of Municipality was 39.16% and for the subsequent years i.e., from 2018 - 2021 establishment cost of Nagarpalika was 34.42%, 40.74%, 33.65% respectively.

5. Prima facie, the basis of the aforesaid affidavit filed by the Mamlatdar is on a mistaken belief that the establishment cost of the Municipality in the year 2017-18 is beyond 48% i.e., 90.46%. Consequently, the basis of granting notional benefit by respondent No. 2 for the aforesaid period between 01.01.2006 and 30.09.2017 is on a wrong premise and needs to be reconsidered by the Director of Municipality, in light of the aforesaid facts and the figures which are available on record.

6. At this stage, Ms. Kruti Shah, learned advocate appearing for the Municipality also raised an objection

about entitlement of the petitioner to receive the benefit of 6th Pay Commission as according to her, none of the petitioners have worked on a sanctioned post and/or having an order showing that they were regularly selected by the Panchayat i.e., erstwhile Gram Panchayat.

7. Per contra, Mr. Desai, learned advocate would draw the attention of this Court that in past, the petitioners along with others have approached this Court by way of Special Civil Application No. 9623 of 2001 as they were not granted benefit of 5th Pay commission by the Panchayat. It is submitted that in the order dated 28.12.2001, it was specifically recorded by this Court that as per the affidavit of Panchayat, the persons/employees appointed between 10.07.1978 to 05.06.1984 in the service of the Panchayat shall be treated as confirmed as per the Government Resolution. The necessary proposal was sent to Government to sanction the post whereby the petitioners could have been accommodated.

8. Likewise, it is further submitted that even respondent - Municipality vide its resolution dated 23.10.2008 also authorised the Chief Officer/its President to send the proposal to the State whereby the petitioners and other similarly situated persons can be accommodated on the sanctioned post.

9. It appears that till date, no decision has been taken by the State for reasons best known to it.

10. At this stage, without further delving into the issue, the respondent No. 2 - Director of Municipality is directed to review its impugned decision dated 16.10.2017 in light of what is observed hereinabove and also to explain to this Court that whether the petitioners herein are entitled to get the benefit of 6th Pay Commission or not. Such exercise shall be undertaken by Director of Municipality within four weeks from today and its decision shall be placed on record before this Court on the next date of hearing.

11. Stand over to 09.06.2026.

SHAHANAZ

(MAULIK J.SHELAT,J)