

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 217 of 2021
With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2021
In R/SECOND APPEAL NO. 217 of 2021

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MUNICIPAL CORPORATION JUNAGADH

Versus

HARSUKH DAYALJIBHAI POPAT

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Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1
for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 21/10/2021

ORAL ORDER

ORDER IN APPEAL:

Heard Mr. H.S. Munshaw, the learned counsel appearing for the appellant.

The following substantial questions of law arise in this Appeal for consideration of this Court:

“(A) Whether the respondent who is released the benefits of first, second and third higher pay scales while in employment of Junagadh Municipal Corporation is entitled to the age of superannuation of 60 years meant for Class IV employee?”

“(B) Whether the respondent is entitled to a benefit of superannuation age of 60 years

though he has served as Sanitary Inspector till the date of his superannuation on 30.9.16?

(C) Whether the impugned Judgment and Decree are contrary to the provisions of Gujarat Civil Service Rules, 2002 laying down superannuation age for Class III employee as of 58 years?

(D) Whether the lower courts are justified in ordering to reinstate the respondent in service with full salary, dearness allowance and all consequential benefits though he has not served the authority pending the Suit No. 154/16 before the trial court?

(E) Whether the judgment and decree of the lower court to pay 100 salary, dearness allowance and consequential benefits without rendering work would nothing but unjust enrichment and result into bad precedent?”

The Appeal is **admitted**.

ORDER IN CIVIL APPLICATION:

Heard Mr. H.S. Munshaw, the learned counsel appearing for the applicant.

It is submitted by Mr. Munshaw that the respondent (original plaintiff) was born on 02.09.1958 and was recruited as Conductor in bus transport department of Junagadh Municipal Corporation-applicant herein on 12.07.1990. It was further submitted that on

closure of the transport department, the respondent was taken in another department as Class-IV employee on the ground that he was surplus in the said department. The work on the post of Sanitary Inspector cannot be termed as Class-IV employee. He further submitted that the respondent was due to superannuate on 30.09.2016 on the post of Sanitary Inspector. However, the respondent approached the Court below for for enhancement of the age of superannuation from 58 years to 60 years for being considered as a Class-IV employee. According to Mr. Munshaw, both the Courts below have committed an error in accepting the submissions of the respondent herein. The respondent was given the benefits of first and second higher pay scales being equivalent to the post of Senior Clerk i.e. Class-III employee.

In view of the above submissions, issue **Notice** returnable on **18.11.2021**. It is submitted by Mr. Munshaw that an execution application being Regular Civil Execution No. 22 of 2019 is instituted by the respondent.

The executing Court is directed to differ the said application till the next date of hearing.

The Registry is directed to call for the Record and Proceedings before the next date of hearing.

Direct service is permitted.

(VAIBHAVI D. NANAVATI,J)

Pradhyuman