



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7091 OF 2013

The Municipal Corporation of Gr. Mumbai ... Petitioner.

V/s.

Smt. Sudha Ramesh Shelar ... Respondent.

WITH

WRIT PETITION NO. 2540 OF 2014

Smt. Sudha Ramesh Shelar ... Petitioner.

V/s.

The Municipal Corporation of Gr. Mumbai ... Respondent.

Mr. P.M. Palshikar a/w Mrs. M.R. Bhoir i/by U. H. Kedar for the
Petitioner – (BMC) in WP No. 7091/2013 & for Respondent -BMC
in WP No.2540/2014.

Mr. Vidula Patil i/by Prakash Devdas for the Respondent in WP No.
7091/2013 and for Petitioner in WP No. 2540/2014.

CORAM : N. M. JAMDAR, J.

DATE : 16 APRIL, 2014

P.C. :

1 Writ Petition No. 7091 of 2013 is filed by the Municipal Corporation, challenging the order of the Industrial Court, setting aside the order of compulsory retirement of the Employee dated 31 August 2011 and writ Petition No. 2540 of 2014 is filed by the Employee challenging the part of the order of the Industrial Court wherein 100% back wages have been denied.



2 Considering the issues involved in the matters, Rule in both the Petitions.

3 Heard the parties for continuation of the ad-interim relief granted on 05 August 2013. On 5 August 2013, Learned Single Judge had passed the following order :

“PC:

1 Not on board. At the request of petitioner, matter is taken on board.

2 Heard the learned counsel for the parties.

3 By this petition under Article 226 and 227 of the Constitution of India, petitioner original respondent Corporation challenges the order dt.1.7.2013 passed by Industrial Court, Mumbai in complaint (ULP) No.265 of 2011.

4 The learned counsel for the petitioner states that Industrial Court by its order dt.31.7.2013 stayed the effect and implementation of the impugned order dt.1.7.2013 till 14.8.2013 subject to condition that the petitioner Corporation to deposit 25% of back wages for the period from 1.9.2011 to 31.7.2013 in the office of Industrial Court on or before 8.8.2013.

5 The learned counsel for the petitioner states that they will require further two weeks time to comply the order dt.31.7.2013 passed by Industrial Court.

6 After hearing both the sides, I am satisfied that the petitioner has made out a case for extension of interim protection granted by Industrial Court on 31.7.2013 till CMIS date.

7 Petitioner to deposit 25% back wages as directed by Industrial Court within two weeks from today. It is made clear that if the petitioner failed to deposit 25% back wages as directed by Industrial Court within stipulated time, respondent org. complainant will be at liberty to execute the order according to law.



8 *Matter to come up on board for admission as per CMIS date.*

9 *Interim protection granted by Industrial Court on 31st July, 2013 to continue till next date.*

10 *The learned counsel for respondent waives service.*

11 *In the meanwhile, advocate for petitioner to remove office objection failing which Writ Petition shall stand dismissed without further reference to the court.*

(K.K.TATED, J.)”

It is informed that 25% back-wages as directed are deposited.

4 The learned counsel for the Corporation submitted that there is no right in an employee to continue beyond the period of 55 years under the Rules framed by the Corporation. If in the opinion of the Corporation that it is in public interest to retire an employee after completion of 55 years, the Corporation has right to do so and such an employee will be deemed to have retired from service for the purpose of pensionary and other consequential benefits. The learned counsel for the Corporation has drawn my attention to the methodology adopted by the Corporation for effecting orders of compulsory retirement and the criterion laid down by the Committee. On the other hand, the learned counsel for the Employee submitted that the criterion laid down in the guidelines is not satisfied in respect of the Employee.

5 The report of the Review Committee is placed on record. The Review Committee has considered the last remark as regards the service of the employee which is 'average' and on that ground, the



committee has recommended compulsory retirement. It is the submission of the learned counsel for the Employee that other remarks which are found to be 'good' have not been considered.

6 The Service Rules and Regulations gives power to the appropriate authority to compulsorily retire an Employee in the public interest. The object of compulsory retirement is to ensure that the dead wood is removed. Power is to be exercised in public interest and efficiency of an employee is one of the considerations. The Review Committee has considered the last remark in respect of the Employee, which is 'average'. It is settled law that review of the decision to compulsorily retire an employee is extremely narrow.

7 The impugned order directing to withdraw the compulsory retirement has not been given effect to in view of the interim orders. The Employee stands compulsory retired at the age of 55. It is stated that the Employee would reach the age of 58 years on 31 August 2014. Considering the position discussed above, the request of the learned counsel for the Employee to vacate the stay granted in the petition cannot be accepted. If the Employee succeeds in the Petition, she will be compensated monetarily.

8 In the circumstances, the interim order dated 5 August 2013 operating in this petition shall continue till disposal of the Petitions.

(N.M.JAMDAR, J.)

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