REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1765 OF 2023

[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 18911 OF 2021]

Maharashtra Rajya Padvidhar Prathamik
Shikshak Va Kendra Pramukh Sabha ....Appellant

VERSUS

Pune Municipal Corporation and Ors. ....Respondents

JUDGMENT

Surya Kant, J.

Leave granted.

2. The issue that requires our consideration in this case is whether the services rendered by primary teachers while in the service of the Zilla Parishad (hereinafter "ZP") deserves to be counted towards their seniority after the transfer and merger of

their services into the Pune Municipal Corporation (hereinafter "PMC")?

FACTS :

3. The State of Maharashtra is vested with the power to specify a `larger urban area' of a municipal corporation under Section 3(1) of the Maharashtra Municipal Corporation Act, 1949 (in short, "MMC Act"). Such an area can further be altered by issuing a Notification under Section 3(3). The expression, "larger urban area" is defined under Article 243Q(2) of the Constitution, which says that:-

> "(2) In this article, "a transitional area", a "smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non- agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

4. State of Maharashtra in exercise of its powers under Section 3(1) of MMC Act decided to expand the territorial limits of the PMC and, consequently, the geographical area of 38 villages which were part of the Pune ZP were merged into the PMC with effect from 01.11.1999. Post the merger, primary teachers as well

as employees from other departments who were serving in those villages were given the option to have themselves transferred and absorbed into the services of PMC.

5. In this context, Sections 3(1) & 3(3) of the MMC Act being relevant are reproduced below: -

> "3. **Specification of larger urban areas and constitution of Corporations.** [(1) The Corporation for every City constituted under this Act existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the notification issued in respect thereof under clause (2) of Article 243-Q of the Constitution of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name "The Municipal Corporation of the City of....";
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> xxx xxx xxx
>
> (3) [(a)Subject to the provisions of sub-section (2), the State Government] may also from time to time after consultation with the Corporation by notification in the *Official Gazette*, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification.
>
> (b) Where any area is included within the limits of the [larger urban area] under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the [larger urban area] shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the City.
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> xxx xxx xxx"

6. Respondent Nos. 5 to 79 were working as Primary Teachers in the Pune ZP. They were appointed on different dates prior to 01.11.1999. They too were given option for their merger in the PMC. They opted to accede to the absorption and joined the PMC. It may be relevant to mention at this stage that with a view to regulate the conditions of service of employees who are merged from the Zilla Parishad to Municipalities, the State Government had passed a Resolution (hereinafter "GR") dated 13.08.1990, the relevant part whereof reads as follows: -

> "xxx xxx xxx
>
> government was considering whether to consider service provided for Zilla Parishad by said teachers should be considered for pay fixing, seniority, retirement benefit, etc.in Municipal Council/Municipal Corporation education department. Government is passing order now regarding same that, service in Zilla Parishad of primary teachers should be considered for pay fixing, seniority, retirement benefit, etc. in Municipal Council/Municipal Corporation service, who are transferred under rule in concerned Municipal Corporation/Municipal Council education board from concerned Zilla Parishad for reasons mentioned above. but concerned Zilla Parishad should accept liability of service prior to classification of concerned primary teachers. government grant shall be passed for. Zilla Parishad at the rate fixed thereon.
>
> 2. This government resolution is passed under official approval of town development department, village development department and finance department
>
> and under official reference - 1045 / number-cr-1045/ 86/ser-4, dated 18.8.1986 of finance department.
>
> xxx xxx xxx"
>
> (*sic.*)

7. The GR reproduced above unambiguously provides that the services rendered by teachers in a ZP shall be taken into consideration when fixing pay, seniority, retiral benefits etc. on their permanent transfer to Municipalities. Despite the seeming clarity on this point, there arose a dispute in respect to fixation of *inter se* seniority between the teachers who were initially recruited in the ZP and were later on absorbed into the PMC, as opposed to the primary teachers who had been part of the services of the PMC from the very beginning. There were a series of correspondence on this issue between the Chief Executive Officer of the ZP and the Administrative Officer, Shikshan Mandal of the PMC, including two letters dated 11.10.1999 and 02.07.2011. These communications do not appear to us of any legal consequence given the fact that the GR dated 13.08.1990 has not been rescinded, modified or superseded by any subsequent government resolution.

8. The Appellant is an Association formed by the primary teachers who were directly recruited by the PMC. Its members have an *inter* se seniority dispute with Respondent Nos. 5 to 79. A draft seniority list was circulated by the PMC which proposed

to assign seniority to Respondent Nos. 5 to 79 from the dates they joined service in the ZP. The PMC, however, reversed its tentative decision vide letter on 04.02.2017 which stated that Respondent Nos. 5 to 79 would be assigned seniority only from the date of their absorption into PMC. The private respondents raised objections against the aforementioned decision, which resulted in the constitution of a committee of five officers of the PMC for consideration of those objections. On the recommendations of the Committee a final seniority list was eventually issued on 20.02.2018 in which the seniority of Respondent Nos. 5 to 79 was fixed only from the date of their absorption into the PMC. For the sake of specificity, the outcome of the Committee's recommendations was that the service rendered by Respondent Nos. 5 to 79 in their roles within the ZP stood excluded from the length of their service.

9. Aggrieved, Respondent Nos. 5 to 79 approached the High Court and a Division Bench vide the impugned judgment dated 1st October, 2021 has allowed their writ petition in the following terms: -

> "52. A conjoint reading of Section 493 which provides for transitory provisions read with Clause 5 of Appendix IV clearly indicates that the service rendered by the officers

and servants before in the employment of the Municipality or the local authority immediately before the appended date shall be the officers and servants employed by the Corporation under the said Act and the services rendered by such officers and servants before the appointed date shall be deemed to be service rendered in the service of the Corporation. The second proviso to Clause 5 of Appendix IV empowers the Corporation to discontinue, the service of any officer or servant who in its opinion is not necessary or suitable to the requirements of the municipal service, after giving such officer or servant, such notice as is required to be given by the terms of his employment. Such discontinued employee shall be entitled to such leave, pension or gratuity as he would have been entitled to take or receive on being invalided out of service if this Act had not been passed.

53. It is not the case of the respondent no.1 or respondent no.3 that service of any of these petitioners were discontinued by the respondent no.1 under second proviso to Clause 5 of Appendix IV on the ground of not being suitable to the requirements of the municipal service or on the ground that their services were not necessary for the respondent no.1 – Corporation.

54. In our view, the said provision under Section 493 of the Maharashtra Municipal Corporations Act read with Clause S(c) of the Appendix IV would also apply in case of en bloc transfer of the property forming part of such village which were transferred to the Municipal Corporation along with the schools, employees and the students. In our view, the seniority of each of these petitioners thus will have to be counted from their initial date of appointment in the schools run by Zilla Parishad and not from the date of their transfer in the schools run by the respondent no.1 Corporation. The impugned order showing the petitioners below the then existing employees of the respondent no. 1 by considering the date of their transfer in the schools run by the respondent no.1 as the date of appointment is totally illegal and contrary to Section 493 read with Clause S(c) of Appendix IV thereto."

10. The Appellant Association, representing those primary teachers who have been recruited directly by the PMC and whose

seniority is adversely affected by the inclusion of the period spent by Respondent Nos. 5 to 79 in ZP towards their seniority after absorption into the PMC, has now filed this appeal.

SUBMISSIONS:

11. Mr. Vinay Navare, learned Senior Counsel for the Appellant advanced three submissions:

(i) Firstly, he argued that Respondent Nos. 5 to 79 were given a choice to either seek transfer into the PMC or to continue with their services in the schools run by the ZP. The respondent-teachers consciously made a choice to be assimilated into the PMC. Since this was a case involving 'voluntary transfer' rather than an 'administrative transfer', they cannot claim the benefit of their past service towards fixation of seniority.

(ii) Secondly, it was a case of expansion of the `larger urban area' belonging to the PMC and, hence, conditions of service of Respondent Nos. 5 to 79 shall remain protected only to the extent as provided under Section 3(3)(b) of the MMC Act. The said provision is conspicuously silent with respect to protection and

consideration of past service. Section 493 of the MMC Act read with Clause 5(c) of Appendix (IV) relied upon by the High Court will be attracted only in a case of newly constituted Municipality. That being not the case here, the High Court gravely erred in relying upon the said provision. Shri Navare explained that the legislative intent can be discerned from the fact that a provision similar to the first proviso to Clause 5(c) of Appendix IV, has not been added to Section 3(3)(b) of the MMC Act. Reliance was placed on ***Union of India v. Shiv Dayal Soin & Sons (P) Ltd.***[1], wherein the following was observed:

> ***"6.*** ..... As a canon of statutory interpretation, *expression unaus Est exclusion arteries*, what is expressly mentioned in one place but not in another must be taken to have been deliberately omitted. ....."

(iii) Thirdly, Shri Navare argued that the decision of PMC five-Member Committee, which unequivocally held that the date of joining the PMC would be the conclusive determinant for the purpose of *inter-se* seniority, was a quasi-judicial order which Respondent Nos. 5 to 79 did

[1] (2003) 4 SCC 695

not assail before any forum. Their acquiescence and long silence on the matter estop them from questioning the subsequently published final seniority list which was a step taken to comply with the decision of the Five Member Committee.

12. Learned counsel for Respondent No. 1, the PMC, also supported the cause of the Appellant and urged that in the event of granting the benefit of past service to Respondent Nos. 5 to 79, a cascading domino effect will be triggered which will lead to other employees of different departments who have been absorbed into PMC raising similar claims, thus, spawning an unending seniority dispute between different cadres.

13. On the other hand, Mr. Abhay Anil Anturkar, learned counsel for Respondent Nos. 5 to 79 strenuously opposed the Appellant's claim and urged that:

(i) First proviso to Clause 5(c) of Appendix IV, which is to be read into Section 493 of MMC Act, categorically provides that the service rendered by Officers and Servants before their date of appointment shall be deemed to be service rendered in the service of the

Municipal Corporation itself. In view of this statutory mandate, the High Court has rightly held that Respondent Nos. 5 to 79 are entitled to assign the seniority from the date they were appointed in ZP.

(ii) The Government Resolution dated 13.08.1990, in no uncertain terms, provides that on inclusion of the area of a ZP within the limits of Municipal Corporation, the transferred employees shall be entitled to the benefit of their past service towards fixation of pay, seniority and retiral benefits etc. This Resolution falls within the ambit of Article 162 of the Constitution, and is binding on all inferior authorities including the PMC. Since Respondent Nos. 5 to 79 were appointed in the ZP, their previous service cannot be ignored. He forcefully denied the Appellant's contention that it was a case of `voluntary transfer' and maintained that private respondents had no choice but to give their consent for absorption in PMC as all the schools where they were working had been transferred to within the municipal limits.

(iii) The Appellants have mis-quoted the contents of letter dated 11.10.1999. The true extracts of the letter are as follows:

> "xxx xxx xxx
>
> 4. Also, it is hereby ordered to absorb only those primary teachers who have consented for being transferred to the Pune Municipal Corporation and it is hereby requested to accommodate said primary teachers with Municipal Corporation.
>
> xxx xxx xxx"

(iv) Neither the Appellant nor the PMC invoked Section 3(3)(b) of MMC Act before the High Court and their reliance upon this provision has been made for the first time before this Court only.

(v) With regard to the claim raised by Appellant regarding acquiescence and estoppel, learned counsel countered by arguing that Respondent Nos. 5 to 79 were not obliged to challenge recommendations of PMC Committee specifically, given that they consequently objected to the culmination of those recommendations into the final seniority list dated 20th February, 2018, without any delay.

ANALYSIS :

14. We have considered the rival submissions made on behalf of the parties and have minutely examined the statutory provisions relied upon by both the sides. In our considered view, the following two questions need to be determined to resolve the controversy:

(I) Whether the *inter se* seniority of the primary teachers who were appointed in the ZP and were later on absorbed into PMC, vis-à-vis those primary teachers who directly joined PMC, is to be determined in accordance with Section 3(3)(b) of the MMC Act?;

(II) Alternatively, should such *inter se* seniority be determined in accordance with Section 493 read with Clause 5I of Appendix IV of the MMC Act?

Question No. I:

15. On a cursory look of the legislative scheme behind the MMC Act, it is evident that Section 3 falls in Chapter 1, which is captioned as 'PRIMARY'. Since, the MMC Act was enacted in 1949, it has been suitably amended from time to time, especially

after the insertion of Part IX-A 'Municipalities' in our Constitution with effect from 01.06.1993. Article 243Q(1) mandates that, in every State, the following would be constituted: (a) A nagar panchayat, for a transitional area, namely, an area in transition from rural to urban area; (b) a municipal council for a smaller urban area; and (c) a municipal corporation for a larger urban area. The obligation was placed on every State under sub-Article (2) of Article 243Q to define 'transitional area', 'a smaller urban area' or 'a larger urban area'. It is in discharge of this Constitutional obligation that the State of Maharashtra also amended the MMC Act thereby providing under Section 3(1) that a `larger urban area' shall be specified by way of a Notification to be issued under Article 243Q(2) of the Constitution, and such an area shall be deemed to be a duly constituted Municipal Corporation. Sub-Section (3) further provides that the State Government, in consultation with the Corporation, may include or exclude an area from within the limits of the Municipal Corporation. It is in this context that Clause (b) of sub-section (3) provides that when an area is included within the limits of the `larger urban area', any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, by-laws

issued, imposed or granted, under the MMC Act or any other law which is for the time being in force in the larger urban area shall, notwithstanding anything contained in any other law, apply to and be in force in the additional area, from the date that area in question is included in the city. To simplify, Clause (b) merely states that whatever appointments, notifications, notices, rules or by-laws etc. are already in force in the existing 'larger urban area' will *mutatis mutandis* come into force in the "additional area" which is included by issuing a notification under Clause (a) of Section 3(3) of the MMC Act.

16. The purpose of Clause (b) is to ensure that any statutory or administrative decision which has already been enforced by a Municipal Corporation in its existing larger urban area shall stay in force and will become applicable automatically in the newly added area also. The expression 'appointments' has to be understood in this context only.

17. The scope of Clause (b) as a provision is meant to facilitate the inclusion of newly added additional areas and to ensure that such areas do not remain in a vacuum for want of statutory or administrative decisions following the cessation of its status as

part of the ZP. Clause (b) of Section (3)(3) is not concerned with the protection of conditions of service of the employees of the ZP who are absorbed into a Municipal Corporation. When the Legislature never intended to regulate terms and conditions of the employees who are merged in a Municipal Corporation due to expansion of `larger urban area', no inference in relation thereto can be drawn from the plain wording of Section 3(3)(b) of the MMC Act. The reliance placed by the Appellants on the said provision is, thus, completely misplaced and is liable to be rejected.

Question No. II:

18. Section 493 of the MMC Act reads as follows: -

> "**493. Transitory provisions.-** The provisions of Appendix IV shall apply to the constitution of the Corporation and other matters specified therein."

It may be seen that the provisions of Appendix (IV) shall apply to the constitution of the Corporation and other matters specified therein. Clause (1) of Appendix (IV) pertains to 'construction of reference in other enactments' whereas Clause 2 provides that all rights of the municipality or any other local authority shall, on the date in question, vest in the Corporation

constituted for the said area. Clauses (3) and (4) deal with 'sums due' and 'debts, obligations, contracts and pending proceedings', respectively.

19. Clause (5) thereafter reads as follows:-

"**APPENDIX IV**

TRANSITORY PROVISIONS

1. Construction of references in other enactments. ....

2. Transfer of rights.- ...

3. Sums due. - ....

4. Debts, obligations, contracts and pending proceedings. - ....

5. Continuation of appointments, taxes, budget estimates, assessments, etc. – Save as expressly provided by the provisions of this Appendix or by a notification issued under paragraph 22 or order made under paragraph 23, -

(a) any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under (the area constituted to be a City immediately, before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be;

(b) all budget estimates, assessments, valuations, measurements, and divisions made under (the Maharashtra Municipalities Act, 1965) or any other law in force in any area constituted to be a City immediately before the appointed day shall in so far as they are consistent with the provisions of this Act, be deemed to have been made under this Act;

(c) all officers and servants in the employ of the said municipality or local authority immediately before the

appointed day shall be officers and servants employed by the Corporation under this Act and shall, until other provision is made in accordance with the provisions of this Act, receive salaries and allowances and be subject to the conditions of service to which they were entitled to subject on such date:

Provided that service rendered by such officers and servants before the appointed day shall be deemed to be service rendered in the service of the Corporation:

Provided further that it shall be competent to the Corporation to discontinue the services of any officer or servant who, in its opinion, is not necessary or suitable to the requirements of the municipal service, after giving such officer or servant, such notice as is required to be given by the terms of his employment and every officer or servant whose services are so discontinued, shall be entitled to such leave, pension or gratuity as he would have been entitled to take or receive on being invalided out of service if this Act had not been passed."

[Emphasis applied]

20. Clause 5, thus, deals with 'continuation of appointments', taxes, budget estimates, assessments etc.' and its Sub-Clause (C) specifically says that all officers and servants under the employment of a municipality or local authority immediately before the appointed day shall be officers and servants employed by the Corporation under this Act and shall, subject to other provisions made in accordance with the provisions of this Act, receive salaries and allowances and be subject to the conditions of service which were operative on such date. The first proviso provides, crucially, that service rendered by such officers and

servants before the appointment date shall be deemed to be service rendered in the service of the Corporation itself.

21. There is no dispute regarding the fact that Clause 5(c), including its first proviso, occupies this field of law till date. The provision explicitly deals with protection of conditions of service of the officers and servants who were earlier employed in a local authority like a ZP, and who have been subsequently absorbed into a Municipal Corporation. It expressly protects their service rendered by them in the local authority before the appointed day and further provides that it shall be considered as service rendered in the Municipal Corporation itself. Given the existence of this unambiguous provision, the only logical conclusion is that the service rendered by Respondent Nos. 5 to 79 in the ZP has to be treated as service rendered in the PMC. Such service, therefore, has to be counted towards the determination of their seniority as well. There is no infirmity in the view taken by the High Court in this regard.

22. Additionally, Clause (5) of Appendix IV starts with the expression 'continuation' of appointments. The word 'continuation' connotes 'without interruption'. It is an unbroken

and consistent state of affairs or operation of something. In other words, the service rendered by Respondent Nos. 5 to 79 in the ZP is consistent and unbroken and it remains in existence even after their absorption into the PMC as a result of the statutory protection embodied under Clause (5) of Appendix (IV) read with Section 493 of the MMC Act.

23. The appellant's attempt to invoke estoppel against Respondent Nos. 5 to 79 for their failure to challenge the report of the PMC Committee does not assist its case. Firstly, the PMC Committee was not competent to make any administrative recommendation *dehors* the Government Resolution dated 13.08.1990. Secondly, the cause of action to launch the challenge arose in the first place only when final seniority list was issued on 20.02.2018. Soon thereafter, Respondent Nos. 5 to 79 approached the High Court, thus, dispelling any notion of them having slept on their rights. They cannot be said to have acquiesced to the adverse decision taken against them and neither there is any delay or latches on their part. Appellant's objection on this ground is untenable and must be rejected.

CONCLUSION:

24. For the aforementioned reasons, we do not find any merit in this appeal which is, accordingly, dismissed.

25. All pending applications, if any, stand disposed of.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
MARCH 17, 2023.