

MUNICIPAL COMMISSIONER, JAMNAGAR MUNICIPAL CORPORATION AND ANR. A

v.

R. M. DOSHI

(Civil Appeal No. 6069 of 2012) B

MAY 02, 2023

[M. R. SHAH AND J. B. PARDIWALA, JJ.]

Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971 – Rule 6 – Respondent was discharging his duty as city engineer of the appellant-Municipal corporation – Respondent was charged with irregularities in the execution of work and construction of roads – Commissioner of the Municipal Corporation passed a dismissal order against the respondent – Respondent challenged the dismissal order before the High Court, arguing that the Commissioner lacked the authority and jurisdiction – Appellant corporation submitted that under Resolution No.51, the commissioner had passed the final order and his order was ratified by the General body of corporation – Single Judge of the High Court quashed the dismissal order based on the lack of authority of the Commissioner – The Division Bench upheld the decision of the Single Judge – On appeal, held: The High Court have rightly observed that the Resolution No.51 did not authorize and confer any power upon the Commissioner to take action with respect to any other lapses other than the purchases – However, the General Board had the power to pass an order of dismissal and the decision of the Commissioner was placed before the General Board and the decision was ratified – Therefore, the dismissal can be said to be an order passed by the General Board – Judgment of High Court quashed and set aside – Order of dismissal restored. C D E F

Allowing the appeal, the Court

HELD: 1. The submission on behalf of the appellant Corporation that *vide* Resolution No. 51 dated 20.11.1998, the Commissioner was authorized to take action against any officer with regard to the lapses and/or negligence on the part of the officers in various works and purchases is concerned, on going through the Resolution No. 51, it appears that though the issue G H

A raised was with regard to the lapses and negligence on the part of the officers in various works and purchases and was discussed, however, ultimately, what was resolved was to empower the Commissioner to take proper and necessary action against those erring officers, who committed lapses and carelessness in various works in purchases and take action as per the rules and regulations, wherever, necessary. Therefore, the Commissioner was authorized to take action against the erring officers with respect to the lapses and carelessness with various works in purchases only. Therefore, both the Single Judge as well as the Division bench of the High Court have rightly observed and held that the Resolution No. 51 did not authorize and/or confer any power upon the Commissioner to take action with respect to any other lapses other than the purchases. However, at the same time, it is required to be noted that the decision of the Commissioner was placed before the General Board and the General Board *vide* its Resolution No.56 dated 15.12.1998 as amended by subsequent Resolution dated 30.12.1998, ratified the decision of the Commissioner dismissing the respondent from service. In the present case, the General Board had the power to pass an order of dismissal, which is not even disputed by the learned counsel appearing on behalf of the respondent. The decision of the Commissioner was placed before the General Board and the General Board had ratified the said decision. Therefore, thereafter, the dismissal can be said to be an order passed by the General Board. [Para 7.1][1115-C-G; 1116-A-B]

2. Applying the law laid down by this Court in the case of *Pannalal Choudhury* to the facts of the case on hand, any irregularity complained of by the respondent on the authority exercised by the Commissioner to dismiss him stood ratified by the competent authority (General Board) thereby making an invalid act a lawful one in conformity with the procedure prescribed under the Act and the Rules. [Para 7.2][1116-F]

National Institute of Technology and Anr. Vs. Pannalal Choudhury and Anr., (2015) 11 SCC 669 : [2015] 8 SCR 78 – referred to.

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Marathwada University Vs. Seshrao Balawant Rao Chavan, (1989) 3 SCC 132 : [1989] 2 SCR 454 – held inapplicable. A

Case Law Reference

[2015] 8 SCR 78	referred to	Para 4.1	B
[1989] 2 SCR 454	held inapplicable	Para 5.1	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6069 of 2012.

From the Judgment and Order dated 15.11.2011 of the High Court of Gujarat at Ahmedabad in LPA No. 726 of 2006 in SCA No. 10682 of 1998. C

Preetesh Kapur, Sr. Adv., Ms. Hemantika Wahi, Ms. Jesal Wahi, Kabir Hathi, Advs. for the Appellants.

Ms. Jaikriti S. Jadeja, Amaan Shreyas, Advs. for the Respondent. D

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 726 of 2006 by which the Division Bench of the High Court has dismissed the said appeal preferred by the appellant – Jamnagar Municipal Corporation and has confirmed the judgment and order passed by the learned Single Judge in Special Civil Application No. 10682 of 1998 by which the learned Single Judge allowed the said application preferred by the respondent herein and has quashed and set aside the dismissal order passed by the Commissioner, the Jamnagar Municipal Corporation has preferred the present appeal. E F

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the respondent herein, at the relevant time, was discharging his duty as City Engineer of the appellant – Municipal Corporation. That for certain execution of work and construction of roads within the Municipal Corporation area, it was found that the respondent had committed certain irregularities. A chargesheet came to be issued against him on 15.01.1993. The respondent did not agree to the charges levelled against him. Therefore, a departmental inquiry was conducted against H

- A him. Upon conclusion of the inquiry, the Inquiry Officer submitted his report dated 06.10.1995.

2.2 The Inquiry Report was made available to him calling for his representation. Report of the Inquiry Officer was supplied alongwith notice dated 02.09.1998. He was called upon to show cause as to why major penalty as provided under Rule 6 of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971, should not be imposed upon him. The respondent replied to the said show cause notice. The Commissioner of the Municipal Corporation, thereafter, passed a dismissal order dated 07.12.1998 by which the respondent was ordered to be dismissed from service.

- C 2.3 The order of dismissal passed by the Commissioner of the Municipal Corporation was challenged by the respondent before the learned Single Judge of the High Court. Before the learned Single Judge, the respondent challenged the inquiry report as well as the dismissal order on merits and also on the ground that the Commissioner, who passed the order of dismissal was not having any jurisdiction and/or authority to pass a dismissal order and impose the major penalty.

- D 2.4 It was the case on behalf of the respondent before the learned Single Judge that the Resolution No. 51 dated 20.11.1998 passed by the General Board of the Jamnagar Municipal Corporation did not empower the Municipal Corporation to initiate and/or to conclude the disciplinary proceedings for the alleged irregularities or negligence in the present case.

- E 2.5 The petition was opposed by the Corporation on merits as well as on the authority of the Commissioner. It was submitted that under Resolution No. 51 dated 20.11.1998, the Commissioner had passed the final order of penalty. It was contended that the delegation covers all kinds of works including purchases and other execution of work in which it is found that the officer has committed irregularity or had acted in a negligent manner. It was further submitted that eventually, the General Body of the Corporation *vide* its Resolution No.56 dated 15.12.1998 as amended by subsequent Resolution dated 30.12.1998, had ratified the action taken by the Commissioner.

- G 2.6 The learned Single Judge though held on merits against the respondent but, however, set aside the order of dismissal passed by the Commissioner solely on the ground that the Commissioner had no
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authority and/or power to impose any major penalty upon the respondent for the misconduct proved. The learned Single Judge observed that the Resolution No. 51 dated 20.11.1998 conferred power upon the Commissioner for initiating action for irregularities with respect to the purchases only and not with respect to any other misconduct and/or irregularity. The learned Single Judge also held that the subsequent ratification by the General Board would not confer any authority upon the Commissioner and the subsequent ratification of the action of the Commissioner would not save the action. Consequently, the learned Single Judge allowed the writ petition and set aside the order of dismissal with all consequential benefits. A B

2.7 The judgment and order passed by the learned Single Judge was the subject matter of appeal before the Division Bench by way of Letters Patent Appeal No. 726 of 2006 by which the learned Single Judge upheld the inquiry and the inquiry report. The respondent also preferred Letters Patent Appeal No. 752 of 2006. C

2.8 By the impugned judgment and order, the Division Bench of the High Court has dismissed the appeal preferred by the appellant Corporation. In view of the dismissal of appeal preferred by the Corporation, learned counsel appearing on behalf of the respondent did not press the Letters Patent Appeal No. 752 of 2006. D

2.9 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court dismissing Letters Patent Appeal No. 726 of 2006 and confirming the judgment and order passed by the learned Single Judge, quashing and setting aside the dismissal order passed by the Commissioner, the Corporation has preferred the present appeal. E F

3. While issuing the notice dated 26.03.2012, this Court had stayed the operation of the impugned judgment. However, thereafter *vide* order dated 24.08.2012, while granting leave, this Court has directed that the appellants shall continue to pay a lump-sum amount of Rs. 10,000/- per month to the respondent w.e.f. 01.04.2012. It is reported that the said amount of Rs. 10,000/- per month thereafter is being paid to the respondent. G

4. Mr. Preetesh Kapur, learned Senior Advocate, appearing on behalf of the appellants has vehemently submitted that both the learned Single Judge as well as the Division Bench of the High Court have H

- A materially erred in observing that the Commissioner had no power and/or authority to pass the order of dismissal against the respondent. It is submitted that the Resolution No. 51 dated 20.11.1998 authorised the Commissioner to pass the final order of penalty and the said delegation covers all kinds of works including purchases and other execution of work in which it is found that the officer has committed irregularity and/or had acted in a negligent manner.

- 4.1 It is submitted that in any case, thereafter, the decision of the Commissioner to dismiss the respondent from service was placed before the General Board and the General Board of the Corporation *vide* its Resolution No.56 dated 15.12.1998 as amended by subsequent Resolution dated 30.12.1998, ratified the action taken by the Commissioner. It is submitted that the said ratification would relate back to the order of dismissal passed by the Commissioner. It is submitted that even if the order passed by the Commissioner can be said to be invalid, the same came to be ratified subsequently, the said defect, in any case, can be said to have been cured. Heavy reliance is placed on the decision of this Court in the case of **National Institute of Technology and Anr. Vs. Pannalal Choudhury and Anr., (2015) 11 SCC 669** (paras 13 and 33).

5. Present appeal is vehemently opposed by Ms. Jaikriti S. Jadeja, learned counsel appearing on behalf of the respondent.

- 5.1 It is submitted that insofar as the Resolution No.51 dated 20.11.1998 is concerned, it conferred power upon the Commissioner to take action with respect to any irregularity in case of purchases only and not with respect to any other misconduct. It is submitted that, therefore, the decision of the Commissioner to dismiss the respondent from service was *void ab initio* and therefore, the subsequent ratification by the General Board cannot save the order of dismissal. Reliance is placed on the decision of this Court in the case of **Marathwada University Vs. Seshrao Balawant Rao Chavan, (1989) 3 SCC 132** (paras 27 and 28).

- 5.2 In the alternative, it is further submitted that the respondent, at present, is aged 75 years of age and he is being paid Rs. 10,000/- per month w.e.f. 01.04.2012.

6. Heard the learned counsel for the respective parties.

7. At the outset, it is required to be noted that after departmental proceedings and on conclusion of the inquiry, the charges and the misconduct alleged against the respondent have been proved, which has been even confirmed by the learned Single judge. However, thereafter, solely on the ground that the Commissioner, who passed the order of dismissal had no power / authority to impose the penalty of dismissal on the respondent, who, at the relevant time, was serving as City Engineer, the learned Single Judge quashed the order of dismissal with all consequential benefits and the same has been confirmed by the Division Bench.

7.1 Now, insofar as the submission on behalf of the appellant Corporation that *vide* Resolution No. 51 dated 20.11.1998, the Commissioner was authorized to take action against any officer with regard to the lapses and/or negligence on the part of the officers in various works and purchases is concerned, on going through the Resolution No. 51, it appears that though the issue raised was with regard to the lapses and negligence on the part of the officers in various works and purchases and was discussed, however, ultimately, what was resolved was to empower the Commissioner to take proper and necessary action against those erring officers, who committed lapses and carelessness in various works in purchases and take action as per the rules and regulations, wherever, necessary. Therefore, the Commissioner was authorized to take action against the erring officers with respect to the lapses and carelessness with various works in purchases only. Therefore, both the learned Single Judge as well as the Division bench of the High Court have rightly observed and held that the Resolution No. 51 did not authorize and/or confer any power upon the Commissioner to take action with respect to any other lapses other than the purchases. However, at the same time, it is required to be noted that the decision of the Commissioner was placed before the General Board and the General Board *vide* its Resolution No.56 dated 15.12.1998 as amended by subsequent Resolution dated 30.12.1998, ratified the decision of the Commissioner dismissing the respondent from service. Learned counsel appearing on behalf of the respondent has relied upon the decision of this Court in the case of **Marathwada University (supra)** and relying upon paragraph 27, it is submitted that as observed and held by this Court a decision *ab initio* void cannot be ratified. However, the said decision shall not be applicable to the facts of the case on hand. The decision of the Commissioner cannot be said to be *per se void ab initio*.

A It is to be noted that even otherwise, in the present case, the General Board had the power to pass an order of dismissal, which is not even disputed by the learned counsel appearing on behalf of the respondent. The decision of the Commissioner was placed before the General Board and the General Board had ratified the said decision. Therefore, thereafter, the dismissal can be said to be an order passed by the General Board. At this stage, the decision of this Court in the case of **Pannalal Choudhury (supra)** on ratification is required to be referred to. On discussing the entire law on ratification, thereafter in paragraph 33, it is observed and held as under:-

C “33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent’s dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.”

F 7.2 Applying the law laid down by this Court in the case of **Pannalal Choudhury (supra)** to the facts of the case on hand, any irregularity complained of by the respondent on the authority exercised by the Commissioner to dismiss him stood ratified by the competent authority (General Board) thereby making an invalid act a lawful one in conformity with the procedure prescribed under the Act and the Rules.

G 7.3 In that view of the matter, the impugned judgment and order passed by the Division Bench of the High Court as well as the learned Single Judge quashing and setting aside the order of dismissal are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. However, at the same time, it is directed that any amount paid to the respondent, namely, Rs. 10,000/- per month w.e.f.

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01.04.2012 pursuant to the order passed by this Court be not recovered from the respondent despite allowing the present appeal and restoring the order of dismissal. A

Present appeal is accordingly allowed. No costs.

Ankit Gyan
(Assisted by : Abhishek Agnihotri and Aarsh Choudhary, LCRAAs)

Appeal allowed.