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UNA NAGAR PALIKA

v.

KALIBEN BALUBHAI MAKWANA & ANR.

(Civil Appeal No. 5529 of 2016)

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SEPTEMBER 20, 2018

**[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]**

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*Service Law – Pension/Pensionary Benefits – Claim for – Denial of – When not proper – Respondents-employees of appellant-Municipality denied pension/pensionary benefits – Challenged by respondents – Allowed by High Court – Held: High Court was right in holding that the question involved in the present appeals is covered by the earlier decision of the High Court rendered in Mohamed Irshad Husenbhai case, which was upheld by Supreme Court and has thus attained finality – Plea of appellant that there is distinction between the two groups of employees, namely, one coming from the Panchayat and then becoming the Municipal employees and the other directly becoming the Municipal employees and that in Mohamed Irshad Husenbhai case, the employees who fell in the former category were held entitled for the grant of pension which is not the situation in the present case – Such plea is of no significance because the appellant made the respondents members of the GPF contributions and deducted regular contribution from their salary till the date of their retirement – Thus, the distinction pointed out by the appellant for coming out of the clutches of the decision of Mohamed Irshad Husenbhai case was rightly found untenable by the High Court – No case to interfere in the impugned order.*

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**Dismissing the appeals, the Court**

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**HELD: 1.1 The High Court was right in holding that the question involved in these appeals is covered by the earlier decision of the Gujarat High Court rendered in *Mohamed Irshad Husenbhai Baloch* case, which was upheld by this Court by order dated 16.09.2013 and thus attained finality. [Para 19] [756-E]**

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**1.2 Distinction between the two groups of employees, namely, one coming from the Panchayat and then becoming the**

Municipal employees and the other directly becoming the Municipal employees was held to be of no significance because the appellant made the respondents as the members of the GPF contributions and went on to deduct regular contribution from their salary till the date of their retirement. The aforementioned distinction pointed out by the appellant for coming out of the clutches of the decision of *Mohamed Irshad Husenbhai Baloch* case was also rightly found untenable by the High Court by assigning the proper reasons. Keeping in view the undisputed facts arising in the case coupled with the decision rendered in the *Mohamed Irshad Husenbhai Baloch*, which has attained finality, and was then given effect to in relation to concerned Municipal employees holding them eligible and entitled to claim the pension and the pensionary benefits, no good ground is found to take any other view than the one taken by the writ court and the Division Bench in the impugned order. [Paras 23, 24, 25] [757-G-H; 758-A-D]

1.3 The appellant is directed to finalize the pension cases of the respondents and release the amount of pension after proper verification within four months from the date of this order. [Para 30] [758-G]

*Chief Officers v. Mohmad Irshad Husenbhai Baloch & Ors.* (2011) (1) GCD 569 (Guj) (D.B.) – approved.

**Case Law Reference**

(2011) (1) GCD 569 (Guj) (D.B.) approved Para 1

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5529 of 2016

From the Judgment and Order dated 06.10.2015 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 1122 of 2015 in Special Civil Application No. 3699 of 2014.

WITH

Civil Appeal Nos. 5530, 5531, 5532, 6490 of 2016.

S. P. Hasurkar, Anshul Narayan, Bhargav Hasurkar, Prem Prakash, Ms. Anushree Prashit Kapadia, Vinod Tiwari, Ms. Promila, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. These appeals are directed against the common final judgment and order dated 06.10.2015 passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No.1122 of 2015 in Special Civil Application No.3699 of 2014 with Letters  
B Patent Appeal No.1065 of 2015 in Special Civil Application No.30402 of 2007 with Letters Patent Appeal No.1066 of 2015 in Special Civil Application No.4757 of 2012 with Letters Patent Appeal No.1067 of 2015 in Special Civil Application No.6137 of 2012 and Letters Patent Appeal No.1124 of 2015 in Special Civil Application No.11100 of 2014  
C whereby the Division Bench of the High Court disposed of the Letters Patent Appeals filed by the appellant herein on the basis of the judgment rendered by the Division Bench of the High Court in the matter of *Chief Officers vs. Mohmad Irshad Husenbhai Baloch & Ors.* (2011 (1) GCD 569 (Guj) (D.B.).

D 2. In order to appreciate the issues involved in these appeals, few relevant facts need mention *infra*.

3. The appellant herein was the respondent whereas the five contesting respondents herein were the petitioners in the special civil applications(petitions) filed before the High Court.

E 4. The appellant is the “Municipality” also called Nagar Palika for the place called “Una” in the State of Gujarat. The five contesting respondents, out of them four have expired and now represented by their legal representatives, were the employees of the appellant-Municipality. One of the respondents was appointed in the year 1990 whereas others were appointed in 1996 and 1998.

F 5. On their attaining the age of superannuation in the appellant’s services on different dates, all the five respondents requested the appellant to settle their claims for payment of pension and pensionery benefits.

G 6. The appellant declined to grant any pensionery benefits (pension) to all the five respondents stating that they were neither eligible and nor entitled to claim the pension or/and any pensionery benefits from the appellant.

7. This gave rise to filing of the special civil applications (petitions) by the respondents against the appellant in the High Court of Gujarat

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being S.C.A. No. 3699 of 2014 and four others. The appellant as A  
respondent contested the petitions.

8. The Single Judge of the High Court by passing separate orders B  
on different dates allowed the petitions and held that the petitioners  
(respondents herein) are eligible and thus entitled to claim pension and  
pensionary benefits from the appellant being their employees and  
accordingly issued a writ of mandamus against the appellant-Municipality  
directing payment of pension to all the petitioners therein (respondents  
herein) from the date of their retirement.

9. The appellant (Municipality) felt aggrieved and filed intra court C  
appeals before the Division Bench in the High Court. By common  
impugned order, the Division Bench dismissed the appeals giving rise to  
filing of these appeals by way of special leave in this Court by the Una  
Nagar Palika(Municipality).

10. It is apposite to mention that the very question, namely, whether D  
an employee of a Municipality is entitled to claim pension/pensionary  
benefits from his employer-Municipality was the subject matter of one  
litigation in Gujarat High Court. The leading judgment was passed by the  
Division Bench in LPA No. 214/2011 entitled *Chief Officer vs.*  
*Mohamed Irshad Husenbhai Baloch and Others* (supra) along with  
other connected matters on 31.01.2013.

11. The Division Bench held that the employees are eligible and E  
thus entitled to claim the Pension/Pensionary benefits provided they render  
qualifying service while in the employment of the Municipality in terms  
of the Rules. The concerned Municipality felt aggrieved by the said  
order and filed special leave to appeal (SLP Nos.15691 to 15700 of  
2003) in this Court. It was, however, dismissed by this Court by order F  
dated 16.09.2013.

12. The order was accordingly given effect to by sanctioning the  
pension to those employees, who were parties in the said litigation.

13. It is with this background, when the petitions out of which G  
these appeals arise came up for hearing, the Single Judge (writ court)  
essentially placed reliance on the decision of *Chief Officer vs. Mohamed*  
*Irshad Husenbhai Baloch and Others* (supra) and allowed the petitions  
finding no material distinction in the case at hand and in the case of

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A **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra).

14. When the matter came up in appeals, the Division Bench also placed reliance on the view taken in **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) and dismissed the appeals.

B 15. The writ court and the Division Bench were of the view that the issue in question has attained finality by the decision rendered in the case of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) and affirmed by the order of this Court dated 16.09.2012.

C 16. It is with this background facts, the question arises for consideration in this appeal is whether the view taken by the writ court and the Appellate Court requires any interference.

17. Heard Mr. S.P. Hasurkar, learned counsel for the appellant and Ms. Anushree Prashit Kapadia, learned counsel for the respondents.

D 18. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no case to interfere in the impugned order.

E 19. In our considered opinion, the High Court was right in holding that the question involved in these appeals is covered by the earlier decision of the Gujarat High Court rendered in the case of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) which was upheld by this Court by order dated 16.09.2013 and thus attained finality.

F 20. We find that in order to show that the decision rendered in the case of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) has no application to the facts of the case and that it does not lay down the correct principle and be held as *per curium*, the appellant (Municipality) made attempts and contended before the Division Bench that there lies a distinction between the employees, who were originally working with the Panchayat and later on convergence of G Panchayat into the Municipality became the employees of the Municipality by virtue of its merger and the employees, who were directly appointed by the Municipality.

21. It was contended that the employees, who fall in former category of case, were held entitled for the grant of pension but not

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those employees, who fall in the latter category of the case. It was pointed out that since the employees in the case of *Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others* (supra) fell in the former category of the case and, therefore, they were held entitled to claim the benefit of pension whereas the respondents of this case fall in the latter category of cases, the benefit of decision rendered in the case of *Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others* (supra) could not be granted to the respondents because they were appointed directly by the appellant (Municipality).

22. The Division Bench while repelling the aforementioned submission took note of the following four undisputed facts arising in this case:

**“1. The original petitioners-respondent No.1 herein in the respective appeals were appointed by the municipality and they were in service of the municipality.**

**2. After the appointment, the employee concerned continued in service until he reached to the age of superannuation, so far as LPA No.1066/15 is concerned. Whereas, in the rest of the Letters Patent Appeals, the services of the employees concerned came to an end on account of death of the employees.**

**3. It is an undisputed position that the total length of service in respect of all cases has exceeded 10 years which is the minimum requirement for eligibility of pension.**

**4. In respect of all employees, which is subject matter of the present group of appeals, they were member of GPF and GPF contributions were being deducted by the municipality from their salary from time to time until their services came to an end.”**

23. The Division Bench was of the view and, in our view, rightly that the distinction sought to be made between the two groups of employees, namely, one coming from the Panchayat and then becoming the Municipal employees and the other directly becoming the Municipal employees was held to be of no significance because the appellant made the respondents members of the GPF contributions and went on to deduct regular contribution from their salary till the date of their retirement.

A           24. In our view, the case at hand is covered by the earlier decision rendered in the case of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) which stands upheld by this Court by order dated 16.09.2013. We are also of the view that the aforementioned distinction pointed out by the appellant for coming out of the clutches of the decision of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra) was also rightly found untenable by the High Court by assigning the proper reasons.

B           25. Keeping in view the aforementioned four undisputed facts arising in the case coupled with the decision rendered in the case of **Chief Officer vs. Mohamed Irshad Husenbhai Baloch and Others** (supra), which has attained finality, and was then given effect to in relation to concerned Municipal employees holding them eligible and entitled to claim the pension and the pensionary benefits, we find no good ground to take any other view than the one taken by the writ court and the Division Bench in the impugned order.

C           26. Learned counsel for the appellant (Municipality), however, placed reliance on one State Government's Circular dated 28.11.1994 (Annexure P-1) and contended that in the light of this circular, the respondents are neither eligible and nor entitled to claim the benefit of pension. We find no merit in this submission.

D           27. Firstly, we find that it was not filed before the High Court (writ court/Division Bench); Secondly, the writ court and the Division Bench did not refer it to; Thirdly, in any event, it is of no significance to decide the present controversy.

E           28. Its perusal shows that it applies to the cases of Panchayat employees, who later became the Municipal employees.

F           29. In the light of the foregoing discussion, we find no merit in these appeals. The appeals thus fail and are accordingly dismissed.

G           30. The appellant (Municipality) is directed to finalize the pension cases of the respondents herein and release the amount of pension after proper verification within four months from the date of this order.