

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 488 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

FARIDBHAI ABDULREHMAN CHHIPA

Versus

MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD

Appearance:

MR DIREN A DESAI for Petitioner
MR KIRIT I PATEL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/12/2000

ORAL JUDGEMENT

The appellant is the original plaintiff of Civil
Suit No. 5645 of 2000 which is pending in the City Civil
Court at Ahmedabad. In the said suit, the appellant gave

an application Exh.5 with a prayer that he should not be allowed to be superannuated from service from 31.12.2000 as according to the plaintiff the age of superannuation of class-IV employees is 60 years and not 58 years and, therefore, on attending 58 years of age, he cannot be allowed to retire, he has right to serve upto 60 years. The Trial Court after considering the rival submissions of the parties came to the conclusion that the plaintiff had approached the Court at a late stage and that therefore it is not possible to protect by an interim order. However, it was clarified in the order that in case the plaintiff succeeds in the suit, he can be compensated adequately

The aforesaid order is challenged by the original plaintiff in the present appeal from order. Mr. Zaveri appearing on behalf of the plaintiff argued that when all other class-IV employees are allowed to serve upto 60 years of age, then there was no reason in discriminating the plaintiff for the said treatment and that only on the ground of delay in approaching the Court, his application should not have been rejected by the learned Trial Judge. He, therefore, prayed that injunction prayed for by the plaintiff should be continued till the suit is decided finally. However, considering the facts and circumstances as well as considering the question of balance of convenience, I am of the opinion that in case the plaintiff succeeds in the suit, appropriate order for continuing him in service as well as regarding granting necessary benefits on the basis of such continuity of service can be passed by the Court. Therefore, in the facts and circumstances of the case, without granting interim relief to the plaintiff to continue in service, it will be just and proper to direct the Trial Judge to dispose of the main suit on or before 30.4.2001. Mr. Zaveri states that it is not a case where any voluminous evidence is required to be adduced by either side and both assure this Court that they will cooperate with the Trial Court in early disposal of the said suit. In case the plaintiff succeeds, the corporation may not have to bear the expenditure of payment of backwages and plaintiff may not get benefit of backwages without actually serving. In these facts and circumstances, it is directed that aforesaid civil suit no. 5645 of 2000 shall be disposed of on or before 30.4.2001. The Trial Court shall send the compliance report after disposal of the said suit. In case the suit is not disposed of, it will be open for the plaintiff to apply to this court by an appropriate application. Mr. Zaveri states that he would like to make representation to the Corporation. If any representation is made by the plaintiff, the same

shall be considered in accordance with law. Subject to the aforesaid direction appeal from order is disposed of with no order as to costs. Copy of the order be sent to the City Civil Court at Ahmedabad forthwith.

(P.B.Majmudar,J)

(vipul)