

**(1975) 07 BOM CK 0026**

**Bombay High Court (Nagpur Bench)**

**Case No:** Spl. C. Apple No. 700 of 1970

Municipal Council, City of  
Achalpur

APPELLANT

Vs

Mohd. Sirajuddin Khan Jiauddin  
Khan and others

RESPONDENT

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**Date of Decision:** July 2, 1975

**Citation:** (1976) MhLj 89

**Hon'ble Judges:** U.R. Lalit, J; C.S. Dharmadhikari, J

**Bench:** Division Bench

**Advocate:** D.K. Deshmukh, for the Appellant; B.N. Mohta for respondent No. 1 and M.G. Rajkarne, Asstt. Govt. Pleader for respondent Nos. 2 to 4, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

C.S. Dharmadhikari, J.

In this writ petition the Municipal Council, Achalpur, is challenging before us the order passed by the Sub-Divisional Officer, Achalpur, dated 28-4-1966 in Revenue Appeal No. 6/100/65-66 and the order passed by the Collector dated 13-4-1967 in Revenue Appeal No. 6/100/65-66 confirming the said order of the Sub-Divisional Officer. It appears from the record that as the respondent No. 1 who was working as Head Master with the Municipal Council had completed 30 years of qualifying service, his services were terminated by the Municipal Council, vide resolution dated 26th November 1959. The said order of termination was challenged by the respondent No. 1 by filing an appeal to the Sub-Divisional Officer, Achalpur. The Sub-Divisional Officer dismissed his appeal and the respondent No. 1 filed a second appeal to the Collector, Amravati, who allowed his appeal, and, therefore, ultimately the Municipal Council had approached the High Court in Special Civil Application No. 52 of 1962. This Court, vide its judgment dated 5th October 1962, set aside the order passed by the Collector and allowed the writ petition. This Court further directed the Municipal Council that the Resolution No. 4 dated 28th November 1959 passed by

the petitioner Municipal Council with respect to the respondent No. 2 in that case be given effect to. After this judgment, the Municipal Council, vide its resolution dated 22nd February 1963 granted extension to the respondent No. 1 till he completed the age of 55 years, i.e. upto 30th June 1964 and such extension was granted under the proviso to bye-law 21 of the bye-laws on the subject. Obviously, therefore, under this resolution passed by the Municipal Council the respondent No. 1 continued in service. Subsequently by a resolution dated 5th September 1965 the Municipal Council decided to give effect to the order passed by the High Court. The Municipal Council authorised the President to seek legal advice in the matter and pass suitable orders retiring the respondent No. 1 from service forthwith. In pursuance of this resolution the then President of the Municipal Council took legal advice and issued an order dated 1st October 1965 and relieved the respondent No. 1 from his duties with effect from 1st October 1965 itself. Being aggrieved by this order, the respondent No. 1 filed an appeal which was heard and decided by the Sub-Divisional Officer, Achalpur. The Sub-Divisional Officer allowed the appeal by his order dated 28th April 1966 and set aside the order passed by the Municipal Council. Being aggrieved by this order of the Sub-Divisional Officer, the Municipal Council filed an appeal before the Collector, Amravati. The Collector, by his order dated 13th April 1967 held that the Municipal Council was quite competent to grant extension of service to its employees upto the age of 55 years and, therefore, there was no illegality in the resolution passed by the Municipal Council in February 1963. In the view he took, he dismissed the appeal filed by the Municipal Council. Against this order, it seems, a revision petition was filed by the Municipal Council to the Government. The Government, vide its communication dated 11th June 1969, informed the Municipal Council that the Government had no jurisdiction to entertain the said revision application and, therefore, the papers were returned. In view of this order passed by the Government, the Municipal Council has filed the present petition challenging the orders passed by the Sub-Divisional Officer and the Collector.

2. Shri Deshmukh, learned counsel for the petitioner, contended before us that the resolution passed by the Municipal Council granting extension to the respondent No. 1 to serve as Head Master till he completed 55 years of age was itself illegal being contrary to the direction given by the High Court. He further contended that in any case the further continuance of the respondent as Head Master in the Municipal service was illegal because the extension which was granted to him by the Municipal Council by the earlier resolution was upto 30th June 1964 only. His main contention is that all the subsequent steps taken by the Municipal Council after the decision of the High Court are illegal because thereby the Municipal Council had acted in disobedience of the writ issued by the High Court.

3. On the contrary, it is contended by Shri Mohta, learned counsel for the respondent No. 1, that the question which was decided by the High Court in the earlier writ petition related only to the interpretation of bye-law 21 and was

restricted to find out what was the meaning of "qualifying service" so far as the respondent No. 1 was concerned. In passing a subsequent resolution in February 1963 granting extension to the respondent No. 1 the Municipal Council had not bypassed the said decision of the High Court but had exercised the power vested in it by the proviso to bye-law 21. Therefore, the resolution passed by the Municipal Council in the year 1963 was perfectly legal. He further contended that after the said resolution has been passed by the Municipal Council a subsequent resolution was passed by the Municipal Council on 30th June 1964 whereby it was decided by the Municipal Council that the Government Resolution raising the age of retirement from 55 to 58 years should be made applicable to the primary school teachers working in the schools under its control. The Municipal Council further decided that the said resolution should be given effect to from 11th February 1963. By the said resolution a further decision was taken by the Municipal Council that bye-law 21 of the bye-laws shall cease to apply to the primary teachers serving under the Municipal Council. Therefore, according to Shri Mohta, in view of this resolution of the Municipal Council which has been given effect to and which is followed in all other cases, the respondent No. 1 was entitled to continue in service till he attained the age of 58 years.

4. In our opinion, having regard to the facts and circumstances of the present case, it is not necessary to decide all the contentions raised before us. It is well settled that the terms and conditions of service, so far as municipal employees are concerned, are governed by the bye-laws. Mere passing of a resolution cannot confer any right upon a municipal employee unless the said bye-laws were amended as per the provisions of law or the resolution is given effect to by exercising power conferred by it. In the present case, but for the passing of the resolution dated 30th June 1964i we are informed that no further steps have been taken by the Municipal Council to amend the bye-laws at least till 1st October 1965 i.e. on the date when the President passed the order removing the respondent No. 1 from service. It is also an admitted position that on 30th June 1964 the respondent No. 1 completed 55 years of age and, therefore, was not entitled to continue in service in terms of the resolution passed by the Municipal Council on 22nd February 1963. It is also an admitted position that after the resolution passed by the Municipal Council on 22nd February 1963 no further resolution was passed by the Municipal Council granting any extension to the respondent No. 1, though it is a fact that the respondent No. 1 continued in service till he was removed by the order passed by the President dated 1st October 1965. Thus it is quite clear that so far as respondent No. 1 is concerned the resolution passed by Municipality on 30-6-64 was not implemented. Therefore, it is quite clear from the material placed before us that on 1st October 1965 the respondent No. 1 had already completed 55 years of age, and if the bye-laws were not amended by the Municipal Council under which extension was granted to the respondent No. 1 he had no legal right to continue in service of "he Municipal Council. Even otherwise, as per the order passed by the Collector dated 13th April

1967 the Collector had found that the Municipal Council was quite competent to grant extension of service to its employees upto the age of 55 years. Neither the Sub-Divisional Officer nor the Collector had found that the respondent No. 1 had any right to continue in service after he completed the age of 55 years. If this is so, in our opinion, the Sub-Divisional Officer as well as the Collector had committed an error in holding that the order issued by the President on 1st October 1965 was illegal. It is no doubt true that the President in his order had given a different reason. But admittedly on 1st October 1965 when the said order was passed by the President the respondent No. 1 had completed the age of 55 years and was continued in service merely by lapse on the part of the authorities concerned to take necessary steps. In this view of the matter, in our opinion the orders passed by the Collector as well as the Sub-Divisional Officer setting aside the order of the President dated 1st October 1965 were obviously wrong, though for different reasons.

5. In the result, therefore, we allow the writ petition and set aside the orders passed by the Collector dated 13th April 1967 and the Sub-Divisional Officer dated 28th April 1966. We further hold that the respondent No. 1 was rightly removed from service by the President by his order dated 1st October 1965. However, it is made clear that till 1st October 1965 the respondent No. 1 was in the service of the Municipal Council. He was working as Head Master and has, therefore, earned his wages. Therefore, whatever emoluments were paid to him till 1st October 1963, the Municipal Council is not entitled to recover back the same from him on any count. However, in the circumstances of the case there will be no order as to costs.