



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 376 of 2024

In R/SPECIAL CIVIL APPLICATION NO. 16598 of 2023

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 376 of 2024**

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ABHIJIT AJITDAN GADHAVI

Versus

AHMEDABAD MUNICIPAL CORPORATION & ANR.

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Appearance:

MR SANDIP H MUNJYASARA(10781) for the Appellant(s) No. 1
for the Respondent(s) No. 2

MR HAMESH C NAIDU(5335) for the Respondent(s) No. 1

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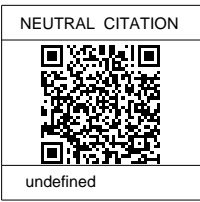
**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Date : 23/04/2024

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1 This appeal under Clause 15 of the Letters Patent has been filed by the appellant challenging the oral order dated 26.10.2023 passed in Special Civil Application No. 16598 of 2023. The appellant, who was the original petitioner before the learned Single Judge had made the following prayers in the petition so filed:

“(A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ order or



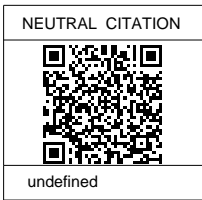
direction quashing and setting aside the communication dated 22.11.2022 (Annexure-L) issued by In-charge, Central Office, Ahmedabad Municipal Corporation;

(B) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ order or direction quashing and setting aside show-cause notice dated 24.08.2023 (Annexure-M) issued by the respondent no.1, Municipal Commissioner, Ahmedabad Municipal Corporation.”

2 Facts in brief are that the petitioner was working as an Assistant Station Officer, Class-III, with the Ahmedabad Municipal Corporation. He was appointed as such by a Resolution of the Corporation dated 28.05.2019 for a period of three years on a monthly fixed pay of Rs.38,090/-. He joined his duty on 04.06.2019.

2.1 The Gujarat Public Service Commission came out with an advertisement inviting on-line applications for the posts of Assistant Director / Regional Fire Officer of the Gujarat State Fire Prevention Services, Class-I. The appellant being eligible, applied for the post.

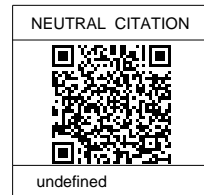
2.2 On 01.06.2021, the Municipal Commissioner,



Ahmedabad, issued a Certificate indicating that the Corporation had no objection if the appellant had so applied for the post of Assistant Director and the appellant joined his duty on 02.11.2022.

2.3 On 27.10.2022, the petitioner tendered his resignation from the post of Assistant Station Officer. The Corporation informed the petitioner that they had received his resignation on 28.10.2022. It is the case of the petitioner that since the petitioner had not given the required notice of one month, he was asked to deposit the amount of surety bond. Accordingly, the petitioner deposited the sum on 28.10.2022 and requested the Corporation that he be relieved as the amount in accordance with the contract of appointment had been so deposited.

2.4 On 22.11.2022, the Central Office of the Ahmedabad Municipal Corporation informed the appellant that his resignation is not accepted as a result of the on-going

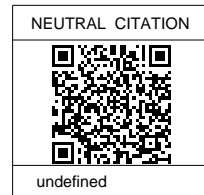


vigilance inquiry. The appellant received a show-cause notice dated 24.08.2023 inter alia asking the petitioner to show-cause as to why action should not be taken of terminating his services as though he was not qualified to be appointed he had obtained such appointment through fraud. It is in this context that the aforesaid petition with the prayers referred to hereinabove was filed.

3 After hearing the learned respective counsels for the appellant / petitioner and the lawyer for the Corporation, the learned Single Judge dismissed the petition, hence the appeal.

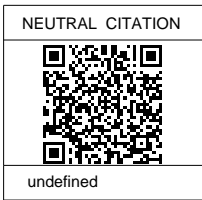
4 Mr.Sandip Munjyasara, learned counsel appearing for the appellant would make the following submissions:

4.1 He would submit that pursuant to the order of appointment, the petitioner - appellant joined his service. Reading the terms of the contractual appointment, Mr.Munjyasara, learned counsel, would submit that if the



terms of appointment, namely, Clauses 2, 19 and 20 are read together, it would indicate that it was open for the appellant to resign from service either by tendering his resignation together with notice pay of a month or give notice and thereafter be relieved a month after the date of notice.

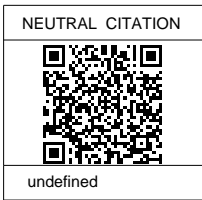
4.2 Mr.Munjyasara, learned counsel would submit that in the facts of this case, it is clear from the letter dated 27.10.2022 that the appellant had sought to resign after office hours immediately. By a letter dated 28.10.2022, the Corporation had informed him that in accordance with condition No.2, 19 and 20 of the conditions of appointment, the appellant was required to pay notice pay. The notice pay was immediately deposited in the treasury on 28.10.2022. He would, therefore, submit that in accordance with the terms of the contract, when Clause 2 is read with Clause 20 of the appointment order, on payment of notice pay immediately with the resignation, the contract of engagement would



immediately come to an end and there was therefore no reason for a formal order of relieving or accepting the resignation of the appellant.

4.3 Mr.Munjyasara, learned counsel, would further submit that the learned Single Judge committed an error in considering the clauses of his appointment order being akin to Rule 36 of the Gujarat Civil Services (General Conditions of Services) Rules, 2002, (for short “the Rules”). Reading rule 36 of the Rules, especially emphasizing the note to the Rule, learned counsel would submit that when there was a special contract by which his terms of appointment were governed, as per the note of the Rule, Rule 36 would not be applicable.

4.4 Mr.Munjyasara, learned Counsel would further submit that therefore, the communication dated 22.11.2022 cannot be held against or be taken as a rejection of his resignation. In fact, sub-rule 2 of Rule 36 also would support his case, inasmuch as, there was no

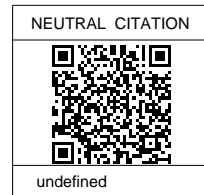


formal order rejecting his resignation and therefore it was deemed to have been accepted.

4.5 Mr.Munjyasara, learned Counsel, would rely on the following decisions to support his submission that rule has to be interpreted in the manner that it can normally be so interpreted. In the submission of Mr.Munjyasara, the Rules cannot be interpreted so as to reduce such an interpretation as futile. The decisions relied upon by the learned Counsel are as under:

- (i) ***Commissioner of Income Tax Vs. Hindustan Bulk Carriers.***, reported in ***(2003) 3 SCC 57.***
- (ii) ***Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh & Ors.***, reported in ***1988 (Supp) SCC 669.***

4.6 Mr.Munjyasara, learned Counsel, would also rely on a decision in the case of ***Dalip Singh Vs. State of Uttar Pradesh & Ors.***, reported in ***(2010) 2 SCC 114*** and in the case of ***K.D.Sharma Vs. Steel Authority of India***

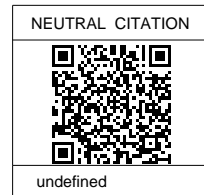


Limited & Ors., reported in **(2008) 12 SCC 481.**, to submit that the respondents are proceeding with the departmental inquiry in breach of principles of natural justice which would amount to abuse of process.

5 Mr.Hamesh Naidu, learned Counsel appearing for the respondent - Corporation, would make the following submissions:

5.1 That the interpretation advanced by the learned counsel for the appellant with regard to Clause 20 cannot be accepted. The Corporation had to accept / approve the resignation and the contention of the appellant that the appellant would be treated to have been automatically relieved on payment of bond money is misconceived.

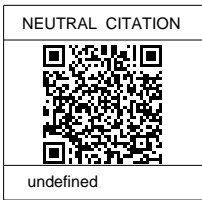
5.2 That the Appointing Authority was the Municipal Commissioner, and therefore, the resignation had to be accepted by the competent authority i.e. the appointing authority and merely because there was some



endorsement or a communication asking the appellant to pay the bond money would not work in favour of the appellant.

5.3 Mr.Naidu, learned Counsel, would rely on the provisions of Rule 36 of the Rules and submit that if the resignation is rejected, deemed acceptance cannot be pressed into service. The Corporation had within a period of 30 days from 27.10.2022, on 22.11.2022 rejected the request for the resignation, which was in accordance with law.

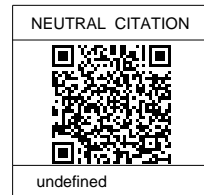
6 Having considered the submissions made by the learned counsels appearing for the respective parties, true it is that the appointment of the appellant was on contractual basis on the terms and conditions as set out in his appointment order. Though an endeavour is made by the learned counsel for the appellant before us to submit that for the purposes of relieving, the issue Clause 2 and Clause 20 of the appointment order have to be read



in conjunction. The only intention reading General Condition No.2 of the Contract was that it was open either for the employer or the employee to put an end to the contract by giving a month's notice. If the employee wanted to put an end to his contract of appointment, he had to either give one month's notice together with the notice pay or a notice indicating that he should stand relieved a month henceforth from the date of notice to bring an end to the contract. General Condition No.20 of the Contract which is a matter at issue reads as under:

“Condition no.20: An employee on contractual basis on fixed pay can voluntary resign from his employment during the contractual period either by giving one month's notice or after the said resignation is accepted but the said employee must deposit the bond amount with the municipal corporation.”

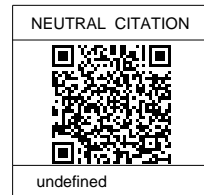
6.1 On reading Condition No.20 it is obvious that an employee appointed on contractual basis can either voluntarily resign from his appointment by giving one month's notice or after the resignation is accepted, but after deposit of the bond amount. The contention of the learned counsel for the appellant that the word “or” in



Clause 20 would support the case of an employee who has voluntarily resigned after tendering the amount with that of an employee who has put the employer to notice of 30 days is misconceived.

6.2 A clear reading of Clause 20 of the Appointment Order would indicate that on giving a notice of a month to resign, it would be effective a month thereafter unless it is accepted by the Corporation much earlier. It would show that the Clause permits the employee to voluntarily retire giving one month's notice or notice pay after the resignation is accepted.

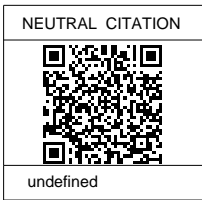
6.3 Perusal of the order of the learned Single Judge would, therefore, indicate that he drew an analogy of Clause 20 being *pari materia* with Rule 36 of the Rules. The learned Single Judge has also reproduced Rule 36 of the Rules. Reading the Rule would indicate that a resignation which is tendered by an employee shall be effective from the date it is accepted by the appointing



authority. One month's notice period is prescribed in accordance with Clause 20 which also is similar to the provisions of Rule 36. On giving notice of a month and in absence of any formal communication rejecting the resignation, it shall be deemed to have become effective after the date of expiry of one month.

7 Considering the facts of this case, what is apparent is that the appellant tendered his resignation on 27.10.2022. Merely because the Corporation asked him to deposit the bond money on the very next date would not tantamount to severing the relationship under the contract unless a request is rejected. It is in this context that the communication dated 22.11.2022 which is impugned in the petition needs to be appreciated.

7.1 Admittedly, within less than 30 days from the date of the appellant having tendered his resignation, the Corporation in no uncertain terms opined that since the vigilance inquiry was in progress against the appellant,



his resignation is rejected. This period is admittedly within the time frame of 30 days, and therefore, the concept of “deemed acceptance” would not apply.

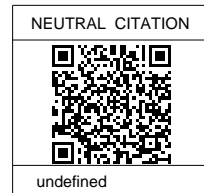
7.2 Having independently said that, it would therefore now be in the fitness of things to reproduce the observations of the learned Single Judge, which read as under:

“(D) The only issue that arises for the consideration of this Court is whether the resignation of the petitioner being rejected by the respondent vide communication dated 22.11.2022 was sustainable in law or not.

(a) It would appear that while the petitioner had been appointed in the services of the respondent Corporation vide order dated 28.05.2019 and whereas it would appear that the appointment was for a fixed tenure for a fixed pay and whereas Clause 20 of the appointment order which is being relied upon heavily by learned senior advocate, the is reproduced as under:-

“Condition no.20: “An employee on contractual basis on fixed pay can voluntary resign from his employment during the contractual period either by giving one month’s notice or after the said resignation is accepted but the said employee must deposit the bond amount with the municipal corporation.””

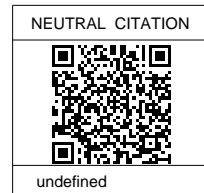
(b) It would appear that the petitioner had after



giving the letter of resignation on 27.10.2022, upon being informed in addition to depositing the bond amount, had also deposited the one month notice pay. The question being that whether by virtue of the employee depositing the notice pay, could the employee claim that the resignation would be effective from the date of deposit or whether the clause or the general conditions envisage that the employer is required to approve the resignation.

(c) In the considered opinion of this Court, Clause 20 as well as the general conditions i.e. Gujarat Civil Services (General Conditions of Services) Rules, 2002 both envisage a situation where the employer i.e. the appointing authority is required to approve/accept the resignation of the employee. A perusal of Clause 20 as reproduced herein above would show that the said clause permits the employee to voluntarily resign by giving one month's notice or after the resignation is accepted. The said clause could only be read to mean that the resignation of the employee would be effective after a period of one month if no action is taken thereupon by the Corporation or the resignation would become effective if it is accepted by the Corporation before the completion of the one month period. It clearly appears that Clause 20 is in tune with Rule 36 of the Gujarat Civil Services (General Conditions of Services) Rules, 2002, which envisages the same situation but the position being clarified in a better way. Rule 36 of the Gujarat Civil Services (General Conditions of Services) Rules, 2002 being relevant for the present purpose is reproduced hereinbelow for benefit:-

“36 Resignation from Government service: (1) A Government employee may at any time resign from the services of the State by giving a notice of one month in writing to the appointing authority.



Provided that in the case of a temporary employee who has put in service of less than one year, the period of such notice shall be one week.

Note: Nothing in this rule shall affect the provisions of any special contract of service or bond entered into by the Government employee with the Government, or the provisions of any special rules, if any, applicable to him, in respect of the period of notice to be given for resignation from service or payment of any sum by the Government employee, to the Government for premature resignation by him.

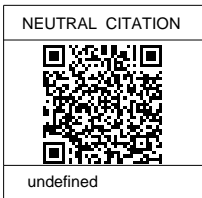
(2) The resignation tendered by a Government employee shall be effective from the date on which it is accepted by the appointing authority; but if it is not accepted before the expiry of the period of notice for resignation to be given by such employee under sub-rule (1), it shall be deemed to have become effective on the date of the expiry of such period, unless the Government employee is informed before such date, that his resignation has been rejected and of the reasons for such rejection: Provided that the resignation of a Government employee shall not be rejected except in a case where -

(a) any ascertained or ascertainable amount of money is found outstanding against him and payment thereof is not made by him within the period mentioned above,

(b) he is under suspension,

(c) any departmental inquiry or criminal prosecution is contemplated or pending against him.

(3) A Government employee shall not be relieved from his office, if his resignation is rejected.

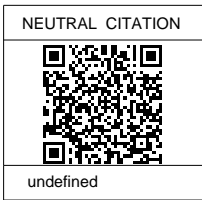


(4) Where a Government employee remains absent from duty before his resignation has become effective or if his resignation has been rejected without prior grant of leave for such absence, it shall be lawful for the competent authority to treat his absence as leave without pay and to take disciplinary action against him for unauthorized absence from duty.

(5) Any notice of resignation from service shall not be permitted to be withdrawn after the resignation has become effective, except on exceptional ground or in public interest.

(6) Where the temporary Government employee has put in service for a period exceeding one year, the period of such notice shall be one month and where such Government employee has put in service for one year or any period less than one year the period of such notice shall be one week. Provided that the service of any such Government employee may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowance for the period of the notice at the same rates at which he was drawing pay and allowances immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the notice period.

(7) Where a notice is given by the authority other than Government terminating the services of a temporary Government employee or where the services of any such Government employee is terminated by an authority other than the Government either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Government may, of its own motion or otherwise reopen the case and after calling of the records of the case and after making such inquiry as



it deemed fit -

(i) confirm the action taken by the authority;

(ii) withdraw the notice;

(iii) re-instate the Government employee in service, or

(iv) make such other order in the case as it may consider proper. Provided that except in special circumstances, which shall be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months.

(i) from the date of notice in case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(8) Where a Government employee is re-instated in service under sub-rule-(7), the order of reinstatement shall specify -

(i) the amount or proportion of pay and allowance, if any, to be paid to the Government employee for the period of his absence between the date of termination of his service and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

(d) Rule 36 as could be clearly discernible states that the resignation tendered by a government employee shall be effective from the date on which it is accepted by the appointing authority (or after the said resignation is accepted as per Clause 20) but, if



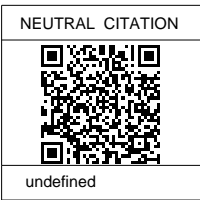
it is not accepted before the expiry of the period of notice for resignation to be given by such employee, it shall be deemed to have become effective after the date of expiry of such period (by giving one month's notice again as per Clause 20).

(e) While Rule 36 inter alia further envisages that the State is empowered to reject the resignation and inform the employee the reasons for such resignation before the date of expiry of such period and whereas, while such specific words are not found in Clause 20 but the fact of Clause 20 inter alia containing the words "resignation is accepted" clearly envisages the power to the Corporation to even reject the resignation.

(f) In the instant case, the respondent Corporation having rejected the application for resignation by the petitioner before completion of 30 days, more particularly the said order also stating the reason for such resignation not being accepted, in the considered opinion of this Court, the said order is in line with the power envisaged with the Corporation under Clause 20 read with the power envisaged with the State Government under Rule 36 of the Gujarat Civil Services (General Conditions of Services) Rules, 2002. Under such circumstances, in the considered opinion of this Court, the petitioner not being able to make out a case against rejection of resignation, the prayer with regard to quashing and setting aside the impugned communication dated 22.11.2022 i.e. a communication whereby the resignation is rejected, is hereby rejected.

Common order in all the four petitions:-

5. Insofar as show cause notices are concerned, which are challenged in all the four petitions, the following directions are passed which shall be common to all the four petitions:-



(i) The respondent - Corporation to take appropriate steps in accordance with Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 in furtherance of the show cause notices dated 24.08.2023.

(ii) The departmental inquiry, which shall be conducted by the respondents, shall be strictly in accordance with the Rule referred to herein above.

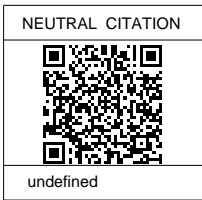
(iii) The departmental inquiry shall be conducted as expeditiously as possible and whereas, the petitioners shall cooperate in the inquiry proceedings and whereas, the petitioners shall not seek any adjournment.

(iv) It is clarified that the respondent - Corporation shall grant appropriate /adequate opportunity to the petitioners as envisaged in Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and where at any stage if no time limit is stipulated in the Rules then reasonable opportunity shall be granted at that stage.

(v) It is clarified that insofar as show cause notices are concerned, this Court has not opined anything on merits. All rights and contentions of all the parties are left open to be agitated before appropriate forum.

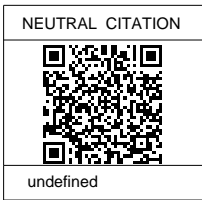
6. With these observations and directions, the present petitions stand disposed of. Direct service is permitted."

7.3 What is therefore evident on reading the reasonings of the learned Single Judge in addition to the reasons that



we have supplied, the only interpretation that is possible to be given to Clause 20 is that a resignation tendered by an employee voluntarily unless it is accepted cannot bring in a contract to an end. The concept of deemed acceptance brought into the submission by the appellant also would not be applicable as admittedly after having tendered his resignation on 27.10.2022, the Corporation within a month rejected the request. There was no severance of the contract merely because of the added Condition No.2 in the Contract when in absence of any positive action of the employer in accepting the resignation, the appellant could not have joined the department which he had pursuant to the advertisement No. 131/2019-20 on the post of Assistant Director / Regional Fire Officer of the Gujarat State Fire Prevention Services, Class-I.

7.4 For the aforesaid reasons, therefore, since the resignation of the appellant was rejected within a period of 30 days, the Corporation was entitled to issue the



show-cause notice dated 24.08.2023 to hold a departmental inquiry. The learned Single Judge, considering these aspects gave certain directions that the departmental inquiry should be completed within a period so directed by the learned Single Judge.

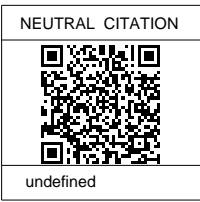
8 For the aforesaid reasons, we do not find any merit in the appeal and the appeal is accordingly, dismissed.

In view of dismissal of the main appeal, civil application also stands disposed of, accordingly.

FURTHER ORDER

After the dictation of order, at this stage, Mr.Munjyasara, learned counsel for the appellant, requests that the operation and implementation of the order dictated by us be stayed for a period of two weeks' as the learned counsel is advised to file an appeal before the Hon'ble Supreme Court.

Mr.Hamesh Naidu, learned counsel for the respondent, vehemently objects to the request so made



by the learned counsel for the appellant.

Having considered the submissions made by the learned counsels for the respective parties, the request for stay is rejected.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI, J)

BIMAL