

GULAB CHAND AGRAWAL

v.

STATE OF BIHAR AND ORS.

NOVEMBER 29, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law:

Pension—Rules provided option to Municipal employees, who had subscribed to Contributory Provident Fund, to switch over to Pension Scheme under the Rules—Rules adopted by employer-Municipality in 2001—Entitlement of Appellant-employee to exercise option under the Rules—Held, not entitled as he had already retired in 1992—Grant of opportunity to him to exercise the option does not and cannot arise—Bihar Municipal Officers and Servants Pension Rules, 1987—Rule 4—Bihar and Orissa Municipalities Act, 1922.

Appellant was appointed as a clerk in Respondent No.4-Municipality, a 'local authority' constituted under the Bihar and Orissa Municipalities Act, 1922. He retired from service in 1992. Rule 4 of the Bihar Municipal Officers and Servants Pension Rules, 1987 gave Municipal employees, on roll on the date of confirmation of such Rules, and who had subscribed to Contributory Provident Fund under the Provident Fund Rules, the option of switching over to Pension Scheme under the Pension Rules. The option was to be exercised in writing. The Pension Rules were adopted by the Respondent-Municipality in 2001.

Writ application of Appellant was dismissed by High Court on the ground that he did not give any option for switching over to Pension Scheme under the Pension Rules from the Contributory Provident Fund Scheme of which he was a member.

In appeal to this Court it was submitted by the Appellant that the question of giving any option in terms of the Rule 4 of the Pension Rules did not arise as the same had been adopted by Respondent No.4-Municipality only in 2001.

Dismissing the appeal, the Court

A **HELD: 1.** Although the appellant may be correct in his submission but the fact remains that he had already retired in 1992 and as such at this juncture, the respondent No.4 - Municipality's giving him opportunity to opt for the said scheme does not and cannot arise. Therefore, albeit for different reasons, the judgment and order passed by the High Court is upheld.

B **2.** However, it is stated at the Bar that the entire retirement dues of the appellant has not been paid. If that be so, the respondent No.4 being a 'State' within the meaning of Article 12 of the Constitution, shall pay all lawful dues of the appellant at an early date. [851-E-F]

C **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2730 of 2006.

From the Judgment and Order dated 16-10-2003 of the High Court of Judicature at Patna in L.P.A. No. 972 of 2003.

D Rajesh Pathak, Sumeet Kumar and Amit Kumar for the Appellant.

Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

E This appeal is directed against the judgment and order dated 16.10.2003 passed by a Division Bench of the Patna High Court in LPA No. 972/2003, whereby and where under a judgment and order dated 11.9.2003 passed by a learned Single Judge of the said Court passed in CWJC No. 707/2000 was affirmed the appellant herein was appointed as a clerk in Siwan Municipality.

F The said Municipality is a 'local authority' constituted in terms of the provisions of the Bihar and Orissa Municipalities Act, 1922.

The State of Bihar framed rules for the Municipal employees, known as Bihar Municipal officers and Servants Pension Rules, 1987. Clause 1 if

G Rule 4 of the said rules reads as follow:

H "Municipal employees on roll on the date of confirmation of this rule and who had subscribed to the contributory provident fund under provident fund rules and want to be governed by these rules shall have the option to do so and such option shall be exercised in writing in the prescribed Form (Annexure-I) and submitted to their head office within 90 days from the date of framing of this rule by the State

Government. If such option in writing prescribed form is not received within the period so fixed it will be deemed that they would retain the existing contributory provident fund." A

Appellant retired from his service on 31.1.1992. The aforesaid rules were adopted by the respondent-Municipality in August, 2001. As Appellant did not give any option for switching over to the pension scheme under the aforesaid rules from the contributory provident fund scheme of which he was a member, the High Court dismissed his writ application. B

Learned counsel appearing on behalf of the appellant submits that the question of giving any option in terms of the Rule 4 of the Pension Rules did not arise as the same had been adopted by respondent NO. 4 - Municipality only in August, 2001. C

Although the learned counsel may be correct in his submission but fact remains that he had already retired in 1992 and as such, at this juncture, the respondent No. 4 - Municipality's giving him opportunity to opt for the said scheme does not and cannot arise. We, therefore, albeit for different reasons, uphold the judgment and order passed by the High Court. D

However, it is stated at the Bar that the entire retirement dues of the appellant has not been paid. If that be so, we are sure that the respondent No. 4 being a 'State' within the meaning of Article 12 of the Constitution, shall pay all lawful dues of the appellant at an early date. E

The appeal is dismissed with the aforesaid observations.

B.B.B.

Appeal dismissed