

(2003) 04 PAT CK 0029

In the Patna High Court

Case No : L.P.A. No's. 1050, 1052 and 1053 of 200 (sic)

Chapra Municipality Chapra and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Bihar Municipal Officers and Servants Pension Rules, 1987 — Rule 4

Citation : (2003) 3 PLJR 150

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi and Arvind Kumar Pandey, for the Appellant;
Mahesh Narain Parbat, for the Respondent

Final Decision : Allowed

Judgement

1. All the four appeals are barred by (sic)ation.
2. After having heard learned Counsel the parties and taking into consideration governments made in the limitation peti(sic) we are satisfied that sufficient ground been made out to condone the delay in (sic) these appeals. Accordingly, the delay (sic)ng these appeals are condoned.
3. The Appellants in all the four ap(sic)s are the Chapra Municipality, Chapra (sic) its officer and the question involved in said appeals is one and the same, as (sic) they have been heard together and (sic) being disposed of by this common (sic).
4. In LPA No. 407 of 2002 the Appellants have challenged the order dated 7.12.2001 passed in CWJC No. 5642 of 2000 by a learned single Judge of this Court whereby he has directed for payment of family pension to the writ Petitioner/ Respondent who is the widow of the deceased Class IV employee, namely, Khalil Ahmad.
5. L.P.A. Nos. 1050, 1052 and 1053 of 2002 have been filed by the Appellants against a common order dated 26.6.2002 passed in batch of writ applications out

of which the said three appeals arise, whereby learned Single Judge has directed the Appellant for payment of pension and other retiral benefits to the private Respondents who superannuated as Class III and IV employees of the Municipality, Chapra.

6. The only question for determination in these appeals is as to whether the employees or their dependents, in case of death of the employee, are entitled to pension or family pension in terms of the Rules, known as "Bihar Municipal Officers and Servants Pension Rules, 1987, (hereinafter referred to as the Rules) which came into force on 13.11.1987 or they are only entitled to contributory provident fund in terms of the provisions of the Provident Fund Rules which was applicable in their case prior to coming into force of the aforesaid Rules.

7. It is admitted position that prior to coming into force of the aforesaid Rules employees were entitled to only contributory provident fund in terms of the Provident Fund Rules. Rules were framed providing for pension to the employees and in case of his death, family pension to his descendant on fulfilling certain terms and conditions as mentioned in the Rules. Rule 4 of the Rules gave option to the Municipal employees to opt for benefit of pension scheme within 90 days from the date of framing of the Rules by the State Government. It was provided therein that if such option in writing in prescribed form is not received within the prescribed period it will be deemed that the employees will retain the existing contributory provident fund.

8. The assertion made on behalf of the writ Petitioners in three appeals, namely, LPA Nos. 1050, 1052 and 1053 of 2002, filed on behalf of the employees is that they opted for pension in terms of the Rules. The case of the widow of the deceased employee Khalil Ahmad (L.P.A. No. 407 of 2002) is that her husband had opted for pension under the Rules and after his death now she is entitled to family pension.

9. The learned Single Judge has firstly decided the case of Habibun Nisa (Petitioner in CWJC No. 5642 of 2000 out of which LPA No. 407 of 2002 arises) on 7.12.2001 and allowed the claim of the widow for family pension on the ground her case is similar to the case of Parvati Devi whose claim for payment of family pension has been allowed by this Court in MJC No. 1562 of 1999. The other ground given by him was that the Municipality of Chapra has not maintained proper record as to the option being given by its employees and when they have got no papers to show that some of the employees had not opted for pension then it becomes obligatory on the part of it to accept the position that all 4th Grade employees had opted for pension. The other three writ petitions were disposed of on the basis of the order passed in the aforesaid case.

10. Learned Counsel appearing for Appellants submitted that a list of those employees who had opted for benefit of pension scheme under the Rules was filed before the learned Single Judge as Annexure-C to counter affidavit filed on behalf of Respondent Nos. 2 and 3 in CWJC No. 5642 of 2000. From perusal of

the same it would appear that only 74 employees had opted for pensionary benefits under the Rules and as such only they were entitled to such benefit under the Rules. The names of the writ Petitioner in the three appeals and the husband of the writ Petitioner in one appeal are not in the aforesaid list and as such they are not entitled to the benefit of pension under the aforesaid Rules.

11. Learned Counsel appearing for the writ Petitioners-Respondents on the other hand relied upon the office note dated 9.11.1987 and 26.11.1987, which has been annexed as Annexure-2 to the writ petition being CWJC No. 5642 of 2000, and submitted that from perusal of the same it appears that all employees of general wings had opted for pension scheme under the Rules except two whose names are mentioned in the same list and as such the list contained in Annexure-C to the counter affidavit filed on behalf of the Respondents No. 2 and 3 to the aforesaid writ application has not been properly maintained by Municipality.

12. In reply to the aforesaid submission of the learned Counsel for the writ Petitioners/Respondents, the learned Counsel for the Appellants submitted that Annexure-2 to the aforesaid writ application containing office note is not a genuine document and that is a created one and the averment to that effect has already been made in the counter affidavit and (sic) such the learned Single Judge was not justified in relying upon Annexure-2 to (sic) aforesaid writ application in deciding (sic) matter in favour of the writ Petitioner and Respondents.

13. The question for payment of (sic)sion under the Rules is dependent upon the factum of giving an option within the period prescribed under Rule 4 of the Rules. If no option in writing in prescribed form has been filed within the period prescribed by the employee then they are not entitled to the benefit of the Rules and will be paid contributory provident fund. If the employee has opted for pension under the Rules in writing in prescribed form within the prescribed form, then he cannot be allowed to offer. The reliance placed upon the order issued in said MJC No. 1562 of 1999 by (sic) learned Single Judge was little misplaced as name of the husband of the petitioner of said MJC application was in the list of 74 persons appended as annexure-C to the aforesaid writ application and as such her case was different (sic) from the case of the present writ Petitioners.

14. In view of the divergent stands (sic) taken by both the parties and challenge (sic) made to the genuineness of the documents brought on record we are of the (sic) view that the question as to how many employees had opted for pension under (sic) Rules and whether the Municipality has prepared the correct record or not, cannot (sic) be decided in writ jurisdiction. This matter has to be inquired into by an independent authority so that controversy is settled otherwise the dispute will crop up at the time (sic) of the retirement of the employees and (sic) when they retire.

15. Taking into consideration this aspect of the matter and in the facts of this (sic) we direct the Collector, Chapra to (sic) make a detail inquiry and prepare a list of

employees opted in terms of the Rules (sic) deciding the matter, the Collector will be the Municipality and will also afford opportunity to the concerned employees (sic)ing ex-employees. The parties may allowed to support their stand by provided materials in support of their stand. This (sic)cise should be completed within six (sic)hs from the date of receipt/production copy of this order.

16. In the result, all the four appeals allowed and the orders passed by the and Single Judge in the said four writ applications are set aside and the writ applications stand disposed of in terms of the directions stated above.