

(1996) 03 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 1777 of 1990

Vasant Gopal Bhagwat and Others

APPELLANT

Vs

Pune Municipal Corporation

RESPONDENT

Date of Decision : 06-03-1996

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 465(3)
Constitution of India, 1950 — Article 12, 14, 16
Municipal Corporation Pune, Provident Fund Regulations, 1950 — Regulation 2

Citation : (1996) 5 BomCR 527 : (1997) 3 MhLj 812

Hon'ble Judges : A.S. Venkatachala Moorthy, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.D. Soni and Kiran Bhagalia, for the Appellant; R.G. Ketkar, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, J.—Everyone desires to live long, but no one would be old - Swift. Old age becomes particularly painful and intolerable when left to penury for want of security and support in the twilight of life. Petitioners, old and infirm yearn for equality of treatment which was meted out to their fellow workers in the fall of life. Their prayer is for extending the benefit of pension which was denied to some on the basis of a fortuitous event of their retirement being prior to what is known as cut off date and to others on the ground of not opting for the benefit within the stipulated time.

2. The concept of pension is now well known and has been crystallised by the decisions of the Supreme Court. It is not charity or bounty nor is it gratuitous payment solely dependent on the whim and sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the

Constitution when the employer is a State within the meaning of Article 12 of the Constitution. Therefore Article 14 will be attracted where classes of pensioners are treated differently without any rational basis. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , the Apex Court held that the classification in revised pension formula between pensioners on the basis of date of retirement specified in memorandum is arbitrary and violative of Article 14. The Apex Court speaking through Desai, J., held :

"With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavors to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria, "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in the memoranda, violates Article 14 and is unconstitutional and liable to be struck down. But, as the arbitrary and discriminatory portion in the memoranda can be easily severed, both the memoranda shall be enforced and implemented after severance of the unconstitutional part. However, arrears of pension prior to the specified date are not required to be paid to those who have retired before the specified date because to that extent the scheme is prospective. Accordingly, all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of their date of retirement."

3. In the case of *T.S. Thiruvengadam v. Secretary to Government of India and others* 1992(2) S.C.C. 174, the Apex Court reiterated the law laid down in *Nakara's* case, (supra). It was held that the action of the Government in extending the benefit of memoranda only to those who were absorbed in public undertaking after the date of memoranda is violative of Articles 14 and 16 of the Constitution. Reference may be made to the judgment of Apex Court in *Smt. J.S. Rukmani and Others Vs. Government of Tamil Nadu and Others*, , where it was held that action of granting family pension to Government servants of former State of Madras whose last place of service fall within Tamil Nadu after States reorganisation but depriving to those whose last place of service fell in Kerala after reorganisation is discriminatory and violative of Article 14.

4. We proceed to examine the facts of the case at hand in the light of these settled legal principles.

The petitioners are retired employees of Transport undertaking of Pune Municipal Corporation. They served in different capacities for different periods in the

transport undertaking of the Municipal Corporation. The petitioners were in some cases employees of the Silver Jubilee Motors who were originally running the bus services within the municipal limits. Upon its taking over by the Pune Municipal Corporation they were absorbed and continued in the service of the municipal transport undertaking until their respective dates of retirement. As far as the petitioner No. 1 is concerned he had retired on 20th October, 1962. The petitioner No. 2 had retired on 15th August, 1968 while petitioner No. 3 had retired on 1st July, 1974. The petitioners Nos. 4 and 5 had retired on 1st August, 1977 and 31st March, 1975 respectively. The petitioner No. 6 had retired on 2nd January, 1967 and the 7th petitioner had retired on 13th September, 1961.

5. In November, 1950 the Municipal Corporation of Pune had promulgated Provident Fund Regulations as required by section 465(3)(a) of Bombay Provincial Municipal Corporations Act, (for short "the Act") 1949. By virtue of Regulation No. 2(a) thereof those regulations were made applicable to the officers and servants of the transport undertaking governed by Chapter XX of the Act. Under the said scheme the petitioners were required to contribute at the rate of 1 Ana and 4 paise for every rupee of salary as provided by Regulation 6. Regulation 8 provided matching contribution of 100% by the Municipal Corporation equal to the subscribers subscription. At the time of their retirement the petitioners received the provident fund amount standing to their credit in their account. Considering the length of their services and the small salaries which they were drawing the petitioners received meagre amount by way of post retirement benefits. For instance, the petitioner No. 1 who retired in 1962 received only Rs. 3,500/- while the petitioner Nos. 2 and 3 retired in seventies received approx. Rs. 23,000/- each.

6. It appears that the Municipal Corporation did not have any pension scheme for its staff till about 1954. Mr. Ketkar learned Counsel for the Corporation has informed us that a pension scheme was in existence from 1954 governing the employees of the Corporation but the employees of the transport undertakings were not eligible for the said scheme. The said scheme was replaced by the Revised Pension Regulations of 1960 and the same were made applicable to all the Corporation employees except the employees working in the transport undertaking. Finally in the year 1970 the Corporation framed and adopted pension regulations on the same lines for the transport undertaking. The Maharashtra Government by its resolution dated 23rd September, 1970 confirmed these regulations. The regulations though confirmed in 1970 were deemed to have come into effect on 1st April, 1967 as per Clause 1 of the Resolution No. 3. The petitioner Nos. 1, 6 and 7 who had already retired were not covered by the said pension scheme of 1970 which was made applicable with effect from 1st April, 1967. There is no explanation forthcoming from the respondents as to why the date 1st April, 1967 was chosen as a cut off date but we shall deal with this aspect in more detail in later part of the judgment.

7. When the scheme of 1970 was introduced the second petitioner had already

retired but he was covered by the scheme as his retirement was after 1st April, 1967. The petitioner Nos. 3, 4 and 5 were in service when the scheme was introduced and naturally they were entitled to opt for the said scheme and there is no dispute that such option was given to not only to petitioner Nos. 3, 4 and 5 but also to petitioner No. 2. There is also no dispute that they did not opt for the revised pension scheme.

8. Thereafter a modification was effected to the pension scheme of 1970 by inserting sub-Regulation No. (iv) after sub-regulation (iii) and the same reads as followed :---

"Notwithstanding anything contained in sub-rule (ii) and (iii) Municipal Officers and Servants who were appointed in Poona Municipal Transport before 1st July, 1970 and are still in the service in Poona Municipal Transport on or before 1st August, 1973 and who have been deemed to have opted to remain under the Provident Fund Regulations of Employees Provident Fund Act, 1952, shall have a further option to elect to be governed by those Regulations or to remain under the Regulations of the Employees' Provident Fund Act, 1952 applicable to him. This option shall be exercised within three months of the date on which approval of Government to this rule is communicated. Option once exercised will be final."

The above change was accepted by the State Government on 16th January, 1975. Under the amended sub-regulation No. IV an opportunity was given to the employees who were appointed before 1st July, 1970 and are still in service with the Municipal Corporation transport undertaking on or before 1st August, 1973 and who have been deemed to have opted to remain under the P.F. Regulations of Employees Provident Fund Act, 1952. The petitioner No. 3 had retired from service by the time the aforesaid modification was introduced. It is the case of the petitioner No. 3 that he was not aware of the modified scheme. The Corporation has contended that the amended scheme was communicated to the petitioner No. 3 but no evidence has been produced on record in this behalf.

9. In 1985 Municipal Corporation further amended the pension regulations with the approval of the State Government dated 8th January, 1985. By the amendment sub-regulation (v) was inserted in the scheme which reads as follows :---

"The Officers and Servants of the Pune Municipal Transport Undertaking who were in the service before 1st April, 1971 and those who are in the service on or after 1st April, 1978 and who have been deemed to have opted to remain under the Provident Fund Act, 1952 shall have a further option to elect the Pension Rules of the Pune Municipal Transport Undertaking or to remain under the Regulations of the Employees' Provident Fund Act, 1952 applicable to them. This option shall be exercised within three months from the date on which approval of Government to this Rule is communicated. Option once exercised final."

The plain reading of sub-regulation (v) shows that a fresh opportunity was given to only two sets of employees viz., (a) those who were in service before 1st April,

1971 and (b) those who are in service on or after 1st April, 1978 and who have been deemed to have opted to remain under the P.F. Regulations of Employees' Provident Fund Act, 1952. Thus the employees who retired during the period 2nd April, 1971 to 31st March, 1978 were excluded from the amended modification. The petitioner Nos. 3, 4 and 5 had retired during this period. In spite of their repeated representations to the authorities no explanation was given as to why only the employees retired during the said period were excluded from the benefit of the revised scheme. As far as petitioner No. 2 is concerned who could have been covered by the revised scheme has stated that he had no knowledge of the revised scheme and therefore he could not apply within the time fixed under the said scheme.

10. At this stage it is necessary to refer to a resolution issued by the Municipal Corporation which has an important bearing on the outcome of this petition. On 18th November, 1986 Municipal Corporation passed resolution bearing No. 2217 whereby the benefits of the liberalised pension rules were extended by the Municipal Corporation to the Municipal employees with retrospective effect from 1st January, 1957. By paragraphs 1 and 2 of the said resolution benefit of being governed by amended pension rules as per option in Rule 2(1)(a) was made applicable to all those who had retired after 1st January, 1957, and even in the cases where the pensioner is dead benefit was made available to his heirs. This was also extended to those who had opted to be governed by the P.F. Rules. Even the widows of the retired persons were deemed to be entitled to the pension, under the new dispensation which was to be claimed by the concerned person within 1 year from the date of the resolution. Surprisingly the Corporation did not extend this resolution to its employees in the transport undertaking.

11. The basic contention of the petitioners who had retired prior to the cut off date of 1st April, 1967 is that the corporation has discriminated between its employees who had retired prior to the said date of 1st April, 1967 and those who have retired after that date and thus violated Article 14 of the Constitution. The grievance of the petitioners is that the distinction made between the employees retired before 1st April, 1967 and those retiring after that date is arbitrary and without any rational basis particularly when the similar pension scheme was made applicable to the other municipal employees with effect from 1960, and a further benefit was conferred on them by resolution of 1986 whereby the scheme was made applicable with retrospective effect from 1st April, 1951, not only to those who had not opted for such scheme but even to their heirs. The petitioners contend that there is no justification on the part of the Municipal Corporation in meeting differential treatment to the employees of transport undertaking. The petitioners also contend that if the pension scheme which is applied to employees working in the transport undertaking is no different than the scheme applied to other municipal employees there is no reason to make distinction between the two sets of employees, at least as far as the cut off date is concerned. The challenge of the petitioner Nos. 2 to 5 stands on a slightly different footing. As far as the petitioner No. 2 is concerned he is

clearly covered by the revised scheme of 1985. He could not apply in time because he was not aware of the said revised scheme. So far as petitioners 3, 4 and 5 are concerned it is their contention that the revised scheme of 1985 should have been made applicable to all the employees who retired before the date of 1st April, 1978. Their grievance is that there is no justification for excluding the employees who retired during the period 2nd April, 1971 to 31st March, 1978. They placed strong reliance upon the resolution of 1986 passed by the Corporation whereby the benefit has been extended to all the municipal employees and to even their heirs.

12. We will first deal with the case of petitioner No. 2 because in our opinion he is clearly covered by the revised scheme of 1985. The benefit of the said scheme cannot be denied to him merely because he has not applied within the time fixed under the revised scheme. It is the case of the petitioner No. 2 that he was not made aware of the revised scheme and therefore he could not apply within time. We have therefore no hesitation to hold that the benefit of 1985 scheme is liable to be extended to the second petitioner. Now as far as the petitioners 3 to 5 are concerned we find considerable force in their contention that the revised scheme of 1985 which has the effect of excluding the employees from transport undertaking retired during the period from 2nd April, 1971 to 31st March, 1978, suffers from vice of arbitrariness. There is absolutely no explanation for excluding only those employees who retired during the aforesaid period. If an employee who has retired prior to 1st April, 1971 is entitled to the benefit of the revised scheme it is difficult to understand as to how the employee who has retired during the period 2nd April, 1971 to 31st March, 1978 can be excluded from the benefits afforded by the amended scheme. To that extent in our opinion the scheme violates the petitioners' right of equality guaranteed to the petitioners under Article 14. Therefore, we feel that the benefit under the revised scheme must be given to all the employees of the transport undertaking who retired during the said period.

13. Coming to the case of employees who had retired before the cut of date of 1st April, 1967 Mr. Ketkar, learned Counsel for the Corporation strenuously contended that the Corporation was justified in choosing a cut of date because the pension scheme was introduced for the first time by the resolution of 1970. Mr. Ketkar urged that when there was no pension scheme in existence prior to 1970 the authorities were perfectly justified in introducing a cut of date and in that eventuality the employees retiring before such date form a separate class and therefore it cannot be said that there was violation of Article 14. The contention of learned Counsel though appears to be attractive at the first appearance, is found completely meritorious in view of the admitted position that a similar pension scheme was made applicable to all the municipal employees except the employees working in the transport undertaking with effect from 1960. In our opinion the authorities were not justified in according differential treatment to the petitioners who were working in the transport department. It is true that the employees of the said undertaking are governed by different service

rules but it is equally true that the pension scheme made applicable to the transport undertaking is similar to the one applied to other municipal employees and if that is so then there cannot be any differentiation in the treatment as far as the fixation of cut of date is concerned.

14. We have already seen that under the resolution of 1986 the Corporation has thought it fit to extend the benefit of liberalised pension to all the employees of Corporation and in case the concerned employee is not alive to his heirs. Surely the petitioners who are in the employment of Municipal Corporation cannot be treated by different yard sticks. We may mention at this stage that we repeatedly asked Mr. Ketkar to justify the Corporation's stand on this issue but Mr. Ketkar was unable to give any explanation beyond saying that the transport undertaking being a separate undertaking the resolution of 1986 was not made applicable to the employees of the said undertaking. This is hardly a ground for meeting different treatment to different department in vital matters like pension and other post retirement benefits. Pension is not merely a statutory right but it is the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. When the municipal corporation has devised a scheme of giving benefits to its employees and their families with retrospective effect there cannot be any justification for depriving such benefit to the employees of transport department. We are therefore of the opinion that the cut of date of 1st April, 1967 fixed under the resolution of 1970 is violative of Article 14 and is therefore liable to be struck down. The employees of the municipal corporation transport undertaking who have retired after 1-4-1967 will be entitled to opt for the pension scheme, subject to the terms and conditions of the said scheme.

15. Before parting with this matter we may state that we have given our anxious thought to the financial implications of our decision. We are informed that there are hardly 20-25 employees of the transport undertaking who will be getting the benefit of our order and as such financial burden on the Corporation will not be much.

16. In view of the foregoing discussion we pass the following order :---

Pune Municipal Corporation is directed to extend the benefit of revised pension scheme of 1985 to the petitioners 2 to 5. Corporation is also directed to extend the benefit of the said scheme to the employees of the Pune Transport Undertaking who had retired after 1st April, 1957 including the petitioner Nos. 1, 6 and 7. The Corporation shall intimate within 15 days the exact amount which is due from the petitioners for the purpose of availing the benefit of the revised pension scheme of 1985. The amount so intimated shall be deposited by the respective petitioners within two weeks and thereafter the Corporation shall fix the pension payable to them within 6 weeks. Rule made absolute in above terms. No costs. C.C. expedited.