

PETITIONER:
TRANSPORT MANAGER, PUNE MUNICIPAL CORPORATION, TRANSPORTUNDE

Vs.

RESPONDENT:
VASANT GOPAL BHAGWAT (DAD) BY LRS. AND OTHERS

DATE OF JUDGMENT: 27/08/1998

BENCH:
S.C. AGRAWAL, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Rajendra Babu, J.

Leave granted.

Respondents 1 to 7 are retired employees of the Transport Undertaking of the Pune Municipal Corporation ("Municipal Corporation" for short). Respondent No. 1 retired on 20.10.1962, respondent No. 2 on 15.8.1968, respondent No. 3 on 1.7.1974, respondent No. 4 on 1.8.1977, respondent No. 5 on 31.3.1975, respondent No. 6 on 2.1.1967 and the respondent No. 7 on 13.9.1961 under section 462 (3) (a) of the Bombay provincial Municipal Corporation Act, 1949, the Pune Municipal Corporation had introduced Provident Fund Regulations for its employees in November 1950 which were made applicable to officers and employees of the transport Undertaking in the Corporation. At the time of retirement these respondents had received provident fund amount standing to their credit in the account. The Municipal Corporation framed Pension Scheme for its employees in the year 1954. However, employees of the Transport Undertaking were not included in the said Scheme because Transport Undertaking itself was a separate autonomous body. The 1954 Scheme was replaced by a revised Pension Regulation Scheme of 1960. In the year 1970, the Corporation framed Pension Regulations for the employees of the Transport Undertaking which were approved by the Government of Maharashtra and became effective from 1.4.1967. Respondents 1, 6 and 7 had retired prior to 1.4.1967 and, therefore, the benefits under the said Pensions Scheme were not available to them. 2nd respondent though he had retired was covered by the Scheme as he retired subsequent to 1.4.1967. Respondents 3, 4 and 5 were still in service when the Scheme was introduced and these respondents 2, 3, 4 and 5 were informed of the Pension Scheme and were asked to give their option to have the benefit of the said Scheme. None of them opted for the new Scheme. A modification was made to the Pension Scheme of 1970 on 16.1.1975 and sub-regulation No. IV of the Pension Scheme which is relevant for our purpose was inserted which reads as follows:-

"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 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 these 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."

Again the said Scheme was modified on 8.1.1985 and sub-Regulation V of the modified Scheme 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 Municipal Corporation passed a resolution on 18.11.1986 extending the benefit of the Pension Rules to the employees with retrospective effect from 1st January, 1957. Even in cases where a pensioner had died, the benefit was made available to his heirs. A Writ Petition was filed in the year 1990 to apply the resolution dated 18.11.1986 so as to extend the benefit of pension Scheme to the employees of the Transport Undertaking even though they had opted or were governed by the Provident Fund Scheme and retired after 1.1.1957 but prior to 29.11.1986. The appellants contested the said position on the basis that the Transport Undertaking was a separate autonomous body and the employees of the Transport Undertaking had separate set of Pension Rules and they cannot claim parity in the pension with the employees of the Pune Municipal Corporation. the High Court, however, took the view that the employees of the Transport Undertaking are also employees of the Municipal Corporation; that they are entitled to the same benefits which have been granted to the employees of the Pune Municipal Corporation; that therefore, allowed the Writ Petitions and directed the extension of the benefits of the Revised Pension Scheme to respondents 2 to 5. The Corporation was also directed to extend the benefits of the said Scheme to the employees of the Transport Undertaking who had retired after 1.4.1957

including respondents No.s 1,6 and 7.

We shall first deal with the question whether Scheme as applicable to the employees of the Municipal Corporation should be applied to the employees of the Transport Undertaking. At para 13 of its order, the High Court records as follows:-

" It is true that the employees of the said undertaking are governed by different service rules but it is equally true that the pension 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 off date is concerned.

The position is that the employees of the Transport Undertaking are governed by different set of rules. The employees of the transport Undertaking are appointed pursuant to Chapter XX of the Act and are subject to Poona Municipal Transport Service Regulations. The nature of the work done by them and other municipal employees cannot prima facie be identical. There was a provident Fund Scheme introduced to the employees of the Transport Undertaking framed under the Employees Provident Fund Act, 1952 and all the respondents had drawn the benefits of the Provident Fund Scheme. Under the Provident Fund Scheme a contribution matching that of the employees is made by the Transport Undertaking. Therefore, the scheme applied insofar as pension is concerned to the employees of the Transport Undertaking was entirely different from that of the Municipal Corporation.

The Scheme provided that modifications thereof were to be effective from 1.4.1967. The High Court took the view that the cut of date is arbitrary and there is no rational basis in fixing the Same. It is brought to out notice that an agreement was entered into with the employees of the Transport Undertaking Corporation and the Corporation and the agreement became effective from 1st April, 1967 and in those circumstances the particular date had been fixed. If that is so, it cannot be said that the appellants have chosen the cut of date arbitrarily and is therefore violative of Article 14 of the Constitution.

It is only for the first time in the year 1970 that the Corporation framed Pension Regulations for the employees of the Transport Undertaking. until then there was no pension scheme available to the employees in the Transport Undertaking of the Corporation. The said Scheme was modified from time to time and the resolutions were passed by the Municipal Corporation whenever it wanted to make it applicable specifically to the employees of the Transport Undertaking, the same was specifically mentioned. When there was no such mention of the benefit of the Scheme, it was not open to the High Court to extend the benefit thereof from an anterior date to the employees in question. The basis upon which the distinction was maintained between the two classes of employees was not appreciated by the High Court. The same was brushed aside by stating that such a reason could hardly be a basis for meting out different treatment to different department in vital matters like pension and other post retirement benefits.

One cannot be dogmatic in such matter. Introduction of the Provident Fund Scheme and application of the Pension Scheme only from the year 1970 was in the background set

forth above. If these aspects make it clear that the High Court appears to have slipped into such an error.

In the circumstances, the view taken by the High Court cannot be sustained. The order made by the High Court, therefore, is set aside and the writ petition filed by the respondents shall stand dismissed. The appeal is allowed. No Costs.

JUDIS