REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 4802-4803 OF 2013
ARISING OUT OF
SPECIAL LEAVE PETITION (C) Nos. 14922-14923 OF 2009

SANCHARI DEVI & ORS **Appellant(s)**

VERSUS

ARA MUNICIPAL CORPORATION & ORS **Respondent(s)**

JUDGMENT

Leave granted.

2. These appeals are against the judgment dated 4th March, 2009 of the Division Bench of the Patna High Court in L.P.A. Nos. 863 and 914 of 2007.

3. The facts very briefly are that Ramashish Prasad and Vishwanath Ram were working with the Ara Municipal Corporation. Ramashish Prasad superannuated on 31st August, 1996 and Vishwanath Ram superannuated on 31st March, 1999. While they were working in the Ara Municipal Corporation, the Bihar Municipal Officers and Servants Pension Rules, 1987 (for short 'the Rules') came into effect. The Rules were to apply to all permanent employees of the Municipalities and Notified Area Committees in the State of Bihar. The Ara

Municipal Corporation, however, did not give effect to the Rules until 19th June, 2004 on which date it adopted resolution to give pensionary benefits to its employees who had retired from service from the year 2000 onwards in accordance with the Rules.

4. Aggrieved, Ramashish Prasad and Vishwanath Ram filed Writ Petitions CWJC Nos. 3267 and 3441 of 2005 before the Patna High Court claiming appropriate reliefs. The learned Single Judge of the High Court who heard the writ petitions held in his judgment dated 25th May, 2007 that the Rules were applicable with effect from 13-11-1987 when the Rules were notified in the Gazette and since both the writ petitioners had superannuated after 13-11-1987 they were entitled to the benefit of pension under the Rules. The judgment dated 25th May, 2007 of the learned Single Judge was challenged by the Ara Municipal Corporation in L.P.A. Nos. 863 and 914 of 2007 and by the impugned judgment, the Division Bench of the High Court upheld the finding of the learned Single Judge that the Rules came into effect on 13-11-1987 but held that as the two writ petitioners had not exercised their option for the pension as required by Rule 4 of the Rules and as their right to pension under the Rules was dependent upon the exercise of their option for pension, they were not

entitled for the pension under the Rules. Aggrieved, Ramashish Prasad and the legal heirs of Vishwanath Ram have filed these appeals before this Court.

5. We have heard learned counsel for the parties and we find that the only point that we have to decide in these appeals is whether Ramashish Prasad and Vishwanath Ram were entitled to the benefit of the Rules even though they had not exercised their option for pension as required by Rule 4 of the Rules. For deciding this point, we have to look at the Rules 1 and 4 of the Rules which are quoted here-in-below:

> **1. These rules may be called the Bihar Municipal Officers and Servants Pension Rules, 1987 and shall apply to all permanent employees of the Municipalities and Notified Area Committees.**
>
> **4. (i) Municipal employee 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 1) and submitted to their head of office within 90 days from the date of framing of this rule by the State Government. If such option in writing in prescribed form is not received within the period so fixed, it will be deemed that they would retain the existing contributory provident fund.**
>
> **(ii) Municipal employees who retired before the date of effect of this rule and have received the part or whole amount of provident fund contribution will not be eligible for the pension.**

6. A bare reading of the Rules 1 and 4(i) of the Rules makes it clear that the Rules apply to permanent employees of the Municipalities and Notified Area Committees in the State of Bihar. Thus, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation were statutorily entitled to the pension under the Rules. Rule 4(ii) of the Rules provided further that municipal employees who retired before the date of effect of the Rules and received part or whole amount of provident fund contribution will not be eligible for pension. Hence, Municipal employees who had retired before the date of effect of the Rules and had received part or whole of provident fund contribution were not entitled for the pension under the Rules. In other words, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation had a statutory right to get pension if they had not retired before the date of effect of the Rules and had not received part or whole of provident fund contribution.

7. Rule 4(i) of the Rules, quoted above shows that municipal employees on the rolls on the date of confirmation of the Rules and who had subscribed to the provident fund and wanted to be governed by the

provident fund rules shall have the option to do so and such option was to be exercised in writing in the prescribed form in Annexure 1 and submitted the option within 90 days from the date of framing of the Rules by the State Government and if such option in writing in prescribed form is not received within the time so fixed, it will be deemed that they would retain the existing contributory provident fund. The language of the last limb of Rule 4(i) provides that in case the option is not exercised by a municipal employee who is entitled for pension under the Rules, it will be deemed as if he has exercised his option to retain the existing contributory provident fund. The option was, therefore, a right of the employee either to continue with the contributory provident fund or to switchover to pension under the Rules and the statutory right of the municipal employee to receive pension was not dependent upon the exercise of option as held by the High Court in the impugned order. As we have already indicated, by virtue of what is provided in Rule 1 of the Rules, every permanent employee of a Municipality or Notified Area Committee, if he had not retired before the date of effect of the Rules and had not received part or whole of provident fund contribution was statutorily entitled to the pension.

8. In the facts of the present case, the Ara Municipal Corporation itself had taken a view that the Rules were not applicable until a resolution is adopted by the Corporation and adopted the resolution only on 19th June, 2004 saying that the pensionary benefits of the Rules will be given to those employees who had retired from service from the year 2000 onwards. The resolution was clearly in contravention of the Rule 1 as well as Rule 4(ii) of the Rules. If the Corporation had taken the correct view that the rules would be effective from 13th November, 1987, the two employees Ramashish Prasad and Vishwanath Ram who were employees of the Ara Municipal Corporation on that date, could have exercised their respective options to switchover to pension scheme under the Rules. This is a case where the Ara Municipal Corporation by taking the view that the Rules were not applicable until adopted by the Corporation had disabled the aforesaid two employees from exercising their option and cannot take advantage of such a disability caused by the Municipal Corporation itself and deny their statutory right to pension under the Rules. Moreover, the two employees have also not received part or whole of provident fund contribution although they have retired in 1996 and 1997 and hence

they could not have been deemed to have exercised their option to retain existing provident fund.

9. For the aforesaid reasons, we set aside the impugned judgment of the Division Bench and direct that the appellants will be given the pensionary benefits including pension and family pension, as the case may be, in accordance with the Rules within three months from today.

10. We make it clear that this judgment has been delivered in the facts of the present case and will not be treated as a precedent applicable to all other cases the facts of which are not before this Court.

11. The appeals stand allowed accordingly with no order as to costs.

.....J.
(A.K. PATNAIK)

.....J.
(RANJAN GOGOI)

NEW DELHI,
JUNE 25, 2013