Ramdas Vaidya Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jun-25-2012

Appellant : Ramdas Vaidya

Respondent : The State of Madhya Pradesh

Advocate for Def. : Shri. G.P.Singh

Advocate for Pet/Ap. : Shri. Uttam Maheshwari

Judgement :

HIGH COURT OF MADHYA PRADESH : AT JABALPUR WP 4394/2010(S) RAMDAS VAIDYA Versus THE STATE OF MADHYA PRADESH WP 4402/2010(S) MUNNA Versus THE STATE OF MADHYA PRADESH WP 485/2007(S) KESr.CHANDRA AGRAWAL Versus THE STATE OF MADHYA PRADESH WP 4391/2010(S) RAMA Versus THE STATE OF MADHYA PRADESH WP 4393/2010(S) SHAKUN Versus THE STATE OF MADHYA PRADESH WP 4399/2010(S) RAMSHREE Versus THE STATE OF MADHYA PRADESH 2 WP 4400/2010(S) SUKHRANI Versus THE STATE OF MADHYA PRADESH WP 4403/2010(S) PARWATI Versus THE STATE OF MADHYA PRADESH WP 4410/2010(S) PUNIYA Versus THE STATE OF MADHYA PRADESH WP 4412/2010(S) CHANDRAKALA Versus THE STATE OF MADHYA PRADESH WP 11835/2010(S) SURESH KUMAR MISHRA Versus THE STATE OF MADHYA PRADESH WP 6449/2011(S) RAMKISHORE DUBEY Versus MUNICIPAL CORPORATION, SAGAR.

WP 6450/2011(S) DURGA PRASAD RAJAK 3 Versus MUNICIPAL CORPORATION, SAGAR.

WP 6452/2011(S) SATYANARAYAN NAMDEO Versus MUNICIPAL CORPORATION SAGAR.

Present : Honble Shri Justice Rajendra Menon.

-- In all the cases: Shri Uttam Maheshwari, learned counsel for the petitioneRs.Shri Sanjeev Kumar Singh, learned Panel Lawyer for respondents State.

Shri G.P.Singh, learned counsel for respondent Municipal Corporation.

-- Whether approved for reporting: Yes / No.

ORDER
../06/2012 As common questions of law and facts are involved in all these petitions and as the relief claimed are also common, all these petitions are being decided by this common order.

2- For the sake of convenience the documents available and the pleadings in the record of W.P.No.4394/2010 (s) - Ram Das Vaidya versus State of M.P.& Others is being referred to in this order.

3- Petitioners in all these these cases were working in the Municipal Corporation, Sagar in various capacity.

On attaining the age of superannuation they have retired and not they are claiming interest on the amount lying to their credit in the General Provident Fund Account.

According to the petitioners they are entitled to interest at the rate as is payable and applicable to the State Government employees 4 whereas, the Municipal Corporation, Sagar is paying interest at a flat rate of Rs.5% per annum on the amount in question and not the interest on the rate as is applicable to the State Government.

Accordingly, claiming the benefit of interest as is indicated herein above, all these writ petitions have been filed.

4- It is the case of the petitioners that initially the Council in question was the Municipal Council established under the M.P.Municipalities Act 1956 but subsequently vide notification dated 31.12.1980 it became a Municipal Corporation as defined under the M.P.Municipal Corporation Act, 1956.

It is stated by the petitioners that when the petitioners were appointed the M.P.Municipal Employees' (Recruitment and Conditions of Service) Rules 1968 (hereinafter referred to as "the Rules of 1968") were applicable.

In the Rules of 1968 a provision for payment of Provident Fund was incorporated vide Rule 24 and this Rule contemplates that the M.P.General Provident Fund Rules as amended from time to time shall apply to Municipal employees in the same way as are applicable to Government servants of similar status.

Accordingly, contending that in accordance to this Rule of 1968 petitioners are entitled to interest in the same manner as is paid to Government servants, these writ petitions are filed.

It is further stated that in accordance to provisions of Section 427 of the M.P.Municipalities Act, 1956 by-laws are to be framed and without framing any by-laws as required under Section 427 only by passing a resolution interest at the rate of 5% per annum is being paid.

Contending that without framing by-laws the interest of 5% on the basis of resolution cannot be made, these writ petitions are filed.

That apart, it is pointed out that even though the State Government has framed the Madhya Pradesh Municipal Corporations (Appointment and Conditions of Service of Officers and Servants) Rules, 2000 (hereinafter referred to as "the Rules of 2000") but Rule 13 of the said Rules only contemplates the method and procedure under which decision is to be taken in respect of payment of Provident fund and as the said Rules does not empower the 5 State Government or Municipal Corporation to fix interest to be paid in the amount of provident fund.

The resolution in question fixing the interest at the rate of 5% per annum is said to be unsustainable.

Placing reliance on a judgment of this Court in the case of Hari versus Municipal Corporation, Gwalior - 1998(2) MPLJ 60 Shri Uttam Maheshwari, learned counsel for the petitioners argued that once the provisions of Section 427 of the M.P.Municipalities Act, 1956 contemplates that a by- law has to be framed for payment of provident fund and since the by- laws have not been framed and in the Rules of 1968 which contemplates payment of provident fund at par with State Government employees, the respondents in passing the resolution and fixing a rate of interest at 5% per annum is unsustainable.

It is argued that the GPF by-laws were framed earlier in the year 1984 but no such by-laws is brought on record.

5- Respondent Municipal Corporation has filed return and it is stated that the Rules of 2000 and the provisions of Rule 13 thereof clearly contemplates a provision empowering the Municipal Corporation to determine the method/ procedure for payment of GPF and as a resolution has been passed on 31.7.2006 for payment of interest at the rate of 5% per annum.

It is stated that this resolution is in accordance to Rule 13 of the Rules of 2000 and petitioners cannot claim any further benefit.

That apart, after a rejoinder was filed, an additional return has been filed and along with the additional return by-laws of Sagar Municipality Annexure R/4 has been filed wherein a provision for payment of provident fund is made.

Bye-laws in question is the bye- laws framed for payment of provident fund by Municipal Committee, Sagar and in the additional return it is stated that by virtue of Section 2 of the M.P.Municipalities Act, 1961 and sub section 3(2) of the Municipal Corporation Act, 1956 this by-law Annexure R/4 is still in existence and as a separate procedure for payment of interest on the provident fund amount by a formula contemplated under Rule 9 is prescribed and as the interest at the rate of 5% per annum is in accordance to this formula, it is stated that petitioners are not entitled to 6 any further relief.

in para 4, 6 and 7 of the additional return the following contentions are advanced by the respondents :- "4.

That Rule 9 of the said Bye-laws contains formula regarding calculation of interest payable in final withdrawal and for adding annual interest to the provident fund accounts of individual subscriptions.

That formula is still in existence which comes near about 5% interest over final withdrawal of G.P.F...6.

As such Bye-laws framed in year 1957 is still enforce.

This Bye-laws earlier protected by Municipalities Act, 1961 and also by Municipal Corporation Act, 1956.

Since Bye-laws of year 1957 is still in existence and same has not been repealed therefore no need to frame Bye-laws afresh in the light of Section 427 of the Municipal Corporation Act, 1956.

7. That, apart from contention made in aforesaid paragraphs it is clarified that Corporation had never invested the amount deducted from the salary in GPF in any section from where Corporation Sagar could earn interest or profit due to tight financial position which may be added as per rule 9 of Bye-laws 1957."

6- As far as Rules of 1968 are concerned, even though it contemplates a provision for payment of GPF to the employees in accordance to the rules applicable to the State Government but this Rules of 1968 have been superseded by Rules of 2000.

Once from the material available on record it is seen that a by-laws has been enforced from the year 1957 with regard to payment of provident fund and the same is in existence, there is no reason for not getting the same enforced.

7- Even though petitioners have filed another bye-laws of the year 1984 at page 21 of the petition but in reply filed and during the couRs.of hearing Shri G.P.Singh, learned Counsel for the Municipal Corporation stated that these were draft bye-laws, they were never 7 approved in accordance to the requirement of Section 427 of the M.P.Municipalities Act, 1956 and therefore, it has not been enforced and instead bye-laws framed in the year 1957 are still in operation.

That being so, in the absence of there being any material to show that draft bye-laws prepared in the year 1984 have been implemented and brought into force in accordance to the statutory provisions, this Court cannot implement the said bye-laws on the contrary, as the bye-laws of the year 1957 continue to hold the field by virtue of provisions of law and therefore, as admitted by the respondent Municipal Corporation, interest on the provident fund dues has to be paid as per this bye-laws.

8- I have heard learned counsel for the parties and perused the record.

From the records it is clear that petitioners claim interest on the amount lying to their credit on the provident fund account in accordance to the interest payable to the Government employees under the General Provident Fund Rules of 1955.

Even though it is stated that the Municipal Corporation, Sagar has formulated the bye-laws namely the GPF bye-laws of 1984 but from the record and the averments made by the respondents in the return, it is clear that the bye-laws have been framed in the year 1957 and till date the said bye-laws are in existence and the 1984 bye-laws were not approved or implemented.

Even during the couRs.of hearing of this writ petition petitioners admitted the position with regard to bye-laws being framed.

Once a bye-law is in existence, petitioners are only entitled to interest in accordance to said bye-laws.

Rule 9 of this bye-law contemplates a procedure and formula for calculation of interest and payment of the same on the amount credited in the provident fund amount of an employee.

Respondents in the additional return admitted that interest is to be paid as per the formula contained in Rule 9 of the bye-laws Annexure R/4.

That being so, the only direction that is to be issued to the respondents Municipal Corporation, Sagar not is to calculate the interest and pay the same in accordance to formula as contained in Rule 9 of the resolution and bye- laws Annexure R/4 contained in the year 1957.

As this is the statutory 8 provision applicable governing payment of provident fund in the respondent establishment.

9- Accordingly, all these petitions are allowed in part.

Respondent- Municipal Corporation is directed to calculate the interest on the amount of provident fund to be paid to the petitioners in accordance to formula contained in para 9 of the bye-laws of 1957 and make payment to each of the petitioners in accordance to their entitlement within a period of two months.

In case apart from the aforesaid amount petitioners are entitled to any further amount towards post retiral benefit, the same be paid to petitioners within the aforesaid period in accordance to their entitlement.

10- Petitions are accordingly stands allowed and disposed of.

(RAJENDRA MENo.) JUDGE MRS.Mishra 9 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR W.P.No.4394/2010 (S)

ORDER
POST FOR : /06/2012 (RAJEANDRA MENo.) JUDGE /06/2012