**Muniya (Smt.) Vs. State of M.P.**

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**Court** : Madhya Pradesh

**Decided On :** Jul-21-1995

**Reported in** : (1997)IIILLJ548MP

**Judge** : S.C. Dwivedi, J.

**Acts** : Madhya Pradesh Municipal Employees Rules, 1968 - Rule 23(2)

**Appeal No.** : W.P. No. 666/1989

**Appellant** : Muniya (Smt.)

**Respondent** : State of M.P.

**Disposition** : Petition allowed

**Judgement** :

**S.C. Dwivedi, J.**

1. The petitioner is a widow of the deceased employee of Municipal Council, Datia, who died in 1976, while he was still in service, and her claim for the grant of family pension has been refused by the respondents.

2. The deceased had entered the municipal service before 1970 and had died on April 21, 1976. The reason assigned by respondents for refusing the claim of the petitioner is that since her deceased husband Bhaiyalal had opted not to take the

benefit of pension, the petitioner was not entitled to any pensionary benefits.

3. The provision of pension for the municipal employees was introduced under Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (for short the 'Rules 1968'). The Rules were brought into operation in the State from April 1, 1970. The relevant provision in Clause (c) of Sub-rule (2) of Rule 23 may be reproduced with profit:--23.(1)

Age of Superannuation--

(2) ** ** **(a) ** ** **(b) ** ** **(c) the municipal employees in service on the date to be specified under proviso (a) above shall have an option of remaining to be governed by the, rules relating to Contributory Provident Fund, Gratuity and Pension applicable to them immediately before the said date and such option shall be exercised by them within a period of three months from the date of publication in Gazette, or before they retire from service, whichever is earlier. The option once exercised shall be final and if a municipal employee does not give his option within the prescribed period, the provision of this rule shall apply to him,'

4. Under the above Clause (c) of Sub-rule (2) of Rule 23, the deceased husband of the petitioner being the municipal employee was required to exercise the option for pension within a period of three months from the date of its publication, i.e., May 8, 1970. Admittedly, the petitioner's husband had not exercised the option within the stipulated time and as such, under the above provision, he was governed by Rule 23 of the Rules of 1968.

5. Thereafter the Rules, M.P. Municipal Services (Pension) Rules, 1980 (referred as Rules of 1980), governing the pension of the Municipal services, were framed by State Government in the year 1980 and were given retrospective effect from April 1, 1970. Under Rule 2(b), it was provided that those employees, who had opted for the pension scheme on or before January 23, 1979, under Clause (c) of Rule 23 of Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1963 and had retired from service on or after April 1, 1970, shall be governed by the Rules. Under Clause (c) of Rule 2, the rules were also applied to those employees, who had failed to exercise any option for pension on or before

January 23, 1979.

6. In between these two Rules, i.e., Rules of 1968 and Rules of 1980, there were no intervening Rules and under Rule 23(2)(c), the option was to be exercised by an employee within three months from the date of publication of the Rules in the Government Gazette. The Rules were published in the Gazette on May 8, 1970. It is no more in dispute that from May 8, 1970, within a period of three months, the petitioner's husband had not exercised the option, and as such, he was governed by Rule 23 of the Rules of 1968. It may be further noted that the Rules of 1980 were given retrospective effect from of April 1, 1970 and under Rule 4, the other existing rules governing the matters of the Government servants were also made applicable to Municipal employees. It would be relevant to reproduce Rule 4 :--

'4. Rules applicable,

(a) A claim to pension, including gratuity and family pension of an employee under these rules shall be regulated by the Madhya Pradesh New Pension Rules, 1951, the Madhya Pradesh Class IV Service (Gratuity, Pension and Retirement) Rules, 1956 along with Madhya Pradesh New Family Pension Scheme, 1966 from April 1, 1970 to May 31, 1976 and the Madhya Pradesh Civil Services Pension Rules, 1976 from June 1, 1976 as amended from time to time:

Provided that provisions regarding commutation of pensions shall not be made applicable to the Municipal Employees:

Provided further that only such period of service rendered on regular establishment against a regular time scale of pay, minus the periods spent on extraordinary leave, shall be taken into account as qualifying for pension and gratuities :

Provided also that the service so computed in so far as it relates to service prior to the April 1, 1970 shall be considered as qualifying regardless of whether or not the employee was a member of the Contributory Provident Fund Scheme.

(b) On coming into force of these rules, the rules relating to the grant of gratuities to the employees of the Council issued under the Central Provinces and Berar

Municipalities Act, 1922 (No. II of 1922), the Madhya Bharat Municipalities Act, 1954 (No. II of 1954) the Madhya Pradesh Municipalities Act, 1946 and the Bhopal State Municipalities Act, 1955 (No. III of 1956), shall cease to apply to the employees governed by these rules'.

7. Under the above Rule, the earlier existing Rules, i.e., M.P. New Pension Rules, 1951, were also made applicable from the year 1970. It contained a provision in Rule 5(1)(a) that in the event of death of the Government servant, while in service, the pension will be payable for five years from the date following the date on which the Government servant dies. These Rules cannot be said to be applicable to the case of the petitioner's husband as the Rules were applicable only to Class I, Class II and Class III servants, whereas, the petitioner's husband was Class IV employee. But under the M.P. New Family Pension Scheme, 1966, which was also made applicable from the year 1970 under the Rules of 1980 to the municipal employees, a provision was made for granting pension to the widow of the deceased servant. In para. 3 of the Scheme, the Government had also considered that the existing provisions regarding the family pension were not adequate as under the Rules of 1951, the family pension after the death of a Government servant was payable only for five years. With the applicability of the New Family Pension Scheme of 1966, which was made applicable to the municipal employees, w.e.f. April 1, 1970, when the petitioner's husband was alive and was in employment of the Municipal Committee, Datia, the petitioner had become entitled to the benefit of family pension.

8. The counsel for the respondent-Municipality and also of the State tried to convince this Court that as the petitioner's husband Bhaiyalal in his lifetime had submitted a document as contained in Annexure R/1 whereunder, he had opted not to join the pension scheme, he had lost the right of family pension to be made available to the petitioner under the Rules of 1980. The contention is devoid of substance.

9. Under Rule 23 (2) (c) of the Rules 1968, the option was available and was to be exercised only within a period of three months from the date of its publication and it is not contended by the respondents that any such option under the Rules of

1968 was exercised by the petitioner's husband during that period. The employee's case was, therefore, of the failure to exercise the option and Clause (c) of Sub-rule (2) of Rule 23 provided that the municipal employee, who does not give option, within the prescribed period, the provisions of this rule would be applicable to him.

10. Therefore, he became entitled to the pension benefits. In this situation, the document Annexure R/1, which is of the year 1974, is of no assistance to the respondents in the present case. There could be no occasion under the Rules of 1968 for the exercise of any option thereafter, and the right so accrued to the family could not be defeated by any subsequent action. Under the M.P. New Family Pension Scheme, 1966, which was made operable from April 1, 1970 by Rules of 1980, the petitioner, who is the widow of the deceased employee Bhaiyalal of Municipal Committee, Datia is, was entitled to the family pension during her lifetime.

11. The petition is, therefore, allowed. The order of Urban Admn. Annex R-2 issued by Directorate dated September 25, 1985 is quashed. The respondents are directed to calculate the pension within a period of two months.

Ordered accordingly.