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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4459 of 2014

- Narayan Prasad Dewangan Aged 65 Years S/o Late Hari Ram Dewangan Retired Assistant Superintendent O/o The Municipal Corporation Korba, Distt. Korba C.G., R/o Plot No. 100, Behind Old Computer Colleter, Kosabadi Korba Distt. Korba C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through its Secretary, Department Of Urban Administration Mantralaya Mahanadi Bhawan New Raipur
2. The Director, Urban Administration and Development Department, Chhattisgarh, H.Q. Indrawati Bhawan, Naya Raipur
3. Municipal Corporation, Korba, Through Its Commissioner Korba, Distt. Korba C.G.

---- Respondents

And

WPS No. 2688 Of 2007

- R.P.Tiwari aged about 59 years S/o Shri Shivdulari Prasad Tiwari at Present working as Deputy Commissioner Municipal Corporation, Korba (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through the Secretary, Department of Town Administration and Development, Government of Chhattisgarh, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Directorate Town Administration , State of Chhattisgarh, Raipur
3. Municipal Corporation Through Its Commissioner, Korba

---- Respondent

And

WPS No. 2664 Of 2015

- Nirmal Chandra Sharma S/o Late Shri Shyam Sundar Lal Sharma Aged About 61 Years Working As Tracer, Planning Department, Municipal Corporation Bhilai, R/o "Shyam Kuti", Block-O Plot-3, Motilal Nehru Nagar Bhilai, District Durg, (Chhattisgarh)

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Town Administration And Development, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (Chhattisgarh)
2. Directorate Town Administration & Development, State Of Chhattisgarh, Raipur, (Chhattisgarh)
3. Deputy Director Urban Administration And Development, (Controller Of Pension For Local Bodies) Raipur Division, Raipur, (Chhattisgarh)
4. Municipal Corporation Bhilai, District Durg, Through The Commissioner, Municipal Corporation, Bhilai (Chhattisgarh)

---- **Respondent**

For Petitioners	Shri R. K. Kesharwani, Advocate and Shri Jitendra Pali Advocate with Ms. Shailja Shukla, Advocate
For Respondent/State	Shri P. K. Bhaduri, Govt. Advocate
For Respondent Corporation	Shri H. B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Ms. Meera Jaiswal & Ms. Shipra Biswas, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

08/02/2016

1. These three writ petitions have been preferred by the petitioners, who were earlier employed with Special Area Development

Authority (for short 'SADA'), Korba and Bhilai. They have raised a common grievance to seek a direction against the respondents to treat their past services rendered with the respective SADAs for calculation of qualifying service for the purposes of pension under the Madhya Pradesh/Chhattisgarh Municipal Services (Pension) Rules, 1980 (for short 'the 1980 Rules').

2. Indisputably, the SADA, Korba and SADA, Bhilai were dissolved by an order passed by the State Government on 09.06.1998 in exercise of powers under Section 76 (1) of the Madhya Pradesh/Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short 'the 1973 Adhiniyam'). This dissolution was pursuant to a notification issued in the official gazette on 08.06.1998 bringing the areas falling within the respective SADAs within the area of existing Municipal Corporation, Korba and Bhilai. The services of all employees, who were working in the erstwhile SADA, were absorbed, as it is, in the existing Municipal Corporation of Korba and Bhilai. Thus, the employees in whatever status they were working, were continued in the same status i.e. daily wager/ad hoc/temporary/regular, as the case may be, in the Corporation.
3. The Directorate of Urban Administration, Madhya Pradesh issued a circular on 19.01.1998 directing that all absorbed employees shall be treated as members of Officer/Employee Pension Scheme and for the purpose of calculation of qualifying service,

the date of absorption would be the relevant date. It was also provided that an officer/employee, who has rendered less than 10 years of service from the date of absorption till the date of retirement, shall not be entitled for pension.

4. Shri R. K. Kesharwani and Shri Jitendra Pali with Ms. Shailja Shukla, learned counsel for the respective petitioners, would rely on the judgments rendered by the Single Benches and Division Benches of the Madhya Pradesh High Court in **Municipal Corporation, Gwalior vs. Ramsewak¹, Thakur Prasad Mishra vs. State of Madhya Pradesh & Others², Raj Kumar Jain vs. State of Madhya Pradesh & Others³, R. R. Gehlot vs. State of Madhya Pradesh⁴, Municipal Corporation, Ratlam vs. R.R. Gehlot⁵ and Mahesh Chand Pandit v. State of M.P. & Another⁶**, to argue that dealing with exactly similar facts situation and legislation, the Madhya Pradesh High Court has held that when the services of absorbed employees of Town Improvement Trust constituted under the 1973 Adhiniyam were counted for the purpose of seniority and other benefits after absorption in the Nagar Panchayat or the Municipal Corporation, there is no justification for not counting their past services for calculation of qualifying service for pension under the 1980 Rules read with the

1 2002 (2) MPLJ 148 : WP No.212 of 2001 (29-10-2001)

2 WP No.14760 of 2007 (S) (26.8.2009)

3 WP No.14746 of 2012 (10.9.2012)

4 WP No.6176 of 2006 (s) (10.11.2010)

5 WA No.17 of 2011 (18.07.2012)

6 WP No.3584 of 2011 (4.9.2013) : 2013 (4) MPLJ 352

provisions of the Madhya Pradesh/Chhattisgarh Civil Services (Pension) Rules, 1976 (for short '1976 Rules').

5. Per contra, Shri P. K. Bhaduri, learned Government Advocate appearing for the State, would submit that under Rule 4 of the 1980 Rules read with Rule 43 (2) of the 1976 Rules, an absorbed employee is entitled to receive pension only when he has rendered at least 10 years qualifying service and his past services are not counted, if the same was not a pensionable service.
6. Shri H.B. Agrawal, learned Senior counsel appearing with Shri Pankaj Agrawal, Ms. Meera Jaiswal & Ms. Shipra Biswas, Advocates for the Municipal Corporation, Korba and Bhilai, would refer to law laid down by the Supreme Court in **Tamil Nadu Electricity Board vs. R. Veeraswamy and Others**⁷ to resist the prayer made by the petitioners.
7. There is no dispute about the fact that both the SADAs were abolished on 09.06.1998 and a day prior to that the areas falling within the SADAs were made part of the existing Municipal Corporations. Similarly, there is no dispute about the fact that the petitioners were regular employees of the erstwhile SADA, Korba or SADA, Bhilai and their services were absorbed pursuant to the area of SADA becoming part of the Municipal Corporation and their past services rendered in SADA has been counted for the

⁷ AIR 1999 SC 1768

purposes of seniority, promotion, etc. While the petitioner Narayan Prasad Dewangan has retired on 31.01.2008 and the petitioner R. P. Tiwari retired on 30.04.2008 without rendering 10 years services as was required to become a member of Pensionable Service in view of the State Government order dated 19.01.1998, the third petitioner Nirmal Chandra Sharma is due for retirement in the month of February, 2016.

8. The cases decided by the Single Benches and Division Benches of the Madhya Pradesh High Court in **Ramsewak** (supra), **Thakur Prasad Mishra** (supra), **Raj Kumar Jain** (supra), **R. R. Gehlot** (supra), **Municipal Corporation, Ratlam** (supra) and **Mahesh Chand Pandit** (supra) dealt with similar issues.
9. In **R.R. Gehlot** (supra), the petitioner was in the service of Town Improvement Trust, Ratlam, a local body created under the 1973 Adhiniyam like SADA, Korba and SADA, Bhilai, which were also constituted under the 1973 Adhiniyam. Thus, all of them are governed under the same statute. The said R.R. Gehlot preferred the writ petition seeking similar relief as he was not held entitled to pension after absorption of his services by the Municipal Corporation, Ratlam.
10. While allowing the writ petition preferred by R.R. Gehlot, bearing No.6176 of 2006 (S), the Madhya Pradesh High Court has held thus :

In the present case it is an admitted fact that the petitioner was an employee of Town Improvement Trust a body constituted under the provisions of M.P. Nagar Sudhar Nyas Adhiniyam, 1960, a body owned and controlled by the State Government. The Town Improvement Trusts were abolished by the State Government and a notification was published in the official gazette on 10th June, 1994. The petitioner was absorbed in the services of Municipal Corporation, Ratlam w.e.f. 01.08.1994. This Court has carefully gone through the order dt. 06.01.1999 passed by the State Government and the aforesaid order reveals that the employees absorbed in the service of local bodies were granted seniority by taking into account their past service. Thus, the petitioner, was also assigned seniority and other benefits flowing out of the seniority for the services rendered by him with Town Improvement Trust, Ratlam. Learned counsel for the respondent Municipal Corporation has vehemently argued before this Court that the Regional, Dy. Director Local Self Government vide letter dt. 05.02.1988 has held that employees absorbed in the services of local bodies will not be entitled for the past services and they will be entitled only for the benefit of contributory provident fund. Letter of the Dy. Director will certainly not supersede the order issued by the State Government and once the decision was taken by the State Government to grant benefit of the past services there appears to be no justification in depriving the petitioner in the matter of grant of benefit of the past services rendered by him with Town Improvement Trust which is certainly a body owned and controlled by the State Government. Learned counsel for the petitioner has placed reliance upon a Division Bench judgment delivered in the case of Municipal Corporation Gwalior and another v. Ramsewak, 2002 2 MPLJ 148 and his contention is that in a similar situation an employee serving Gram Panchayat was

absorbed in the services of Municipal Corporation and the benefit of past services were extended by the Division Bench of this Court vide order dt. 29.10.2001. This Court has carefully gone through the aforesaid judgment delivered in the case of Municipal Corporation Gwalior v. Ramsewak and the employee therein was working in a Gram Panchayat and after his absorption in the services of Municipal Corporation, Gwalior the benefit of past services have been extended by Division Bench of this Court. In the present case the petitioner was also working under an organization owned and controlled by the State Government and the State in its own wisdom has taken a decision on 14.09.1989 to extend the benefit of past service for other purpose and the respondents have also granted gratuity to the petitioner by taking into account the services rendered by the petitioner from 07.08.1965.

Resultantly this Court is of the considered opinion that the petitioner is certainly entitled for the benefit of past service in the matter of computing the qualifying services for grant of pension. However, as the petitioner has already received the CPF, the petitioner shall refund the entire amount of CPF to the respondents within a period of 30 days from the date of receipt of certified copy of this order and thereafter respondents after receiving the aforesaid amount shall revise pension case of the petitioner by taking into account the date of initial appointment i.e. 7 -8 -1965 and shall release the pension of the petitioner along with arrears of pension within 6 months of the receipt of the certified copy of this order.

11. The said judgment rendered by the Single Bench was affirmed by the Division Bench in **Municipal Corporation, Ratlam** (supra). Thereafter the Municipal Corporation, Ratlam preferred SLP No.34485/2012, which was dismissed vide order dated

26.11.2012 in the following terms:-

This petition is directed against the order of the Division Bench of the Madhya Pradesh High Court whereby the writ appeal filed by the petitioner was dismissed and the direction given by the learned Single Judge for payment of pension to the respondent by taking into consideration his total service was upheld.

We have heard Shri Siddhartha Luthra, learned Additional Solicitor General and perused the record. In response to the Court's query, the learned Additional Solicitor General fairly stated that Municipal Corporations of Gwalior and Indore did not challenge the orders passed by the Division Bench of the High Court in the cases of Ramsewak and Bhupendra Kumar Puranik, whereby direction was given for payment of pension to them by treating their total length of service as qualifying service. He, however, argued that the impugned judgment is liable to be set aside because the order of absorption of respondent No.1 did not postulate computation of previous service as part of qualifying service.

In our opinion, there is no merit in the argument of the learned Additional Solicitor General. It is not in dispute that the service rendered by respondent No.1 in Town Improvement Trust, Ratlam was added to the service rendered after absorption for the purpose of fixation of seniority, etc. Therefore, there is no plausible reason for not counting that service for the purpose of computation of pension.

With the above observation the special leave petition is dismissed. The petitioner is directed to implement the direction given by the learned Single Judge within a period of three months and submit a report to this effect in the Registry of the High Court.

A copy of this order be sent to respondent No.1 by registered post at the address mentioned in the memo of special leave petition.

12. In view of the above, the present petitions being similar, all the writ petitions succeed. The respondents are directed to count the past services rendered by the petitioners under the SADA, Korba or SADA, Bhilai, as the case may be, for the purposes of computing the qualifying service for grant of pension.

13. There shall be no order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala