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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.3458 of 2007**

- Laxmikant Taywade S/o Late Shri Ram Bhau, Retd. L.D.C., Municipal Corporation Rajnandgaon R/o Basantpur, Ward No. 40, Near Hanuman Mandir, Rajnandgaon (C.G.)

---- Petitioner

Versus

1. Municipal Corporation, Rajnandgaon through the Commissioner, Municipal Corporation, Rajnandgaon (CG)
2. The Director Local Self Government, District - Raipur (C.G.)
3. State Of Chhattisgarh Through The Secretary, Department Of Local Self Government, D.K.S. Bhawan, District - Raipur (C.G.)

---- Respondent

and

WP No.4640 of 1999

- Murlidhar Hariharno S/o Late Shri Ramadhin Hariharno, aged 62 years, Retired Lecturer, S. D. Mpl. Corporation Hr. S. School, Rajnandgaon, resident of Nakshatra Lok, Station Para, Ward No.8, Rajnandgaon (MP)

---- Petitioner

Versus

1. The State of Chhattisgarh through the Secretary, Local Self Government (Urban Department) DKS Bhawan, Manatralaya, Raipur.
2. Municipal Corporation, Rajnandgaon (MP) through the Commissioner, Municipal Corporation, Rajnandgaon.
3. The Commissioner, Municipal Corporation, Rajnandgaon. (MP)

---- Respondents

For Petitioners in WPS No.3458/2007 : Shri Ajay Shrivastava, Advocate
 For Petitioners in WP No.4640/1999 : Shri PKC Tiwari, Sr. Advocate with Shri Kripesh Kela, Advocate
 For Respondent/State : Shri Satish Gupta, GA
 For Respondent/Corporation : Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**

04/08/2017

The aforesaid two petitions are being disposed off by this common order as these petitions involve common question of law for consideration in the matter of payment of interest on provident fund deposit to an employee of respondent/Municipal Corporation, Rajnandgaon.

2. Murlidhar Hariharno, petitioner in WP No.4640 of 1999 and petitioner Laxmi Kant Taywade in WPS No.3458 of 2007 were initially appointed in the services of the then Municipal Council Rajnandgaon. While these two employees were continuing in the services of the Municipal Council, Municipal Council was upgraded and notified as Municipal Corporation under the provisions of Madhya Pradesh Municipal Corporation Act, 1956 (In short “the Act of 1956”). Both the petitioners were continuing in service and finally retired as employee of Municipal Corporation Rajnandgaon. Petitioner-Murlidhar Hariharno retired from the post of Lecturer upon attaining the age of superannuation on 28-02-1988. Petitioner Laxmikant Taywade was also retired from the post of Lower Division Clerk on 31-1-2004. The aforesaid facts are not disputed and admitted by all the parties.

3. At the time of their respective retirement, respective petitioners were paid interest @ 5% on their provident fund deposits. The case of the petitioners is that the petitioners were initially appointed in the services of the then existing Municipal Council, Rajnandgaon and the terms and conditions of Municipality were governed by the provisions contained in Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (In short “the Rules of 1968”). Rule 24 of the Rules of 1968 provided that the Madhya Pradesh General Provident Fund Rules as amended from time to time shall apply to Municipal Employees in the same way as are applicable to government

servant of similar status except in so far as they are not inconsistent with the provisions of the Madhya Pradesh Municipalities Act, 1961 and the Rules of 1968 with proviso that the rules may not apply to these Municipal Employees who have given their option under proviso(c) of Rule 23(2). When the Municipal Council, Rajnandgaon was upgraded as Municipal Corporation, Rajnandgaon in the year 1983, the petitioner became employee of the Municipal Corporation. However, the existing terms and conditions of their services were saved under Section 442(5), which provided that notwithstanding anything contained in the Act of 1956 or any rule or bye laws made thereunder, the conditions of services, pay allowances existing in respect of permanent Officers and Servants of the Municipal Council on the date immediately before the date the Municipal Council was notified as Municipal Corporation are deemed to be their existing terms and conditions of services, pay and allowances under the Act of 1956. Therefore, it is contended that the saving clause entitles the petitioner to get the same rate of interest, which was payable to them by virtue of Rule 24 of the Rules of 1968 and the rate applicable in the Municipal Corporation and the decision of the Municipal Corporation to apply lower rate of interest @ 5% on the provident fund deposits on such class of employees like the petitioner, who became employee of the Municipal Corporation while continuing as employee of Municipal Council, would not be applicable. Another submission of learned counsel for the petitioner is that in view of the circular dated 27-05-2002 of the State of Chhattisgarh, the benefits which the petitioners were getting as employee of the Municipal Corporation could not be taken away. Lastly, it was submitted that the Division Bench of High Court of Madhya Pradesh in the case of Mohammad Adnan Khan vs. Municipal Corporation, Bhopal and another, 1982 MPLJ 80, held that in the absence of any bye laws framed by the Municipal Corporation, the saving clause under Section 442(5) would operate to

continue application of the existing terms and conditions of services of Municipal employees notwithstanding anything contained in the Act of 1956 which existed on the date when the Municipal Council was notified as Municipal Corporation under the provisions of the Act of 1956.

4. Per contra, learned counsel for the respondent-Corporation submits that as far as applicable rate of interest on provident fund deposits is concerned, earlier decision was taken by the Municipal Corporation that in respect of the employees of the Municipal Corporation, interest @ 5% would be payable on provident fund deposits. He submits that the provision contained under Section 442(5) of the Act of 1956 only saves the benefit with reference to those terms and conditions of services, which were existing on the date, the Municipal Council was notified as Municipal Corporation and the petitioner became employee of the Municipal Corporation, which were not inconsistent with the provisions of the Act of 1956 and bye laws made thereunder and the decision taken by the Corporation from time to time. In the Act of 1956 and the Rules made thereunder, there is no such provision that a retiring employee would be entitled to interest at the rate applicable to the government servants and the Municipal Corporation had earlier also taken a decision to apply rate of interest of 5% only, as such, claim of the petitioners is not tenable in the eye of law. Learned counsel for the respondent- Municipal Corporation submits that the petition of Laxmi Kant Taywade was earlier allowed vide order dated 20-10-2009, against which, a writ appeal was preferred by the Municipal Corporation. In the said writ appeal, it was clearly held that no case of discrimination is made out and there is no express provision in the Act of 1956 that CG General Provident Fund Rules applies to the Officers and Employees of the Municipal Corporation also and order passed by the Single Bench was set aside. He further contends that petitioner could not pray for writ of mandamus

as there was no statutory duty imposed on the Municipal Corporation under the Act of 1956 or the Rules made thereunder to pay interest at the rate claimed by the petitioners and therefore, in the absence of there being statutory right available to the petitioner, the petitioner would not be entitled to any relief, placing reliance on the judgment ***Union of India and another vs. Arulmozhi Iniarasu and Others, (2011) 7 SCC 397 and Suresh Chand Gautam vs. State of Uttar Pradesh and Ors., AIR 2016 SC 1321.***

5. It is relevant to note that the petition of one of the petitioner Laxmi Kant Taywade was allowed on 20-10-2009 directing the Municipal Corporation to compute the amount of interest on provident fund deposits at the statutory rate notified from time to time by the competent authority accepting the case of the petitioner of parity with one R.S. Sharma, a retired employee of the Municipal Council, alleged to be granted interest @ 13% per annum on the provident fund. This order was challenged by way of an appeal by the Municipal Corporation. While supporting the grounds of parity, on which, petition was allowed, learned counsel for the petitioner came out with two new submissions which were not made before the Writ Court. The Writ Appellate Court found that the ground of parity was factually not made out because the Mayor-in-Council did not take any decision to pay interest @ 13% to R. S. Sharma and it was wrongly mentioned in Service book that such a decision was taken by the Municipal Corporation which led to issuance of show cause notice proposing action against the responsible employees. As far as two other new grounds raised for the first time in appeal firstly that as per Rule 24 of the Rules of 1968, CG General Provident Fund Rules are applicable to the employees of the Municipal Council which is saved by sub section (5) of Section 442 of the Act of 1956 and secondly that Circular dated 27-05-2002 of the Finance Department of the Government entitled the petitioner to claim higher rate of interest, were examined by

observing that the grounds, which were raised for the first time in appeal and were not raised before the Writ Court, holding that there was no express provision in the Act of 1956 that CG General Provident Fund Rules are applicable to the Officers and Employees of the Municipal Corporation, the order passed by the Writ Court was set aside. However, considering the factual and legal arguments advanced for the first time in appeal, the Writ Appellate Court considered it proper to remit the petition for hearing on merits and that is how the case of petitioners Laxmi Kant Taywade has been remitted to the Writ Court for decision afresh.

6. In view of the order of the Writ Appellate Court, in the case of Laxmi Kant Taywade, legality of the decision of respondent-Municipal Corporation is required to be adjudged only on the basis of two submissions raised for the first time in writ appeal i.e. firstly as per Rule 24 of the Rules of 1968, CG General Provident Fund Rules are applicable to the employees of the Municipal Council, which is saved by sub section (5) of Section 442 of the Act of 1956 and secondly that Circular dated 27-05-2002 of the Finance Department of the Government entitled the petitioner to claim higher rate of interest. The grounds of parity that another employee R. S. Sharma was granted interest @ 13% is not available to re-agitate again in view of the order passed in Writ Appeal.

7. In the other connected writ petition, the claim is substantially based on the saving clause contained in Section 442(5) of the Act of 1956 and claim of applicability of rates of interest is in accordance with Rule 24 of the Rules of 1968.

8. The legal position with regard to applicable terms and conditions of services of those employees, who were initially recruited in the Municipal Council which was later on notified as Municipal Corporation, was considered by the Division Bench of the High Court of Madhya Pradesh in the case of

Mohd. Adnan Khan vs. Municipal Corporation, Bhopal and another, (1982)

MPLJ 80. That was a case, where the petitioners therein were initially appointed as employees of the Municipality created under the services of the then Municipalities under the Municipalities Act which was in force at that point of time. They were governed by the Madhya Pradesh Municipalities Act, 1961. With effect from 21-08-1967, Madhya Pradesh Municipal Corporation Act, 1956 was applied to Bhopal area, from which date, Municipal Council became Corporation. The transitory provisions contained under Section 442(5) of the Act of 1956 were considered.

9. The dispute arose whether bye-laws framed under the Corporation would override the protection under Section 442(5) of the Act of 1956, so as to save the terms and conditions of services of those Municipal Council employees, who later on become employees of the Municipal Corporation on account of the then Municipal Council having been notified as Municipal Corporation. The effect and impact of the transitory provisions contained in Section 442(5) of the Act of 1956 was considered as below:-

9. ----- XXXX -----

“The effect of sub-section (5) is that the conditions of service of the employees of the defunct Municipal Council as on the date immediately before the application of the Corporation Act shall be deemed to be "their existing conditions of service, pay and allowances under this Act." The word "existing" has normally the implication of connoting "having existence now" (see Corpus Juris Secundum, Vol. 35, page 224). The word "existing" occurs twice in sub-section (5). The first expressly refers to the conditions of service as on the date immediately preceding the date when the Corporation Act is applied to a City and the second impliedly refers to the date when the Corporation Act is applied. The Corporation Act was applied on 26th August 1967 in the city of Bhopal and the words "existing conditions of service, pay and allowances under this Act" in this context refer to service conditions which are deemed to exist on that date of the municipal employees who are continued as employees of the Corporation by sub-section (1) (d). The word "existing" is very often defined to mean existing at the commencement of the Act (see Stroud and Judicial Dictionary, Fourth Edition page 974). Although not defined in these terms, the word "existing" occurring towards the end in sub-section (5) has the same meaning. The learned counsel for the petitioners placed reliance on the non obstante clause in sub-section (5) which is to the effect "Notwithstanding anything contained in this Act or any rule or bye-

law made thereunder;" and argued that no bye-law or rule can be made under the Act to take away the old conditions of service continued by subsection (5). This argument proceeds upon a misconstruction of the substantive part of the sub-section. As earlier pointed out by us, the effect of the substantive part of sub-section (5) is that the conditions of service as on the date immediately preceding the date of the application of the Act become the conditions of service on the date of the application of the Act. This is the fiction created by the substantive part of sub-section (5). The operation of the notwithstanding clause is restricted to this fiction. Putting it differently, nothing in the provisions of the Act or any rule or bye-law made thereunder can have effect to mean that the conditions of service as on the date immediately before the date of the application of the Act will not be the conditions of service on the date when the Act is applied. No rule or bye-law can be made to change this legal position but there is nothing in the sub-section or in the notwithstanding clause to take away the power of the Corporation to subsequently change the conditions of service by making bye-laws in exercise of its powers under the Act. Sub-section (5) does not contain a guarantee that service conditions of the old employees will not be changed at all. This conclusion is further supported by the fact that sub-section (5) is a part of a section which is described to be containing "Transitory provisions" as mentioned in its marginal note. Indeed it would be a very novel thing to find a guarantee of the nature contended for by the learned counsel for the petitioners spelled out of a transitory provision. We are clearly of opinion that sub-section (5) does not take away the power of the Corporation to make bye-laws under section 427 to regulate conditions of service of employees of the defunct Municipal Council who became employees of the Corporation under section 442. By the 1973 bye-laws the Corporation reduced the age of superannuation of all its employees. The 1973 bye-laws have superseded all previous rules, bye-laws, notification etc. There is no exception made in these bye-laws in respect of employees who were previously employees of the Bhopal Municipal Council. The new bye-laws clearly apply to the petitioners and their retirement on attaining the age of 58 years was valid."

10. Thus, in the aforesaid case, it was held that where bye-laws have been framed under the Act of 1956, the transitory provisions contained in Section 442(5) of the Act of 1956 would not save the terms and conditions of services of an employee, which he was enjoying on the date when the Municipal Council was notified as Municipal Corporation. In the case in hand, no bye laws have been placed on record before the Court to establish otherwise. If that be so, the protection under Section 442(5) of the Act of 1956 will continue in favour of the employees of those Municipal Council which were later on notified as Municipal Corporation. That, in turn would mean that in the matter of computation of interest on provident fund, Rule 24 of the Rules of 1968 would continue to be

applicable to such employees, who were initially appointed and working in the Municipality constituted under the Municipality Act, 1961 and later on became employees of the Municipal Corporation when the Municipal Council was notified as Municipal Corporation. In the absence of any bye laws, contrary to the legal position, rate of interest on the provident fund deposits will be that applicable to government servants and not the rate of 5% which has been applied under the resolution passed by the Corporation. This is so because the resolution cannot be equated with the bye laws which may be framed by the Corporation in exercise of statutory powers under Section 427 of the Act of 1956. The respondent Corporation could not bring to the notice of this Court that there were any bye laws framed in exercise of power under Section 427 of the Municipal Corporation of Rajnandgaon having 5% as rate of interest in respect of provident fund deposits.

11. As an upshot of the above discussion, it has to be held that the petitioners are entitled to payment of interest by application of statutory scheme engrafted under Rule 24 of the Rules of 1968 which mandates that Madhya Pradesh General Provident Fund Rules amended from time to time shall apply to Municipal employees in the same way as are applicable to government servants of states except in so far as they are not inconsistent with the provisions of the Municipalities Act of 1961 and the Rules of 1968 subject to the extent that it will not apply to those employees, who have already opted under proviso (c) of Rule 23(2) of the Rules of 1968. On facts, it is not the case of the respondent-Corporation that the petitioners are continuing as employees of the then Municipal Council, Rajnandgaon had opted under proviso(c) of Rule 23(2) of the Rules of 1968.

12. In the result, both the petitions are allowed and the respondents are directed to compute the interest on provident fund deposits by applying the

rates as per Rule 24 of the Rules of 1968. All computation shall be made within a period of 90 days from the date of receipt of a copy of this order and whatever amount is found due and payable to the petitioners over and above the amount already paid to the petitioners, shall be paid to them within a period of two months of such decision. The entire payment due and payable to the petitioners shall be paid to the petitioners within the stipulated period, failing which, it shall carry interest @ 18% from the date of expiry of the period within which exercise is to be completed, as directed above.

SD/-
(Manindra Mohan Shrivastava)
Judge