

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2598 OF 2016

1 Mumbai Municipal Pensioners
Association

A registered association registered under the Maharashtra Societies Registration Act, 1960 and a Public Trust Registered under the Bombay Public Trusts Act, having its address at Room No.9, Ground floor, G/North Ward Office Building, J. K. Sawant Marg, Dadar (West), Mumbai 400 028

...Petitioner

Versus

1 Municipal Corporation of Gr. Mumbai

2 Municipal Commissioner

All having their office at Municipal Head Office, Municipal Corporation of Gr. Mumbai, Mahapalika Marg, Fort, Mumbai 400 001

3 State of Maharashtra, through
Government Pleader, High Court,
Original Side, Mumbai – 400 001

...Respondents

Mr. S. C. Naidu, a/w Ms. Nilima Vinay Sanglikar, for the
Petitioner.

Mr. Suresh S. Pakale, a/w Mr. Sagar Patil, for Respondent
nos.1 & 2/MCGM.

Mr. Dushyant Kumar, AGP for the State/Respondent no.3.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ
DATED: 15th February, 2019

ORAL JUDGMENT :- (Per : B. R. Gavai, J.)

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

2. The Petitioner which is an Association of the pensioners, who have retired from the services of Municipal Corporation of Greater Mumbai, has approached this Court by way of the present writ petition.

3. A very short question of law which arises for consideration in the present matter is, “as to whether the Municipal Corporation is justified in giving different treatment to the classes of pensioners, who have retired prior to 1st April, 2000 in regard to the revision of pension on account of the recommendations of Fourth Pay Commission between a period of 1st April, 2000 and 1st April, 2009”.

4. The facts of the matter are not in dispute. Respondent nos.1 and 2 – MCGM had decided to give the benefit of the Fourth Pay Commission recommendations to its employees with effect from 1st April, 2000. It had already decided to give the benefit of the said re-pay fixation to all its employees, who had retired from the services of the Municipal Corporation. Insofar as the employees who have retired between the period of 1st April, 2000 and 1st April, 2009 are concerned, it was also decided that they will also get the arrears from the date of their retirement till 1st April, 2009. However, insofar as the employees who have retired prior to

1st April, 2000, it was decided by the Corporation that though the said pensioners would also be entitled to revision in pay, but, they will not be entitled to the arrears for the period from 1st April, 2000 to 1st April, 2009. In this background, the Petitioner – Association has approached this Court.

5. Mr. Naidu, the learned Counsel for the Petitioner - Association submitted that, by the impugned action, the Respondent – MCGM has created two classes in the same class of the pensioners, one is of the pensioners, who have retired prior to 1st April, 2000 and the other is of the pensioners, who have retired between 1st April, 2000 and 1st April, 2009. He submits that the cut-off date fixed is patently arbitrary. There is no reasonable justification for fixing the cut off date. The Corporation is not in a position to establish the nexus between the dates as fixed and the purpose to be achieved. The learned Counsel, therefore, submits that the Respondent – Corporation, by the impugned action, had acted in a manner, which is totally in violation of Article 14 of the Constitution of India. Mr. Naidu, the learned Counsel for the Petitioner – Association, relies on the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of

***D. S. Nakara and others vs. Union of India.*¹**

1 AIR 1983 SC 130.

6. In order to meet the preliminary objection of the Respondents that the petition has been filed belatedly, the learned Counsel submits that the said contention is without any merit in view of the law laid down by the Hon'ble Apex Court in the case of ***Asger Ibrahim Amin vs. Life Insurance Corporation of India***². Insofar as the contention of the Respondent – MCGM that, if the Court allows the petition, on account of financial constraints, the Corporation would not be in a position to give benefits to its concerned employees is concerned, Mr. Naidu, the learned Counsel submits that, factually, the position is incorrect, since the Respondent – MCGM in the budget had already provided funds for the arrears between the period from 1st April, 2000 to 1st April, 2009, for all the municipal pensioners. It is submitted that it is the general body of the corporation which subsequently decided to deny the benefits of arrears for the said period. He submits that, even otherwise, in view of the law laid down by the Hon'ble Apex Court in the case of ***State of Rajasthan and others vs. Mahendra Nath Sharma***³, the said contention is without merit.

2 (2016) 13 SCC 797.

3 (2015) 9 SCC 540.

7. To buttress his submission with regard to violation of Article 14, the learned Counsel for the Petitioner relied on the judgments of the Constitution Bench of the Hon'ble Apex Court in the cases of;

- (a) ***D. S. Nakara*** (supra),
- (b) ***V. Kasturi vs. Managing Director, State Bank of India, Bombay and another***⁴,
- (c) ***T. N. Electricity Board vs. R. Veerasamy and others***⁵ and
- (d) ***Smt. Savitribai Narsayya Guddapa vs. The State of Maharashtra and ors. (Writ Petition No.8985 of 2011)*** decided by the Aurangabad Bench of this Court on 9th May, 2014.

8. Mr. Pakale, the learned Counsel for Respondent nos.1 and 2 – MCGM submits that the claim of the Petitioner – Association is totally unsustainable. The learned Counsel submits that the Hon'ble Apex Court in the cases of ***Krishena Kumar vs. Union of India***⁶ and ***Indian Ex-Services League vs. Union of India***⁷, has clearly held that, all retired employees cannot claim equal amount of pension. It is submitted that, different pension to different pensioners

4 (1998) 8 SCC 30.

5 (1999) 2 SCC 414.

6 (2006) 9 SCC 630.

7 1991 AIR (SC) 1182.

depending upon the date of their retirement, is permissible under the Constitutional scheme and, therefore, no interference should be made in the impugned action. He submits that the aforesaid view is followed by catena of judgments of Hon'ble Supreme Court including in the cases of ***State of West Bengal vs. West Bengal Government Pensioners Association***⁸ and ***State of Punjab vs. J. L. Gupta***⁹. It is, therefore, submitted that the date of retirement is a reasonable classification and the decision to grant different treatment to the employees retired prior to a particular date and, after a particular date, can not be said to be discriminatory in nature. The learned Counsel also raised a preliminary objection. He submits that though the decision of the Corporation, which is impugned herein, was taken way back in the year 2009, the petition is filed in the year 2016 and, therefore, on the ground of delay and laches itself the petition is liable to be thrown out. He, further, submits that the Corporation has taken a decision after taking into consideration its financial position and the Court cannot thrust the additional burden on the Corporation by issuing the direction to give arrears to all the pensioners.

8 2002 Law Suit (SC) 6.

9 2000 (3) SCC 736.

9. We are of the considered view that, the issue is no-more *res-integra*. It will be relevant to refer to the question that fell for consideration before the Hon'ble Apex Court in the case of **D. S. Nakara** (supra). The question is culled out in paragraph 2 of the said judgment, which reads thus :

“2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972, (“1972 Rules” for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Art. 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14? These and the related questions debated in this group of positions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.”

After framing the aforesaid question, the Constitution Bench of the Hon'ble Apex Court in the said case has observed thus:

“4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.”

10. It could, thus, be seen that the Hon'ble Supreme Court has held that all persons similarly circumstanced shall be

treated alike, both in cases of privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and, there should be no discrimination between one person and the another, if as regards the subject matter of the legislation, their position is substantially the same. The Hon'ble Supreme Court in the said case further observed thus:

“15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.”

(emphasis supplied)

11. It could, thus, be seen that their Lordships have held that Article 14 prohibits class legislation but permits the reasonable classification for the purpose of legislation. This classification must satisfy the twin tests: classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia must have a rational nexus to the object to be achieved by the statute in question.

12. After considering its earlier judgment, in the case of ***Randhir Singh vs. Union of India***¹⁰, the Hon'ble Apex Court in the case of *D. S. Nakara (supra)* has observed in para 32 as under :

“32.Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners from a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.” (emphasis supplied)

It could, thus, be seen that their Lordships have clearly held that if pensioners from a class, their computation cannot be done by a different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. At the conclusion, in the said case, their Lordships observed thus:

“65.We are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down.” (emphasis supplied)

10 (1982) 1 SCC 618.

13. It could, thus, be seen that the cut-off date which was challenged before the Hon'ble Apex Court at 'being in service and retiring subsequent to the specified date', for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class and the classification being not based on any discernible rational principle and the same having been found to be wholly unrelated to the objects sought to be achieved was held to be not sustainable in law.

14. The question that fell for consideration before the Hon'ble Apex Court in the case of **Krishena Kumar** (supra) was, as to whether the pensioners who had opted for the pension scheme and the pensioners who had opted for provident fund (PF) scheme, formed a group of the same class or not. It was found that the question, in the case of **Krishena Kumar** (supra) before the Hon'ble Apex Court was, as to whether the retirees, who had opted for pension scheme and the retirees, who had opted for PF scheme, are entitled to the same treatment or not, did not come for consideration before the Hon'ble Apex Court in the case of **D. S. Nakara** (supra). After considering the entire position, the Hon'ble Apex Court concluded as under:

“**42.** We are not inclined to accept either of these submissions. The P.F. retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution.”

(emphasis supplied)

It was thus held that the PF retirees and pension retirees having not belonged to the same class, and as such, there was no discrimination.

15. Both these Constitution Bench judgments i.e. in the cases of ***D. S. Nakara*** and ***Krishen Kumar***, came up for consideration before another Constitution Bench of the Apex Court, in the case of ***Indian Ex-services League*** (supra). The question that fell for consideration in the said case before the Hon'ble Apex Court was, as to whether the decision in the case of ***D. S. Nakara*** (supra) could be held to cover all claims made by retirees or demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension would be different. The Hon'ble Apex Court in the said case observed thus:

“[6] Thus all retirees irrespective of their date of retirement were treated as constituting one class entitled to the benefits of the liberalised pension to be recomputed as on the specified date according to the liberalised formula requiring payment to be made prospectively from the specified date of the revised amount. In other words, the benefit of the liberalised pension formula was given equally to all retirees irrespective of the date of their retirement and for this purpose, recomputation was required to be made as on the specified date on the basis of the emolument's payable on the actual date of retirement of each retiree.”

The Hon'ble Apex Court has observed this while discussing the case of **D. S. Nakara** (supra).

16. It could, thus, be seen that their Lordships held that what was held in the case of **D. S. Nakara** (supra) was that the benefit of liberalised pension formula was to be given equally to all retirees irrespective of the date of their retirement and for this purpose, recomputation was required to be made on the specified date on the basis of the emoluments payable on the actual date of retirement of each retiree. The Hon'ble Apex Court also considered the subsequent judgment of the Constitution Bench in the case of **Krishena Kumar** (supra). It is further relevant to refer to the following observations of the Hon'ble Apex Court in case of **Indian Ex-Services League** (supra), while considering the judgment of **D. S. Nakara** (supra).

“[11] The conclusion of the Constitution Bench in Nakara was that the benefits of liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined only to the persons who retired on or after the specified date because for the purpose of grant of the benefits of liberalisation in pension, all retirees constitute one class irrespective of their date of retirement. In order to give effect to this conclusion the only relief granted was to strike down that portion of the memoranda by which the benefit of the liberalised pension scheme was confined only to persons retiring on or after the specified date with the result that the benefit was extended to all retirees, irrespective of their date of retirement. Once this position emerging from the decision in Nakara is borne in mind, the fallacy in the petitioners' contention in these writ petitions becomes obvious and their claim based on Nakara is untenable.”

(emphasis supplied)

It is further relevant to refer to the following observations of the Hon'ble Apex Court in ***Indian Ex-services League*** (supra) while considering the judgment of ***D. S. Nakara***:

“[12]It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more.”

(emphasis supplied)

17. In the light of this, their Lordships in ***Indian Ex-Services League*** (supra) held that the claim of the Petitioners that, all pre 1st April, 1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices 'A', 'B' and 'C' of the Memorandum is untenable. As a matter of fact, the Hon'ble Apex Court took notice of the fact that the Office Memorandum was issued by Union of

India to give benefit of the liberal pension scheme to all, even, who have retired prior to 1974 as per the judgment of the Hon'ble Apex Court in the case of **D. S. Nakara** (supra). It could, thus, be seen that the subsequent Constitution Benches did not in any way water down the view taken by the Hon'ble Apex Court in the case of **D. S. Nakara** (supra) that all the retirees who are under the pension scheme form a homogeneous class of employees and there can not be any discrimination between them on the basis of their date of retirement. What has been held in **Krishena Kumar** (supra) is that, the retirees, who had opted for pension scheme and, the retirees, who had opted for PF scheme, did not form the same homogeneous class. What has been held in the case of **Indian Ex-service League** (supra) is that, **D. S. Nakara** (supra) can not be extended to the principle of "one rank one pension" irrespective of the date of retirement.

18. Though various other judgments are cited by the learned Counsel for both the parties, we do not find it necessary to refer to any of the said judgments. Inasmuch as, they are decided by the Hon'ble two-judge Bench of the Supreme Court. However, a reference to the judgment in the case of **V. Kasturi** (supra), in our considered view, would be

suffice, inasmuch as in the said judgment, the Hon'ble Apex Court has culled out the position of law as it emerges from the various judgments of the Constitution Bench and other judgments of the Hon'ble Apex Court. After considering its earlier judgments, the Hon'ble Apex Court in the case of

V. Kasturi (supra) observed thus:

“**21.** It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly get projected.

Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of *Nakara case (1997) 7 SCC 334*, would cover this category of cases.

Category II:

23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to

erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter, Vs. Capt. Biplabendra Chanda, (1997) 1 SCC 208 and Govt. of T. N. v. K. Jayaraman, (1997) 9 SCC 606 and others to which we have made a reference earlier. If the claimant for pension who benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme would disentitle him from getting such a new benefit.”

(emphasis supplied)

19. It could, thus, be seen that, after considering the legal position as it prevailed over the number of years, the Hon'ble Apex Court carved out two categories of cases. It found that, if the retirees are eligible for pension at the time of their retirement and if they survive till the time of subsequent amendment of the relevant pension scheme to enhanced pension or eligible to get more pension, as per new formula of computation of pension which is subsequently brought into force, they would be entitled to get the benefit of the amended pension provisions from the date such provision came into effect as they would be the members of the very same class of pensioners when the additional benefit is conferred on all of

them. It was held by the Hon'ble Apex Court that, in such a situation, the additional benefit available for the same class of pensioners cannot be denied to them on the ground that they had retired prior to the date on which the aforesaid additional benefit was conferred on the members of the same class of pensioners who had survived by the time, the scheme granting additional benefit to those pensioners came into force. It has been held that, this is in line with the decisions tracing their roots to the ratio of ***D. S. Nakara's*** case (supra).

20. However, the second class that is carved out by the Hon'ble Apex Court is that of a pensioner, who at the time of retirement, was not qualified to get the pension on the basis of the existing rules. It takes into consideration the situation that, if the rules have changed subsequently making them the employees entitled to pension. The question that fell for consideration before the Hon'ble Apex Court in the case of ***V. Kasturi*** (supra) was, as to whether in such a situation, the employees, who were not entitled to pension on the date of retirement on the basis of the rules existing on the said date, would be entitled to pension, if subsequently the rules have changed so as to make the employees entitled to pension. The Hon'ble Apex Court held that, unless the rules

made by the authorities, specify the rules to be retrospectively applicable, such an employee cannot get the benefit of the new scheme. Only if the rules mandate for the retrospective applicability of the liberal scheme to the employees who had retired prior to such scheme coming into effect, such an employee can get the benefit. In any other case, he cannot claim it as a matter of right.

21. We find that if this is a position of law, then the action of the authorities in denying the arrears of pension to the pensioners, who have retired prior to 1st April, 2000, would not be sustainable. We are of the considered view that, what has been done by the Corporation is that, two classes of pensioners have been carved out, one of them is of those pensioners, who have retired prior to 1st April, 2000 and second one is of those pensioners, who have retired between 1st April, 2000 and 1st April, 2009. While computing the revised pension payable to them, the same formula has been applied to all the pensioners. However, though the pensioners in the second class have been held to be entitled to the arrears from their date of retirement till 1st April, 2009, the said benefit is denied to the first class. To take an instance, if an employee retires on 31st March, 2000, he will

not be entitled to the arrears. However, if he retires on the very next date i.e. 1st April, 2000, he would be entitled to get the entire arrears from 1st April, 2000 to 1st April, 2009. We find that, permitting such a grave anomaly by making a classification on the basis of the date of retirement, cannot be said to be reasonable nor it can be said that the classification has reasonable nexus with the object to be achieved. In that view of the matter, we find that the petition deserves to be allowed.

22. Insofar as the contention of Mr. Pakale, the learned Counsel for the Respondent - MCGM with regard to the delay and laches is concerned, it will be relevant to refer to the following observations of the Apex Court in the case of **Asger**

Ibrahim Amin (supra):

“4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in *Union of India v. Tarsem Singh (2008) 8 SCC 648*, that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held: (SCC p.651.para 7):

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if

there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. *For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.* But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.” (emphasis supplied)

We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time-barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.”

23. It could, thus, be clearly seen that the relief sought by the Petitioner – Association does not affect the rights of any of other employees or third parties so as to non-suit them on the question of delay. The claim is on the issue relating to payment of revised pay or pension, which does not affect the rights of third parties. As such, in view of the principles laid

down by the Hon'ble Apex Court, the question of delay should not come in the way of the Petitioner – Association in seeking relief.

24. Insofar as the objection relating to financial constraints are concerned, Mr. Naidu has submitted that the contention with regard to the financial constraints, is without substance inasmuch as the Municipal Commissioner has already budgeted for the pensioners, who have retired prior to 1st April, 2000. We do not find it necessary to go into that aspect of the matter. Since, the Court finds that the Petitioner – Association is entitled to relief as claimed, such an argument would not be sustainable. Apart from that, the number of employees that would have retired prior to 1st April 2000, would be much less as compared to the employees, who have retired after 1st April 2000. In any case, when the Municipal Commissioner has himself budgeted the amount for payment of arrears to these employees, the contention of the learned counsel for the Respondent – Corporation in that regard is devoid of substance. It would be relevant to refer to paragraph 30 of the judgment in the case of ***State of Rajasthan*** (supra).

“30. It is urged before us that it will put a heavy financial burden on the State. The said submission has been seriously resisted by the learned counsel for the respondents by urging that hardly 200-250 retired lecturers in the selection scale are alive in praesenti and the State cannot take a plea of financial burden to deny the legitimate dues of the respondents.”

25. In the result, the petition is allowed.

26. The impugned Resolution No.477 of the general body of the Municipal Corporation Greater Mumbai – Respondent no.1, dated 12th August, 2009 and the Circular, dated 15th January, 2010, issued by Respondent no.2 – Municipal Commissioner, are quashed and set aside. The Respondent - Corporation is therefore directed to pay the arrears to the pensioners, who have retired prior to 1st April, 2000 on par with the arrears paid to the pensioners, who have retired from 1st April, 2000 to 31st March 2009. Arrears to be paid within two months from today.

27. Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

28. At this stage, Mr. Pakale, the learned Counsel for Respondent nos.1 and 2/MCGM, requests for stay of the order for a period of six months so as to enable the Municipal

Corporation to approach the Hon'ble Apex Court. Since our view is based on the law laid down on the issue by the Hon'ble Apex Court, the prayer is rejected.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]