

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8581 of 2017

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Bala Kant Prasad Singh, son of Late Chandrika Singh, Resident of Village-Lodipur, P.S. Bind, District Nalanda. Presently resident of S.R.T. 61, Rajendra Nagar, Road No. 13, 800016.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Urban Development Department, Government of Bihar, Patna
2. The Principal Secretary Urban Development Department Government of Bihar, Patna.
3. The Patna Municipal Corporation at Patna through the Commissioner, Patna Municipal Corporation at Mouryalok Complex, Patna
4. The Municipal Commissioner, Patna Municipal Corporation at Mouryalok Complex, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 12169 of 2019

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Pratap Narayan Singh, son of Late Rameshwar Prasad Singh, R/o Mohalla-Vyas Nagar (Phase-I), Indrapuri, P.S.-Shastri Nagar, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The Patna Municipal Corporation, Mauryalok Complex, Patna through its Commissioner
3. The Municipal Commissioner Patna Municipal Corporation, Mauryalok Complex, Patna
4. The Controller of Municipal Finance and Accounts, Patna Municipal Corporation, Mauryalok Complex, Patna

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8581 of 2017)

For the Petitioner/s : Mr. Ram Sumiran Singh, Advocate
For the State : Mr. Subhash Pd. Singh, GA-3
For PMC : Mr. Prabhakar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 12169 of 2019)

For the Petitioner/s : Mr. Shekhar Singh, Advocate
Mr. Sunil Kumar, Advocate
For the State : Mr. Abbas Haider, SC-6
Mr. Ravish Chandra, Advocate
For PMC : Mr. Prabhakar Singh, Advocate



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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 01-11-2021

The petitioners in both the cases were employees of Patna Regional Development Authority (for short PRDA) which admittedly stood dissolved and merged with the Patna Municipal Corporation (for short the Corporation) with effect from 02.02.2007. This is also not in dispute that consequent upon merger with the Corporation all employees of PRDA became the employees of the Corporation. The employees of the Corporation are entitled to pensionary benefits under statutory Patna Municipal Corporation Officers and Servants Pension Rules, 1986 (for short the PMC Pension Rules), published in Bihar Gazettee on 20.03.1987. The PMC Pension Rules came into force with effect from 01.01.1986. The sole question, which these two writ applications involve is, as to whether the employees of erstwhile PRDA, who became the employees of the Corporation in the aforesaid manner, are entitled to benefits under the PMC Pension Rules for grant of monthly pension and family pension. As the issue involved in both the cases is common, they have been heard together and are being disposed of by the present common judgment and order.

2. It is noted at the outset that this question had earlier



arisen before this Court in a writ application registered as CWJC No. 14307 of 2016 and its analogous matters (Avinash Kumar Singh vs. State of Bihar). A coordinate Bench of this Court upon noticing the stand of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, in response to a query made by the Corporation, had allowed the writ application by order dated 15.05.2017 with the following direction :-

“The only dispute which arises for consideration is, whether these petitioners after their absorption in the Corporation, were entitled to the benefits under 'the Pension Rule' as applicable to the Corporation employees and for which a query was made by the Municipal Commissioner by letter dated 21.1.2017 addressed to the Principal Secretary, Urban Development and Housing Department, a copy of which is placed on record vide Annexure R3/B filed on behalf of the Corporation in each of the two writ petitions, as to how the pension cases of these employees of erstwhile PRDA who have been absorbed in Patna Municipal Corporation, is to be dealt with. It is in response to the query so made by the Municipal Commissioner through his letter dated 21.1.2017, placed at Annexure R3/B, that the Urban Development and Housing Department through the Director, Municipality cum Joint Secretary has issued an advisory to the Municipal Commissioner of Patna Municipal Corporation that the cases of such of the employees who stood absorbed with the Corporation



would be governed in the same manner as the permanent employees of the Corporation. A copy of such advisory dated 24.4.2017 of the Urban Development and Housing Department, Govt. of Bihar has been placed on record vide Annexure 10 to the rejoinder to the counter affidavit.

Having heard learned counsel for the parties and considering that the query whatsoever engaging the Municipal Commissioner, Patna stands satisfied in the advisory present in the letter dated 24.4.2017 vide Annexure 10, it is now for the Municipal Corporation to enforce the same and let the Municipal Commissioner, Patna take a final decision to such effect within a period of six weeks from the date of receipt/production of a copy of this order.

The writ petitions are allowed with the directions aforementioned.”

3. The petitioner of CWJC No. 8581 of 2017 retired with effect from 30.04.2015, whereas the petitioner of CWJC No. 12169 of 2019 retired with effect from 31.08.2015. Both the petitioners have filed the writ applications under Article 226 of the Constitution of India seeking direction to the respondent-Corporation for payment of the amount arising out of grant of Assured Career Progression (ACP) and other post retiral dues including pension under the PMC Pension Rules.

4. By way of supplementary affidavit, the petitioners have brought on record an order dated 12.02.2019, issued in the light of the decision of Empowered Standing Committee of the



Corporation in its meeting held on 16.01.2019, which mentions that the pension scheme under the PMC Pension Rules shall be applicable with effect 01.01.2019 to the employees of the Corporation whose services were merged in the Corporation with the dissolution of PRDA.

5. In one of the counter affidavits filed on behalf of the Corporation reliance has been placed on Rule 4 of the PMC Pension Rules which, according to the Corporation, disentitles the petitioners to claim benefit of pension as they have already received the amount of provident fund contribution. It is the case of the Corporation that since the petitioners received the mount of contributory provident fund, they cannot be granted benefit of pension.

6. It is the case of the petitioners, on the other hand, that the matter as to whether the petitioners and similarly situated employees under the Corporation would be entitled to benefit of pension under the PMC Pension Rules or not had not been conclusively decided by the Corporation despite representations having been made by them and for the first time a decision was taken in 2019 to extend the benefit of pension under the PMC Pension Rules with effect from 01.01.2019.

7. It deserves to be noted at this juncture that this Court



in its order dated 11.02.2021, passed in these matters, had observed as under:-

“Learned counsel for the petitioner(s) submits that in fact the State Government was categorical before the learned coordinate Bench in saying that the cases of all such employees who stood absorbed to the Corporation would be governed in the same manner as permanent employees of the Corporation. If this was the stand of the State Government and pursuant thereto the learned coordinate Bench has issued direction to the Municipal Commissioner, Patna to take a final decision to such effect, the Municipal Commissioner would not be justified in issuing a notification restricting the benefit of pension to only those employees who are presently in service while keeping the matter relating to payment of pension and family pension in relation to the retired employees pending for last two years.

In this connection the report as contained in Annexure ‘RA’ vide Memo No. 01115 dated 19.01.2021 has been referred to and this Court has been called upon to take a view with regard to the payment of pension and family pension relating to the retired employees.

Learned counsel for the petitioner submits that on the one hand, the proposal has been kept pending since 16.01.2019 but at the same time in paragraph ‘7’ of the supplementary counter affidavit filed on behalf of the Corporation a plea has been taken that according to Rule ‘4’ of the Patna Municipal Corporation Officers and



Servants Pension Rules, 1986 (hereinafter referred to as the 'Rules of 1986') the employee who has withdrawn both the contribution amount of provident fund shall not be eligible for pension. Learned counsel submits that the statement has been made in the supplementary counter affidavit being completely ignorant of the basic fact that such rule would be applicable only when the employees of the erstwhile 'PRDA' (since dissolved) would have an opportunity to choose between the contributory provident fund and pension. If such option was not available to the employees of the erstwhile 'PRDA', the analogy which is the premise of Rule '4' of the Rules of 1986 would not be available to be applied against the retired employees of the 'PRDA'.

Mr. Prabhakar Singh, learned counsel for the Patna Municipal Corporation submits that since the report filed before this Court shows that the matter is still pending consideration, he may be allowed an opportunity to come back to this Court with further instruction as to the decision in regard to the retired employees.

This Court is granting further four weeks time being fully conscious of the fact that the matters have been adjourned on many occasions but with sole intention that the authorities of the Municipal Corporation must act and take an appropriate decision as keeping the matter pending at their end is not a way out to resolve the disputes."

8. Apparently, in view of the aforesaid order of this Court and subsequent orders, the Empowered Standing Committee



of the Corporation in its meeting held on 29.06.2021 has now taken a conclusive decision that such employees of the dissolved PRDA who retired before 01.01.2019 and have received both components (subscription and contributory) of provident fund cannot claim benefit of pension and family pension under the PMC Pension Rules. The said decision has been brought on record by way of a supplementary counter affidavit filed on behalf of the Corporation.

9. It has been stated in the supplementary counter affidavit that between 01.02.2007 to 31.12.2018, 35 employees of the erstwhile PRDA have retired/ died. The order relating to grant of pension to the employees of the dissolved PRDA with effect from 01.01.2019 was brought to the notice of the Empowered Standing Committee. Paragraph-5 of the supplementary counter affidavit discloses the reason why the Empowered Standing Committee has rejected the claim of such employees who retired before 01.01.2019 and had received the provident fund contribution. This stand of the Corporation is of immense significance for determination of the issue involved and, therefore, it is considered apt to reproduce the same, which reads as under :-

“That the Empowered Permanent Committee of Patna Municipal Corporation in its meeting held on 29.06.2021 decided the proposal No.



595 placed for taking decision for providing pension to the retired employees whose services had been merged into Patna Municipal Corporation, who were earlier working in the Patna Regional Development Authority. From the perusal of the copy of the proceeding record it is clear that the Municipal Commissioner placed the facts and explained the proposal for taking decision about providing pension the retired employees of the PRDA whose services were merged in 2007 and stated that between 1.02.2007 to 31.12.2018, 35 employees were retired/ died. Order for granting pension to the employees of repealed PRDA with effect from 1.1.2019 was issued. It was further stated that 35 employees have withdrawn the both contribution amount of Provident Fund after their retirement. During proceeding one member of the empowered committee suggested to reject the claim of the retired employees, because as per provision made under rule 4(1)(2) of the Patna Municipal Corporation Officers and Servants Pension Rules, 1986 they are not entitled as they have withdrawn the both contributory amount of provident fund. Thereafter the committee considered the said matter and rejected the claim for pension regarding the employees who have withdrawn the both amount of the provident fund on the basis of provision made under paragraph 4(1)



(2) of the Patna Municipal Corporation Officers and Servants Pension Rules, 1986. (Underlined for emphasis)

10. On careful reading of the supplementary counter affidavit, it is crystal clear that the provision under Rule 4(i) and 4(ii) of the PMC Pension Rules are the bases why in the opinion of the Corporation the petitioners and other similarly situated persons are not entitled to pension/ family pension under the PMC Pension Rules.

11. It may be noted, at this stage that it is the stand of the petitioners that they are ready to refund the provident fund contribution amount received by them to the Corporation with interest, for availing benefit under the PMC Pension Rules.

12. IA. No. 01 of 2021 has been filed in CWJC No. 8581 of 2017 seeking quashing of the order/ decision dated 23.08.2021, whereby the claim of the petitioner has been rejected on the ground that he retired before 01.01.2019 and had received both components of the provident fund amount.

13. Similar application has been made bearing I.A. No. 02 of 2021 in CWJC No. 12169 of 2019, by the petitioner.

14. Both I.A. No. 01 of 2021 filed in CWJC No. 8581 of 2017 and I.A. No. 02 of 2021 filed in CWJC No. 12169 of 2019 are allowed and accordingly the petitioners are permitted to



question the validity and legality of the impugned order/ decision of the Corporation dated 23.08.2021.

15. Mr. Shekhar Singh, learned counsel appearing on behalf of the petitioner in CWJC No. 12169 of 2019 has argued that from the date the employees of the erstwhile PRDA became the employees of the Corporation, upon dissolution of PRDA, by virtue of operation of the PMC Pension Rules, they became entitled to pension/ family pension under the said PMC Pension Rules. He has submitted that despite there being specific provision under the PMC Pension Rules the respondent-Corporation itself was not certain on the point of grant of benefit of pension under the said Rules apropos employees of the erstwhile PRDA. He has argued that for the first time the Corporation considered the issue of applicability of PMC Pension Rules in respect of the employees of the dissolved PRDA working under the Corporation on 15.02.2019. The said order dated 15.02.2019 (Annexure-I/1 of I.A. No. 01 of 2021 filed on behalf of petitioner in CWJC No. 12169 of 2019) discloses the decision of the Empowered Standing Committee in its meeting held on 16.01.2019 to the effect that the pension scheme shall be applicable to the employees of the dissolved PRDA with effect from 01.01.2019 at par with the employees of the Corporation. He contends that the Corporation



could not have created a separate class for purpose of implementation of the PMC Pension Rules from amongst such employees of the PRDA, who, upon dissolution, became the employees of the Corporation. He has submitted that apparently because the Corporation itself was indecisive as regards implementation of the PMC Pension Rules in respect of the employees of dissolved PRDA, no option was obtained from them and the petitioners, who retired before 01.01.2019, did not have any opportunity to exercise their option. He has further submitted that considering the indecisive approach of the Corporation itself the petitioners had no other option but to receive the provident fund amount which the petitioners are willing and ready to refund forthwith with statutory interest. He has urged that the impugned decision of the Empowered Standing Committee is manifestly bereft of any consideration on the observations made by this Court in the order dated 11.02.2021 in these matters and order dated 15.05.2017, passed in CWJC No. 14307 of 2016. He has further argued that the decision to deny the petitioners benefit of pension under the PMC Pension Rules is illegal being violative of Articles 14 and 16 of the Constitution of India, inasmuch as, a class of employees, who retired before 01.01.2019, has been created without any rationale.



16. Mr. Ram Sumiran Singh, learned counsel appearing on behalf of the petitioner in CWJC No. 8581 of 2017 has adopted the submission advanced on behalf of Mr. Shekhar Singh, learned counsel for the petitioner in CWJC No. 12169 of 2019.

17. Mr. Prabhakar Singh, learned counsel appearing on behalf of the Corporation has heavily relied on Rule 4(ii) of the PMC Pension Rules to contend that since the petitioners have already received the provident fund contribution, they are disentitled to get benefit of pension under the Pension Rules. With reference to the said provision, he has justified the decision of the Corporation in denying the benefits of pension to the petitioners and other similarly situated persons.

18. Mr. Subhash Prasad Singh, learned GA-3 in CWJC No. 8581 of 2017 and Mr. Abbas Haider, learned SC-6 in CWJC No. 12169 of 2019 appearing on behalf of the State of Bihar have argued that the State has limited role in the matter of implementation of pensionary benefits to the employees of the Corporation. They have relied on a Division Bench decision of this Court dated 04.05.2015, rendered in LPA No. 960 of 2007 (*The State of Bihar vs. Bhuwan and another*).

19. I have carefully perused the pleadings and other materials on record and I have given my anxious consideration to



the rival submissions advanced on behalf of the parties.

20. The first issue which, in my opinion, is required to be addressed, is the effect of Rule 4 of the PMC Pension Rules which is apparently the sole basis for denial of the petitioners' claim for pension/ family pension. Rule 4 of the Pension Rules reads as under:-

“4. (i) Corporation employee on roll on the date of confirmation of this rule and who had subscribed to the contributory provident fund under P.M.C. employee provident fund rules and want to be governed by these rules shall have the option to do so and such option shall be exercised in writing in the prescribed form (Annexure-1) and submitted to the Chief Executive Officer within 90 days from the date of framing of this rule by the State Government. If such option in writing in prescribed form is not received within the period so fixed it will be deemed that they would retain the existing contributory provident fund.

(ii) Corporation employees who retired before the date of effect of this rule and have received the part or whole amount of Provident Fund Contribution will not be eligible for the pension.”

21. It is manifest on plain reading of sub-rule (i) of Rule 4 of the PMC Pension Rules that it applies to such employees of the Corporation who were on roll on the date of confirmation of



the Rules and who had subscribed to the contributory provident fund under the Patna Municipal Corporation Employee Provident Fund Rules. Such employees, already on the roll, if they wanted to be governed by the PMC Pension Rules, they had the option under Rule 4(i) to do so which option was to be exercised in writing in prescribed form by submitting it to the Chief Executive Officer within 90 days from the framing of the Rules. It further prescribes that if such option in writing in prescribed form was not received within the period so fixed, it would be deemed that they would retain the then existing contributory provident fund rules. Sub-rule (i) of Rule 4 is apparently applicable only for such employees of the Corporation who were already on roll on the date of confirmation of the Rules. Those appointed in the Corporation after the prescribed date, were not required to exercise their option, as such employees would be automatically covered by the said Pension Rules. Requirement of giving option or not giving option under Rule 4(i) was limited to the existing employees of the Corporation as on the date of coming into force of the said Pension Rules, who were covered by the Corporation Employee Provident Fund Rules.

22. Sub-rule (ii) of Rule 4 refers to class of such employees of the Corporation who had already retired before the



date of the effect of the Pension Rules and had received part or whole amount of provident fund contribution. Sub-rule (ii) of Rule 4, by no means, can be interpreted to apply for employees other than those who had retired prior to coming into force of the Rules.

23. In case of *Sanchari Devi vs. Ara Municipal Corporation* reported in *(2014) 15 SCC 648 : 2015(1) PLJR(SC) 370* the Supreme Court had the occasion to examine the scope of similar provision under Rule 4(i) and 4(ii) of the Bihar Municipal Officers and Servants Pension Rules which are in *pari materia* with Rule 4(i) and 4(ii) of the PMC Pension Rules. Upon examining the language of the said provisions the Supreme Court held in paragraph 5 as under :-

“5. A bare reading of the Rules 1 and 4(i) of the Rules makes it clear that the Rules apply to permanent employees of the Municipalities and Notified Area Committees in the State of Bihar. Thus, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation were statutorily entitled to the pension under the Rules. Rule 4(ii) of the Rules provided further that municipal employees who retired before the date of effect of the Rules and received part or whole amount of provident fund contribution will not be eligible for pension. Hence, Municipal employees who had retired before the date of



effect of the Rules and had received part or whole of provident fund contribution were not entitled for the pension under the Rules. In other words, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation had a statutory right to get pension if they had not retired before the date of effect of the Rules and had not received part or whole of provident fund contribution.”
(Underlined for emphasis)

24. By virtue of Rule 4(i) of the Bihar Municipal Officers and Servants Pension Rules, the Supreme Court held in case of ***Sanchari Devi*** (supra), that every permanent employee of a municipality or notified area committee, if he had not retired before the date of effect of the Rule and had not received part or whole of the provident fund contribution was statutorily entitled to the pension. Only such employees of the Corporation who had retired before coming into force of the said Pension Rules and had received the amount of provident fund contribution could not avail the benefit of pension under the Pension Rules.

25. After having analysed the scope of Rule 4 of the Pension Rules, coming to the facts of the case of these petitioners, admittedly they became the employees of the Corporation when the PMC Pension Rules was already in force. They being



employees of the Corporation, by operation of Rule 1 of the Pension Rules, they became entitled to the benefits under the Pension Rules. It is evident from the materials on record and from the order of this Court dated 15.05.2017, passed in CWJC No. 14307 of 2016 (*Avinash Singh vs. The State of Bihar*) that despite there being clear provision under the PMC Pension Rules, the Corporation was not certain on admissibility of pension under the said Rules for employees of the dissolved PRDA after their absorption in Corporation. A query was made by letter dated 21.01.2017 by the Municipal Commissioner, addressed to the Principal Secretary, Urban Development and Housing Department, Government of Bihar and in response to the said query, after having obtained legal opinion from the Law Department, the Corporation was communicated through letter dated 24.04.2017 of the Department that the salary, pension and other retiral benefits would be payable to the employees of the dissolved PRDA at par with the employees of the Corporation. Nearly two years thereafter, the Municipal Commissioner of the Corporation came out with a resolution in the nature of proposal for implementation of pension scheme for the employees of the dissolved PRDA with effect from 01.01.2019. Accordingly, the proposal was accepted by the Empowered Standing Committee of the Corporation in its



meeting held on 16.01.2019 and on that basis it is the case of the Corporation that such employees of the dissolved PRDA are entitled to pension under the PMC Pension Rules with effect from 01.01.2019.

26. In the light of the order of this Court dated 11.02.2021, passed in these matters, a fresh proposal was placed by the Municipal Commissioner of the Corporation before the Empowered Standing Committee of the Corporation which has been rejected by the said Committee in its meeting dated 29.06.2021. The said decision of the Empowered Standing Committee has been issued by the Municipal Commissioner on 14.08.2021. The claim of the petitioners for pension has accordingly been rejected with the issuance of an order dated 23.08.2021 under the signature of Municipal Commissioner of the Corporation. The said order is also under challenge in the present proceeding. It is evident from the order dated 23.08.2021 that the claim of the petitioners has been rejected by referring to the provision under Rule 4(i) and 4(ii) of the PMC Pension Rules.

27. As has been discussed hereinabove, Rule 4(i) of the PMC Pension Rules does not have any application in respect of the employees of the Corporation who were not on the roll of the Corporation as on the date of coming into force. Rule 4(ii) of the



PMC Pension Rules is referable to only such employees of the Corporation who had retired prior to coming into force of the Rules, which does not apply to the petitioners.

28. Rule 1 of the Pension Rules reads thus :-

“1. Those rules may be called the Patna Municipal Corporation Officers and Servants Pension Rules, 1986 and shall apply to all permanent employees of the Corporation.” (Emphasis added)

29. By operation of Rule 1 of the Pension Rules, the petitioners after having become permanent employees of the Corporation, became entitled to application of the PMC Pension Rules. In view of the abovementioned discussion, since reliance on Rule 4(i) and Rule 4(ii) of the Pension Rules by the Corporation for rejecting the claim of the petitioners for grant of pension under the scheme, in Court's opinion, is completely misplaced, the impugned decision of the Empowered Standing Committee taken in its meeting held on 29.06.2021 is accordingly held to be illegal. The consequential order issued under the signature of the Municipal Commissioner of the Corporation dated 23.08.2021 is also held to be illegal and unsustainable, for the same reason.

30. Coming now to the decision of the Empowered Standing Committee of the Corporation in its meeting held on



16.01.2019, leading to issuance of order dated 15.02.2019 to the effect that the Pension Rules shall be applicable in case of employees of dissolved PRDA from 01.01.2019, in my opinion, the same also cannot be sustained, being contrary to the statutory PMC Pension Rules. In my opinion, it was not open for the Corporation to have implemented the PMC Pension Rules in case of these petitioners differently. Since the Corporation itself had failed to take any decision and was rather seeking guidelines from the State Government in this regard, even after the petitioners had attained the age of superannuation, they cannot be blamed, for the lapses on the part of the Corporation, by making them receive the provident fund contribution as they did not have any other option at the said point of time. The Corporation, completely misdirecting itself to the provisions under Rule 4(i) and 4(ii) of the Pension Rules, denied the petitioners' claim and decided to apply the pension scheme for such employees with effect from 01.01.2019. There is no rationale nor any intelligible differentia to distinguish the employees of the dissolved PRDA who retired prior to 01.01.2019 and after 01.01.2019 for the purpose of implementation of the PMC Pension Rules, which came into force in 1986 itself.

31. Law is well settled that a defaulting party cannot be allowed to take advantage of its own wrong. The Corporation



cannot benefit itself by the mistake to which it itself has contributed. [*See (1955) 1 SCR 108, Manilal Mohan Lal Sah vs. Sardar Sayed Ahmed Sayed Mahmud and Another*]. Taking similar view in case of *Haryana Financial Corporation vs. Rajesh Gupta* reported in *(2010) 1 SCC 655*, the Supreme Court held the Corporation in that case having acted unfairly could not be permitted to take advantage of its wrong. (see para 23, supra)

32. Learned counsel for the petitioners are correct in their submissions that the petitioners did not have any occasion/ opportunity or choice to exercise their option at any point of time. No case has been made out on behalf of the Corporation that the petitioners were ever given any option to elect, to be governed by the PMC Pension Rules which they declined. In any view of the matter, in the Court's opinion, the moment the petitioners became permanent employees of the Corporation, they could not have exercised any other option other than to be governed by the PMC Pension Rules, by operation of Rule 1 thereof.

33. In view of the facts and circumstances which have been noticed hereinabove, and the conduct of the Corporation despite clear observations made by this Court in previous orders, the Court is of the definite opinion that the Corporation is trying to take advantage of its own lapses which is impermissible.



34. For the reasons noted above, I am of the considered view that the petitioners are entitled to benefits of pension/ family pension under the provisions of the PMC Pension Rules. The provident fund contribution was wrongly paid to them. They ought to have been given pension under the PMC Pension Rules, since on the date of their superannuation there was no reason for the Corporation to deny them the benefit of pension under the PMC Pension Rules. Receiving of provident fund contribution by the petitioners, in Court's opinion, will not amount to waiver of their legal right to receive pension under the statutory Pension Rules in view of the facts and circumstances of the case as noted above. As has been noticed above, the petitioners are ready to refund the provident fund contribution to the Corporation with interest.

35. In view of the foregoing discussions and the reasons recorded, the impugned order dated 15.02.2019 of the Corporation, to the extent it allows payment of pension under the Pension Rules for employees of the dissolved PRDA who retired with effect from 01.01.2019, deserves interference by this Court and is set aside accordingly.

36. Both the writ applications are allowed with a direction that if the petitioners deposit the entire amount of provident fund contribution received by them right from their



initial appointment in PRDA, with interest to the Corporation, they shall be paid pension under the PMC Pension Rules. The Corporation shall be required to compute the amount of provident fund contribution received by the petitioners as employees of dissolved PRDA and the interest which the petitioners will be required to pay from the date they received the amount till date, within a period of one month from the date of receipt/ production of a copy of this order. Once such computation is made by the Corporation, the same should be communicated to the petitioners forthwith. The amount so computed by the Corporation should be deposited by the petitioners in appropriate account of the Corporation within a fortnight thereafter. If the said amount is deposited by the petitioners within the stipulated time, the Corporation shall be required to pay to the petitioners pension and arrears of pension under the PMC Pension Rules.

37. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.11.2021
Transmission Date	NA

