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(1995) 03 CAL CK 0001

Calcutta High Court (Port Blair Bench)

Case No: C.O. No. 131 (W) of 1994

R.B. Jeevan Lall APPELLANT

Vs

Municipal Board and RESPONDENT

Others

Date of Decision: March 31, 1995

Acts Referred:

• Andaman and Nicobar Islands (Municipal Board), s, 1957 - Section 96

• Constitution of India, 1950 - Article 226

Citation: (1996) 2 CALLT 384

Hon'ble Judges: Bijitendra Mohan Mitra, J

Bench: Single Bench

Advocate: A.K. Roy, for the Appellant; D.R. Parekh, for the Respondent

Final Decision: Allowed

Judgement

Bijitendra Mohan Mitra, J.

This writ petition is primarily directed against Memo. No. 41-91/Estt/MB/3133 dated 30th September, 1994, vide Annexure-C By the impugned Memo., the Secretary, Municipal Board, turned down the request of the petitioner for counting the petitioner" Government service as qualifying service for pension as per rules. The petitioner has started arduous journey in employment as earlier from 20th September, 1962, as he initially joined as Lower Grade Clerk in Andaman & Nicober administration. Thereafter, he was promoted to the post of Sanitary inspector with effect from 15th January, 1966. Sometime in the month of November/December, 1967, the petitioner made an application through proper channel to the Municipal Board "Port Blair for his selection to the post of Sanitary Inspector. He was duly appointed in the said post on 21st December, 1967 in the Muncipal Board. He was promoted from time to time and ultimately he was promoted to the post of Administrative Officer with effect from 25th October. 1969. In exercise of the powers conferred by Section 96of Andaman and Nicobar Islands (Municipal Board) Regulations. 1957. A new rule known as "The Port Blair Municipal Board"s Retirement and Pension

Rules, 1992" came into effect. With the issuance of the said Notification, the Fundamental Rule 56 and CCS (Pension) Rules, 1972 mutatis mutandis was made applicable to Municipal servants with effect from 1.5.1992. Upto that stage, the development of sequences of events has a trend of consistency. The petitioner has asserted that the Municipal servants on the roll as on 1.5.1992 shall have an option either to be governed by the Pension Rule or to retain the CPF benefits. Mr. D.R. Parekh, learned advocate appearing on behalf of the Respondents, cannot admit the same and, as such, the question of an option being made available or open cannot be an admitted position. The bone of contention which has been sought to be raised in this proceeding at the instance of Mr. D.R. Parekh, such Notification and Rule should be normally prospective and it should not be given a retrospective foundation unless credence is attached to the version of the petitioner that he has a right to exercise above option to be governed by the Pension Rules after his name appears on the date as mentioned. The Court has given anxious consideration to the submission of Mr. D.R. Parekh and his submission may be in line with the traditional approach on construction of statutes that they should be prospective and not retrospective. Law is known in its compass as a mirror of social progress. The Court is not unmindful of about new jurisprudential domain which is emerging with the advent of the social legislation for the uplift of the economically weaker section so that they can be placed at a higher platform to start race of life with others from the same pedestal. Viewed from that angle or perspective and after taking stock of the key-note of the preamble to the Constitution of India, where this country has been described as a socialist country and economic equality has been envisaged and in the light of the same the construction of statutes requires a new interpretation so that Law can answer to the social change and contemporaneous challenge. Laws, namely, under grab of legislation and statues are of secondary in nature in a scenario of the primary law which emanates from the basic documents, namely. Constitution of India. In order to make construction of the statute, the Court may be required to shun the traditional approach of well known maxim of common interpretation of statues but the Court should consider statute in conformity with the sprit of the preamble to the Constitution. The preamble is a guide for interpretation not only of the Constitution but also for all secondary legislations enacted in every nook and corner of this country. In view of the same, it is very difficult to make a line of water-shed distinction on an arbitrary date from where some person will be treated as gold and some as silver. It may result in percolation in the minds of the citizens of discrimination. Retrospective interpretation of statute of regulation may be considered necessary if it enures to the object and purpose behind the same. As such, Constitutional requirement of interpretation of social legislation demands that rigidity of retrospectively should be relaxed in the field of interpretation of statutes when they want to open new vistas of social progress by creation of egalitarian society. This Court after giving its anxious consideration to the social requirement, which the Constitution envisages and taking the backdrop wherein these rules have been framed, is inclined to hold that in the given facts and circumstances of the present case the Court should lean in favour of even retrospective effect to be given about the statute or Notification. Even apart from on the question of exercise of option from a prior date this

Court cannot overlook the ceaseless toil rendered almost for his entirety of life for the employer. Accordingly, this Court feels that on that score the petitioner should have entitlement to be covered by the CCS (Pension) Rules which came into effect on 1.5.92 since his name was appearing on the roll on that day so that he may reap the harvest of his life long employment by obviating insecurity.

- 2. As it has been indicated hereinbefore that the present writ petition is directed against Annexure-"C namely, the impugned Memo, has been signed by the Secretary (Municipal Board) but there is no mention in the said Memo, as to whether he has been authorised to communicate the same on behalf of the Municipal Board and office bearer/regular employee cannot take a decision of his own unless it is fortified by the sanction of the Municipal Board. Learned advocate appearing on behalf of the petitioner has referred to a resolution in a meeting held on 30.3.1994 wherefrom it appears that the Members unanimously decided to count the past services rendered by the petitioner under the Administration for his pensionary benefits. The impugned communication is at variance to that order of resolution in the Board"s meeting as aforesaid. The impugned Memo, cannot supersede the Board"s resolution and, as such the same is not sustainable In law. Accordingly, the writ of Mandamus is issued commanding upon the Respondents for not giving effect or further effect to the impugned Memo. 41-91/Estt/MB/3133 dated 30th September, 1994, vide Annexure-"C and, as such, the benefits of the petitioner for his past services in Andaman & Nicobar Administration should be taken Into account in computing his pensionary benefits. Accordingly, the writ petition is thus allowed subject to the above directions and the impugned Memo. is set aside and cancelled.
- 3. Xerox copies of this order be made available to the respective parties at their own costs and expenses.