

## R.B. Jeevan Lall Vs Municipal Board and Others

**Court:** Calcutta High Court (Port Blair Bench)

**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 & Nicobar 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 Municipal 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 96 of 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 statutes 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 statutes but the Court should consider statute in conformity with the spirit 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.