

Vasant Gangaramsa Chandan

Vs

State of Maharashtra and Others

Civil Appeal No. 9860 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

15.07.1996

ORDER

1. Leave granted.

2. Heard both sides.

3. This appeal by special leave arises from the judgment and order of the Bombay High Court, Aurangabad Bench made on 11-11-1993 in Writ Petition No. 3505 of 1993. The appellant was working as on 1-4-1957 as Peon-cum-Watchman in the Hyderabad Agricultural Committee. Consequent upon the State's reorganisation, the appellant had gone and joined the service of the Krishi Utpadan Bazar Samiti in Jalna District. He retired from service on 1-4-1991 after completing about 35 years of service. His qualifying service was computed w.e.f. 1-10-1969. He claimed the service from the date of his appointment. It was denied on the ground that he started contributing towards provident fund w.e.f. the aforesaid date and, therefore, his pensionary benefit required to be computed from that date.

4. Clause 23 of Chapter VI in the scheme reads as under :

"Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the PF contribution for the employee whichever is later."

5. A reading clearly indicates that the qualifying service is from the date he takes charge of the post to which he was first appointed or from the date the employer started deduction of provident fund from the employee, whichever is later. Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied. Therefore, we read down the rule. We hold that reading the rule which is 'later' must be read down to whichever is 'earlier'. If so read, the rule is valid. Otherwise, it would be arbitrary offending Article 14 of the Constitution. Mr Khanwilkar, the learned counsel for the respondent, contended that the appellant is not entitled to the DA; on the other hand, the learned counsel for the appellant contended that pursuant to the order passed by the High Court to pay DA resolution had already been passed by the Committee and the DA has already been paid to him.

6. The pensionary benefit will be computed from 1-4-1957 within two months from the date of receipt of this order and payment of arrears be paid accordingly.

7. The appeal is allowed accordingly. No costs.