

# SUPREME COURT OF INDIA

Gulab Chand Agrawal

Vs.

State of Bihar

C.A.No.2730 of 2006

(S.B. Sinha and Markandey Katju JJ.)

29.11.2006

## JUDGMENT

**S.B. SINHA, J.**

Leave granted.

This appeal is directed against the judgment and order dated 16.10.2003 passed by a Division Bench of the Patna High Court in LPA No. 972/2003, whereby and where under a judgment and order dated 11.9.2003 passed by a learned Single Judge of the said Court passed in CWJC No. 707/2000 was affirmed the appellant herein was appointed as a clerk in Siwan Municipality. The said Municipality is a 'local authority' constituted in terms of the provisions of the Bihar and Orissa Municipalities Act, 1922.

The State of Bihar framed rules for the Municipal employees, known as Bihar Municipal officers and Servants Pension Rules, 1987. Clause 1 if Rule 4 of the said rules reads as follow:

"Municipal employees on roll on the date of confirmation of this rule and who had subscribed to the contributory provident fund under 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-I) and submitted to their head office within 90 days from the date of framing of this rule by the State Government. If such option in writing prescribed form is not received within the period so fixed it will be deemed that they would retain the existing contributory provident fund."

Appellant retired from his service on 31.1.1992. The aforesaid rules were adopted by the respondent-Municipality in August, 2001. As Appellant did not give any option for switching over to the pension scheme under the aforesaid rules from the contributory provident fund scheme of which he was a member, the High Court dismissed his writ application.

Learned counsel appearing on behalf of the appellant submits that the question of giving any option in terms of the Rule 4 of the Pension Rules did not arise as the same had been adopted by respondent NO. 4 - Municipality only in August, 2001.

Although the learned counsel may be correct in his submission but fact remains that he had already retired in 1992 and as such, at this juncture, the respondent No. 4 - Municipality's giving him opportunity to opt for the said scheme does not and cannot arise. We, therefore, albeit for different reasons, uphold the judgment and order passed by the High Court.

However, it is stated at the Bar that the entire retirement dues of the appellant has not been paid. If that be so, we are sure that the respondent No. 4 being a 'State' within the meaning of Article 12 of the Constitution, shall pay all lawful dues of the appellant at an early date.

The appeal is dismissed with the aforesaid observations.