HARI CHAND AND ORS. A

v.

FARIDABAD COMPLEX ADMINISTRATION AND ORS.

APRIL 26, 2005

[RUMA PAL AND C.K. THAKKER, JJ.] B

Service Law—Pension—Appellants were employees of Municipal Corporation—Under the 1971 Act, they were entitled to Contributory Provident Fund which was paid—Appellants retired on various dates between 1976 and 1986, prior to introduction of the new pension scheme in 1992—Action of respondent-adminsitration in denying appellants the benefit of pension under the new pension scheme—Validity of—Held, valid—The new pension scheme operated only prospectively—Besides, Note 1 to Rule 3.16 expressly excluded employees of Municipalities from application of new pension scheme—No violation of Article 14 or 19 of the Constitution—Punjab Civil Service Rules— C D *Rule 3.16, Note 1—Faridabad Complex (Regulation and Development) Act, 1971.*

Constitution of India, 1950—Article 226—Earlier suit instituted by certain employees claiming pensionary benefits was decreed which attained finality—In subsequent writ proceedings, appellant claimed similar relief against the same employer—Doctrine of 'res judicata'—Applicability of—Held: Apart from the fact that the doctrine of res judicata does not stricto sensu apply to writ proceedings, it has no application to the facts of the case—Appellants were not 'parties' to the earlier suit, nor are they claiming through plaintiffs of that suit—That suit was also not filed as a 'representative' suit—Hence, decree in that suit cannot operate as res judicata—Code of Civil Procedure, 1908—Section 11. E F

Appellants were appointed by the Faridabad Development Board which was converted into Faridabad Notified Area Committee, later on renamed as Faridabad Complex Administration and finally as Faridabad Municipal Corporation. They retired from service on various dates between 1976 and 1986 and were entitled to Contributory Provident Fund which was paid to them under the Faridabad Complex (Regulation and Development) Act, 1971. However, the appellants filed writ petition before G

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A High Court for a declaration that they were entitled to pensionary benefits as admissible to employees of Haryana Govt. and for a writ of mandamus directing extension of such benefits to them. Single Judge of the High Court observed that since similar benefit was allowed to similarly situated persons in an earlier civil suit, which decree attained finality, the Appellants too were entitled to equal treatment and similar benefits. B Accordingly it allowed the writ petition. The Division Bench, however, held that the pension scheme was introduced only in 1992 and the appellants having superannuated prior to 1992 were not entitled to pensionary benefits under the scheme. The Division Bench further observed that the point was covered by the ratio of an earlier decision given by it and C accordingly set aside the order of the Single Judge. Hence, the present appeals.

The questions which arose for consideration in the present appeals is as to whether the decree passed in the earlier civil suit operated as *res judicata* and whether the appellants were entitled to pension as claimed D by them.

Dismissing the appeals, the Court

HELD : 1. The Division Bench was wholly right in allowing the appeals and setting aside the directions of the Single Judge. The action of E the respondent-Corporation, hence, cannot be described as arbitrary, discriminatory or unreasonable, violative of Article 14 or 19 of the Constitution. [915-A; 916-C]

State of Punjab v. *Justice S.S. Dewan (Retired Chief Justice) and Ors.*, [1997] 4 SCC 569; *V. Kasturi* v. *Managing Director, State Bank of India, Bombay and Anr.*, [1998] 8 SCC 30 and *Union of India and Anr.* v. *Deoki Nandan Aggarwal*, [1992] Supp 1 SCC 323, relied on.

Dhan Raj and Ors. v. *State of J & K and Ors.*, [1998] 4 SCC 30 and *D.S.Nakara* v. *Union of India*, [1983] 1 SCC 305, distinguished.

G 2. So far as *res judicata* is concerned, admittedly, no suit had been filed by the appellants in any court. A suit was instituted by certain employees which was decreed by the Trial Court and the decree was confirmed by the First Appellate Court as well as by the High Court. Apart from the fact that the doctrine of *res judicata* as envisaged by Section 11 H CPC does not *stricto sensu* apply to the proceedings under Article 226 of

the Constitution, it has no application to the facts of the case. Neither the appellants were 'parties' to that suit, nor they are claiming through the plaintiffs of that suit. Again, that suit was not filed by the plaintiffs as a 'representative' suit. The decree in that suit, therefore, cannot operate as *res judicata*. It is no doubt open to the appellants to rely on the said decision which had attained finality. But, since, in earlier matters, the attention of the Court was not invited to Rule 3.16 of the Punjab Civil Services Rules and in particular Note 1 which excluded Municipal employees from payment of pension, the Division Bench was right in holding that the appellants were not entitled to pension. [910-C-E; H; 916-A]

3. Earlier a three-Judge Bench of this Court also took a similar view and dismissed the appeal specifically observing that in view of statutory provision, the retired employees of the respondent-Corporation were not entitled to pensionary benefit which was introduced for the first time in April, 1992. The three-Judge Bench observed that since the Pension Scheme was introduced from 1992 and the employee retired prior to introduction of the scheme, he would not be entitled to the benefit under the newly introduced scheme. Apart from the fact that it was a decision of three-Judge Bench, it also considered the Notification dated June 13, 1975 on which reliance was placed by the appellants and negatived the contention specifically referring to and relying upon Note 1 to Rule 3.16 of the Punjab Civil Services Rules, and in holding that the said Note excluded employees of Municipalities from the application of the Pension Scheme. [916-B; 911-H; 912-A-B]

A.R. Antulay **v.** *R.S. Nayak and Anr.,* **[1988] 2 SCC 602, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2845 of 2005.

From the Judgment and Order dated 18.10.2001 of the Punjab and Haryana High Court in L.P.A. No. 32 of 2000.

WITH

C.A. Nos. 2846 and 2847-2850 of 2005.

B.K. Shahi, S.B. Upadhyay, Raj Kumar Gupta, Sheo Kumar Gupta, B.P. Gupta and A.N. Bardiyar, Neeraj Kumr Jain, Aditya Kr. Chaudhary, Bharat Singh, Sanjay Singh, Umang Shanker, Ugra Shankar Prasad, Mrs. K.Sarada Devi for the Appearing parties.

A The Judgment of the Court was delivered by

C.K. THAKKER, J. Leave granted.

The present appeals arise out of orders passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on October 18, 2001 B in several Letters Patent Appeals. By those orders, the Division Bench set aside the orders passed by the learned single Judge in various Writ Petitions filed by the petitioners and dismissed those petitions.

To appreciate the controversy raised by the parties, relevant facts of the first matter (S.L.P. No. 6360 of 2002) may be stated.

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The said appeal is filed by one Hari Chand along with three appellants and legal representatives of one Mr. Gardia. From the record, it appears that these five persons were employees of the Faridabad Development Board which was converted into Faridabad Notified Area Committee, later on renamed as Faridabad Complex Administration and finally as Faridabad D Municipal Corporation. The particulars of their service are as detailed below;

Appellant	Name No.	Date of Appointment	Date of Retirement
E A-1	Hari Chand	30.04.38	10.06.76
A-2	Sohan Lal	23.02.50	31.05.80
A-3	Roshan Lal	01.04.55	30.11.79
A-4 F	Jetha Nand	26.03.48	30.04.86
A-5	Gardia	01.07.54	31.07.83

It was the case of the petitioners (appellants herein) that they were appointed by Faridabad Development Board. On January 1, 1960, the functions G of the Development Board were transferred to Notified Area Committee and services of the petitioners were also transferred to the Area Committee. After coming into force of the Faridabad Complex (Regulation and Development) Act, 1971 (Act 42 of 1971), all the employees were transferred to the Complex Administration. From the perusal of various provisions of the Act, it was clear, submitted the petitioners, that the function of Municipal Committee H was taken over by respondent No.2 under the Act of 1971. Services of the

existing staff of the Municipalities i.e. Municipality of Faridabad and Township, Municipality of Faridabad Old and Municipality of Ballabhgarh were taken over by Faridabad Complex Administration. Those employees thus became employees of Faridabad Complex Administration. According to the petitioners, they were entitled to all the benefits and facilities in the matters of pay, pension, gratuity, etc. as extended and available to employees of the State Government as the conditions of services of the petitioners were governed by the Punjab Civil Services Rules as applicable to the State of Haryana. The appellants, therefore, deserved to be treated at par with other Government servants of the State of Haryana. Though the petitioners made various representations to the second respondent for grant of pension, gratuity and retrial benefits, no action was taken by the Corporation. They were, therefore, constrained to approach the High Court by filing a writ petition. A prayer was made to declare that the petitioners were entitled to pensionary benefits as admissible to employees of Haryana Government and to issue a writ of mandamus directing respondent No.2 to extend such benefits to them.

An affidavit was filed on behalf of the Administration, *inter alia* contending that the petitioners were not entitled to benefits as available to Government employees. According to the Administration, the petitioners could not be said to be Government employees. They were governed by Act of 1971 and their service conditions were regulated by the said Act and the Rules made thereunder. Under that Act, they were entitled to Contributory Provident Fund which was paid to them. It was, therefore, prayed that they had no cause of action against the respondent and the petitions were liable to be dismissed.

The learned single Judge, who heard the matter, allowed the petition. It was observed that some employees working with Faridabad Development Board, whose services were transferred to Faridabad Complex Administration came to know about the Bye-laws formulated by the Administration regarding grant of pensionary benefits after they retired. They, therefore, made representations to the Administration for grant of those benefits. As the benefits were not granted to them, they filed a civil suit which was decreed by the Court of Sub-Judge, II Class, Faridabad. An appeal filed by the Administration against the decree of the Trial Court came to be dismissed by the Additional District Judge, Faridabad. Regular Second Appeal was also dismissed by the High Court. On parity of reasoning, therefore, proceeded the learned single Judge, the petitioners were also entitled to equal treatment. The learned single Judge observed that since the petitioners were similarly situated to the plaintiffs

A in a civil suit, they were also entitled to similar benefits. The decree passed in civil suit attained finality and hence, there was no reason for respondent No.2 to deprive the petitioners to the benefits which had been granted to plaintiffs in a civil suit. Accordingly, the petition was allowed and the respondent No.2 was directed to extend all retrial benefits to the petitioners. Similar orders were passed in other writ petitions.

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Being aggrieved by the orders passed by the learned single Judge, the Administration preferred Letters Patent Appeals. The Division Bench of the High Court observed that the decision of Division Bench in *Dhan Singh* v. *Faridabad Municipal Corporation,* Civil Writ Petition No. 842 of 2000 dated

C January 24, 2000 was applicable and the point was concluded by the ratio of that decision. In that Writ Petition, the Court negatived the contention of the petitioners to get pensionary benefits observing that they had no right to such pension in the light of statutory provision.

The Bench noted that the learned single Judge did not deal with the

D provision on the basis of which the prayer had been declined by the respondent - Administration. It observed that the pension scheme was applied to local bodies including Faridabad Municipal Corporation only from April 16, 1992. It was a new scheme and had no application to retired employees. All the petitioners were superannuated prior to 1992 and they were not entitled to pensionary benefits under the scheme. In the opinion of the Division Bench,

E the point was fully covered by the decision of the Division Bench in *Dhan Singh,* and the learned single Judge was in error in allowing the petition. The appeals were accordingly allowed and the orders passed by the learned single Judge were set aside.

F Being aggrieved by the orders passed by the Division Bench of the High Court, the appellants have approached this Court. All Special Leave Petitions were placed for admission, notices were issued and a direction was given to the Registry to list the matters for final disposal. That is how all the matters have been placed before us.

G We have heard learned counsel for the parties.

The learned counsel for the appellants submitted that the suit filed by some of the employees in a civil court was decreed by the Trial Court. The said decree was confirmed by the lower appellate court as well as by the High Court. No further steps had been taken and the decision has thus attained finality. The learned single Judge was, therefore, right in allowing the petitions

filed by the appellants-petitioners. It was also urged that the appellants were similarly situated to the plaintiffs in a civil suit. Hence, even on the ground of equal treatment, the appellants are entitled to the benefits which had been granted by a civil court in favour of employees in a suit. Non-extension of those benefits to the appellants would be discriminatory and violative of Article 14 as also un-reasonable and violative of Article 19 of the Constitution. It was urged by learned counsel that the decision in a civil suit would operate as *res judicata* against the respondent-Corporation. The Division Bench had committed an error of law in allowing Letters Patent Appeals and in setting aside the directions issued by the learned single Judge. It was, therefore, prayed that the appeals may be allowed and direction may be issued to the Corporation to grant pensionary benefits to the appellants.

The learned counsel for the respondent-Corporation, on the other hand, supported the orders of the Division Bench. It was submitted that the doctrine of *res judicata* has no application. Admittedly, the appellants had not approached a court of law earlier and were not parties to the suit. One of the essential conditions of *res judicata* is that the parties must be same, which is absent. On merits also, according to the learned counsel, no case had been made out by the appellants. Admittedly, all the appellants retired prior to April, 1992. Pension scheme was introduced by the Corporation for the first time in 1992. It is well-settled, submitted the counsel, that if a scheme is in existence and is operative, revision, modification or liberalisation thereof would apply to the employees who had retired in the meantime. Such benefit, however, is not available to a newly introduced scheme. In the instant case, the benefit of Contributory Provident Fund was in existence when the appellants retired from service. They were, therefore, entitled to those benefits and were given such benefits. Then in April, 1992, pension scheme was introduced by a notification dated March 5, 1993. Since the appellants were no more in service, they were not entitled to claim the said benefit. Regarding the decree passed in the suit, the attention of the Court was not invited to Rule 3.16 of the Punjab Civil Services Rules, which was never considered by the Court. The decision in the suit was thus *per incuriam* and had no binding force.

The learned counsel also submitted that subsequently in *Dhan Singh*, a writ petition was filed in the High Court of Punjab and Haryana claiming similar benefits on the basis of a decree passed by a civil court. The Division Bench, however, considered Rule 3.16 along with Note 1 and held that no relief could be granted to the petitioners and the petition was dismissed. The

A counsel stated that even this Court also took a similar view. The Division Bench was, therefore, right in allowing the appeals filed by the Corporation and in setting aside the orders of the learned single Judge.

So far as Article 14 is concerned, it was submitted that the civil court had not considered the relevant provision of law. Since the appellants had no B right, the High Court negatived the claim and the action is in accordance with law.

Having given anxious consideration, in our opinion, the Division Bench has not faulted in allowing the appeals filed by the Administration and in setting aside the decision of the learned single Judge. So far as *res judicata* C is concerned, admittedly, no suit had been filed by the appellants in any court. A suit was instituted by certain employees which was decreed by the Trial Court and the decree was confirmed by the First Appellate Court as well as by the High Court. Apart from the fact that the doctrine of *res judicata* as envisaged by Section 11 of the Code of Civil Procedure, 1908 D does not *stricto sensu* apply to the proceedings under Article 226 of the Constitution, it has no application to the facts of the case. Neither the appellants were 'parties' to that suit, nor they are claiming through the plaintiffs of that suit. Again, that suit was not filed by the plaintiffs as a 'representative' suit. The decree in that suit, therefore, cannot operate as *res judicata.* It is no doubt open to the appellants to rely on the said decision which had attained E finality. In our opinion, however, the Division Bench was right and the submission of the learned counsel for the Corporation is well-founded that the Court had not considered Rule 3.16 of the Punjab Civil Services Rules. Reading the judgment of the Court, it transpires that two contentions were raised before the Court. Firstly, it was asserted that the erstwhile Faridabad F Board was functioning a 'limb' of Central Government. Since the plaintiffs were employees of the Board, they ought to be treated as employees of the Government of India in the matter of pensionary benefits. The contention, however, was negatived and it was held that the plaintiffs were not Central Government employees. Secondly, it was urged that they were entitled to pension in view of notification, dated January 13, 1975 and Bye-law 10 G which laid down that the Faridabad Complex Administration would follow the Punjab Civil Services Rules in the matter of pay, pension etc. The Court, therefore, noted that the plaintiffs could not be denied those benefits. In view of the finding on the second point, the suit was decreed and the decree was confirmed even by the High Court. When a similar benefit was claimed by H other employees, the Division Bench in *Dhan Singh,* noted that the attention

of the Court was not invited to statutory provision (Rule 3.16 of the Punjab Civil Services Rules) and hence the decision in civil suit would not bind the administration. The Division Bench observed that the court relied upon Notification dated January 13, 1975, but no reference whatsoever was made to Rule 3.16 of the Rules and particularly Note 1 thereof which expressly excluded the employees of Municipalities from payment of pension. The Division Bench also observed that the statutory pension scheme was introduced only from April 16, 1992. The constitutional validity of the scheme had not been challenged by the petitioner. Since the petitioner retired in 1989, i.e., three years prior to the applicability of the scheme, he was not entitled to pensionary benefits. Accordingly, the petition was dismissed.

There is one more reason why the orders passed by the Division Bench should not be held legal and valid. One K.L. Gulati, who was also an employee of erstwhile Faridabad Notified Area Committee retired on October 31, 1984 from the respondent-Corporation. He opted for Provident Fund which scheme was applicable then and received the benefits. After his death, his widow and children filed a suit for grant of pensionary benefits. The Trial Court decreed the suit. The decree was confirmed by the First Appellate Court. But the Second Appeal was allowed. The plaintiffs then approached this Court.

A three-Judge Bench of this Court on March 31, 2004 dismissed the appeal by a speaking order. It was observed that since the Pension Scheme was introduced from 1992 and the employee retired prior to introduction of the scheme, he would not be entitled to the benefit under the newly introduced scheme. This Court also negatived the contention that in view of the Notification dated January 13, 1975, the appellants were entitled to such pensionary benefits. The Court said;

> "It was then urged that in any case by virtue of Notification dated 13th January, 1975, the appellants were entitled to pensionary benefits. We also do not find any merit in this argument. *Note 1 of Rule 3.16 of the Punjab Civil Service Rules excluded the application of pension schemes to the employees of the Municipalities.*"
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> (emphasis supplied)

An attempt was no doubt made by the learned counsel for the appellants that the above decision of this Court is *per incuriam* and as observed in *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602, it has no binding effect. The contention is not well-founded and cannot be accepted. Apart from the

A fact that it was a decision of three-Judge Bench, it also considered the Notification dated June 13, 1975 on which reliance was placed by the appellants and negatived the contention specifically referring to and relying upon Note 1 to Rule 3.16 of the Punjab Civil Services Rules, and in holding that the said Note excluded employees of Municipalities from the application of the Pension Scheme.

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Regarding pensionary benefits, the learned counsel for the parties referred to few decisions of this Court. In the leading case of *D.S. Nakara and Ors.* v. *Union of India,* [1983] 1 SCC 305, this Court granted pensionary benefits even to those employees who had retired before the revision of Pension Scheme observing that pensioners form a class as a whole and cannot C be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for grant of revised pension. An artificial discrimination for fixing date of enforcement by extending benefits to those who retired after a particular date by depriving similar benefits to those who retired prior to that date must be held arbitrary, discriminatory, irrational and violative of Article 14 of the D Constitution.

In our opinion *D.S. Nakara* would not apply to the facts of the case inasmuch as it was a case of grant of "revised" pension and was not a "new" scheme. What was observed by this Court was that when a scheme is in existence when a Government servant retires and is subsequently revised, it E is not open to the Government to arbitrarily 'pick and choose' by forming two classes; (i) employees who retire prior to revision of the scheme, and (ii) employees who retire after the revision. Since, the scheme was very much operative, benefit of revision ought to be extended to all the employees who were governed by the original scheme and retired prior to revision.

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In *Dhan Raj and Ors.* v. *State of J & K and Ors.,* [1998] 4 SCC 30, *D. S. Nakara* was followed. There, the appellant-employees belonged to erstwhile Government Transport Undertaking in the State of Jammu & Kashmir were sent on deputation in the State Road Transport Corporation and retired prior to June, 1981. The State Government issued an order in 1986 allowing G even retired employees to opt for pension. It was held by this Court that the said benefit was available to all employees and not only to those who retired after 1981.

On the other hand, in *State of Punjab* v. *Justice S.S. Dewan (Retired Chief Justice) and Ors.,* [1997] 4 SCC 569, the petitioner claimed retirement

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benefits on the basis of beneficial provision which was introduced for the first time. The question before this Court was as to the applicability of such scheme to employees who had already retired. It was held that newly introduced scheme would not apply to employees who had retired before introduction of such scheme. If it was liberalization of an existing scheme, it would be applicable to employees who retired after such revised scheme as also prior to the revision.

The Court stated;

> "Conceptually, pension is a reward for past services. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In *D.S. Nakara* case, the change in the formula of determining average emoluments by reducing 36 months' service to 10 months' service as measure of pension, made with a view to giving a higher average, was regarded as liberalization or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalization or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalization of the existing scheme but introduction of a new retrial benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retrial benefit. The object of the amendment does not appear to be to go for liberalization. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be tempted to joint it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22-2-1990, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in *D.S. Nakara* case that if pensioners form a class

computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. Therefore, on both the grounds the High Court was in error in applying the ratio of the decision in *D.S. Nakara case* to this case. As rightly contended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force."

In *V. Kasturi* v. *Managing Director, State Bank of India, Bombay and Anr.*, [1998] 8 SCC 30, referring to several earlier decisions, this Court held that prospective amendment in the Rule would not entitle earlier retirees to get benefit of amendment.

In *Union of India and Anr.* v. *Deoki Nandan Aggarwal,* [1992] Supp 1 SCC 323, this Court observed that the Court cannot usurp legislative function. It also cannot supply omission to a statute. Under the guise of affirmative action to avoid discrimination, it cannot modify legislative policy.

The Court said;

"It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities..... *Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."*

(emphasis supplied)

In our opinion, on the basis of the above case law, the Division Bench was wholly right in allowing the appeals and setting aside the directions of the learned single Judge. The Division Bench in this connection referred to the order passed in *Dhan Singh* (Civil Writ Petition No. 842 of 2000) wherein it was observed :

> "A bare perusal of the above extracted portions of the judgment of the lower appellate court, the Order passed by the learned Single Judge in Regular Second Appeal No. 1867 of 1994 and the Order passed by the learned Single Judge in the Writ Petition of *K.L. Chawla and Ors.* shows that the attention of the first appellate Court had and two learned Single Judges of this Court had not been drawn to Note I appearing below Rule 3.16 of the Punjab Civil Services Rules, Vol. II which expressly exclude the employees of the Municipal Committee from the Chapter relating to the pension etc. The said Rule alongwith Note-I read as under :-
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> '3.16. (a) The service of a government employee does not qualify unless he is appointed and his duties and pay are regulated by the government or under conditions determined by the government;
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> (b) Past service rendered in a part B State (excluding Saurashtra but including an Indian State which subsequently became a part of B State) shall be treated as equivalent to Government services for the purpose of pension and shall count for pension on permanent absorption in the Punjab Government Service in the same manner as such service rendered in a former part A State Counts :
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> Note 1 :- The following are examples of Government employees excluded from pension by this Rule :-
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> 1. Employees of a Municipality;
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> 2. Employees of Grant in- aid schools and institutions;
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> 3. Subordinates appointed by Treasurers on their own responsibility;
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> 4. Service on an establishment paid from a Contract Establishment Allowance, with the detailed distribution of which the Government does not interfere, whether such contract allowance is a fixed amount or consists of fees;
>
> 5. Service on an establishment paid from the Household Allowance

A of the Governor."

Since, in earlier matters, the attention of the Court was not invited to Rule 3.16 of the Punjab Civil Services Rules and in particular Note 1 which excluded Municipal employees from payment of pensions, the Division Bench was right in holding that the appellants herein were not entitled to pension. B As already observed, a three-Judge Bench of this Court also took a similar view and dismissed the appeal specifically observing that in view of statutory provision, the retired employees of the respondent-Corporation were not entitled to pensionary benefit which was introduced for the first time in April, 1992. The action of the respondent-Corporation, hence, cannot be described as arbitrary, discriminatory or unreasonable, violative of Article 14 or 19 of the C Constitution.

For the foregoing reasons, in our opinion, all the appeals deserve to be dismissed and are, accordingly dismissed, however, in the circumstances, without any order as to costs.

D B.B.B. Appeals dismissed.