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IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.960 of 2007
In
Civil Writ Jurisdiction Case No. 14197 of 2006

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The State of Bihar

.... Appellant/s

Versus

Bhuwan & Anr

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Bijoy Kr.Sinha(Jc-Gp6)
For the Respondent/s : Mr.
Mr. Ravindra Kumar Sinha

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE THE CHIEF JUSTICE)

34 04-05-2015 In this appeal the order dated 30.05.2007 passed by the learned Single Judge in C.W.J.C. No. 14197 of 2006 is under challenge. The subject matter of the writ petition was to the claim of the pensionary benefit and arrears of salary by an employee who retired from Gaya Municipal Corporation. The writ petitioner i.e respondent no.1 herein, pleaded that he retired from the service of Gaya Municipal Corporation on 16.02.2002 as sweeper but the corporation did not pay the pension despite its obligation to pay the same.

The respondent no.1 filed writ petition claiming pension, and other similar petitions were filed. Contempt applications that arose out of them. During the course of argument

in those cases the corporation had taken plea that though it is under obligation to pay the pension, it is unable to do so, due to paucity of funds and it has to depend upon the State Government for sanction of the funds. The appellant submitted that the Municipal Corporation is an autonomous body and as per the Patna Municipal Corporation Pension Rules that were adopted by the Gaya Municipal Corporation the pension is payable out of the fund created by the Corporation.

Learned Single Judge has taken into account the various provisions of Chapter IX and IX A of the Constitution of India, as well as the provisions of this Act and held that the appellant is under obligation to make available the funds to the corporation for payment of pension of its retired employee. Hence this appeal.

Learned counsel for the appellant submits that the learned Single Judge has placed the entire burden of payment of pension on the State Government. He contends that the Municipal Corporation is required to maintain the pension fund, and to make contributions for the same and in case there is any lapse on the part of the corporation it has to create its resources. He contends, that the learned Single Judge did not take the same into account.

Learned counsel for the respondents submits that the client is entitled to get his pension as provided under the Rule and it is for the Corporation and the State Government to make the arrangement.

At one stage, this Court directed that the persons who figured as parties in different writ petitions leading to the common order under appeal, be impleaded as a parties and accordingly I.A. No. 3003 of 2012 was filed. Notices were issued to the concerned. However none appeared. Learned counsel for the Gaya Municipal Corporation has also advanced argument stating that the corporation heavily depends upon the funds to be provided by the Government and as and when the funds are made available the lawful dues will be paid to the petitioner.

The Municipal Corporation is creation under the statute. It enjoys autonomy and not with standing the control of the State Government upon them. The parliament inserted Chapter IX in the Constitution which deals with the function of the corporation as well as the manner in which it has to deal with the resources.

The services of the employees of the Municipal Corporations in the State were not pension- able till the year 1987. The scheme of contributory Provided Fund, appears to have been in force. The

Patna Municipal Corporation Pension Rules were framed in the year 1987. The other Corporations adopted the same .Rule 87 thereof provides that the employee or the corporation has the option either to remain in the Contributory Provident Fund or to opt for pension under the rules. In case the employee opts for pension that would be paid to him.

For proper and effective implementation of the scheme the pension fund was created under Rules 12, 13 and 14 They read.

"12. The Patna Municipal Corporation will open a pension fund in any Bank at Patna to be called "The Patna Municipal Corporation Pension Fund" and shall be operated by the Chief Executive Officer or other officers as authorized by him.

13. There shall be credited to the pension funds –

(a) All portion of provident fund contribution (Corporation share) at the credit of the Employees (who have opted for pension) rule Provident Fund Account.

(b) An amount equivalent to 12 per cent of the pay of such employees who are governed under pension rules. This amount may be deposited in the fund monthly, quarterly, half

years or annually as it suits to the Corporation.

(c) All interest and profits arising from any investment of or from any transaction in connection with any money belonging to this fund.

14. The surplus balance, if any, standing to the credit of this fund may be invested in the Government securities and certificate to raise pension fund".

Once the Gaya Municipal Corporation has admitted its obligation to pay the pension, it is duty of the corporation to arrange for payment of pension of the respondent no.1. The corporation has to augment its own revenue for meeting the expenditure. From the Rules referred to above, it is clear that no option is left for the Corporation, except to create the fund so that the same would take care of pension liability. If any corporation did not operate the fund for a particular period it was a matter warranting rectification, but not the basis to put the entire burden upon the State Government. The order passed in the writ petition has put the entire burden on the State Government.

The making of contribution by the State Government to the Corporation, Chapter IXA of the Constitution of India and the Bihar Municipal Act is not meant for specific purpose. The municipal Corporation can make a provision for

various items. If there is deficit in the budget of the Corporation they look to the various means such as levy of taxes earning rents on leases or licenses, contribution or sanction from the State Government. Once the funds are made available to it, the Municipal Corporation has to spend them in an equitable manner.

A Full Bench of this Court, in Manikant Pathak Vs. State of Bihar 1997 (1) PLJR 664, after discussing the matter at length , held that the employees cannot maintain the claim against the State Government and their claim can only against the Corporation.

In Sanchari Devi & ors Vs. Ara Municipal Corporation & ors 2015 (1) PLJR (SC) 371 their Lordships held while dealing with the question as to whether an employee, who retired from the Municipal Corporation can claim pension for his continue service. The Bihar Municipal Officers and Servants Pension Rules, 1987 was taken into account, and it was held that the pension is payable to the employee from the date of giving option. Obviously it was duty of the Municipal Corporation to pay the pension. It is a different matter that in case the finances of the Municipal Corporation are not sound enough, it can approach the State Government for necessary sanction. However, no

amount that comes from the State Government can be used for the exclusive purpose of payment of pension to the retired employee. We, therefore, allow the appeal and set aside the order under appeal, to the extent indicated above.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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