

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1227 of 2014

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1. Abdul Samad Khan Son Of Late Md. Gulam Rasool Resident Of Village - Maniaudi, Post Office - Mehoons, Police Station And District - Sheikhpura
 2. Dhaneshwar Prasad Son Of Late Deoki Mahaton Resident Of Village - Girindah, P.O. , P.S. And District - Sheikhpura
 3. Bangali Jharudar Son Of Late Gokhul Dom Resident Of Village - Budlaulo, P.S., P.O., And District - Sheikhpura
 4. Arjoon Prasad Son Of Late Naurangee Sao Resident Of Village - Girihinda, P.O. And P.S. Sheikhpura, District - Sheikhpura

.... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Urban Development And Housing Department, Government Of Bihar, Patna
3. District Magistrate, Sheikhpura
4. Administrator, Sheikhpura Town, Municipality , Sheikhpura
5. Executive Officer, Sheikhpura Town Municipality , Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Shekhar, Adv.

For the Respondent/s : Mr. Manoj kr. Ambastha, GP-14

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 02-02-2015

Heard learned counsel for the petitioners and counsel for the State.

The prayer of the four of the petitioners in this writ application reads as follows:-

- "1(a) For issuance of an order(s)/direction(s)/ writ(s) in the nature of Mandamus, commanding the respondents to pay salary etc. to the petitioners as per recommendations made by the Fifth and Sixth Pay Commission with effect from their implications date i.e. 1.1.1996 and 1.1.2006 respectively.
- (b) For issuance of an order(s)/direction(s)/ writ(s) in the

nature of Mandamus, commanding the respondents to pay arrears of salary with retrial benefits in terms of the recommendation(s) made by the 5th and 6th Pay Commission, to the petitioners.

- (c) *For issuance of an order(s)/direction(s)/ writ(s) in the nature of Mandamus, commanding the respondents to pay pension, Gratuity etc. and other retrial dues and its arrears to the petitioners."*

Learned counsel for the petitioners submits that the petitioners have retired from service with effect from 31.1.2009, 31.12.2007, 31.1.2009 and 31.12.2006 while holding the different class-3 posts in the office of Sheikhpura Municipality and they, as per the decision of the Municipality dated 20.10.2012, have become entitled for benefit of certain amount either by way of salary and/or retirement benefit. To that extent, he relies on a communication made by the Executive Officer of Sheikhpura Nagar Parishad (Municipality) to one similarly situated retired employee, namely, Sri Bhagwan Das Chaudhary contained in letter no. 594 dated 14.6.2013.

As noted above, learned counsel for the State has no instruction in the matter and does not render any assistance to this Court. This court in fact had issued notice to the respondent nos. 3 to 5 but no one has appeared on their behalf.

The petitioners however still will owe a responsibility to prove their case by discharging the onus on them. There is, however, nothing has been brought by them on record to show that Sheikhpura



Municipality had ever decided to extend benefit of 6th Pay Revision Commission. Whatever has been made in the communication to Bhagwan Das Chaudahry relates only to benefit of 5th Pay Revision Committee. This Court also is not aware as to what would be the cut off date for extension of such benefit, inasmuch as, learned counsel for the petitioners has also not brought on record the resolution dated 20.10.2012 which was part of Annexure-3, a communication dated 14.6.2013. In such a situation, this Court must hold that the petitioners themselves had failed to discharge their onus for proving their case.

Be that as it may, since the petitioners claim certain retirement benefit and/or payment of salary, this court without expressing any opinion would simply give them liberty to move the Executive Officer of Sheikhpura Nagar Parishad (Municipality) and if the latter found that such benefit has already been extended to the similarly situated employees who has either retired prior to the petitioners or after them, their cases would also be considered on the same rationale and basis.

Let it be made clear that in absence of adequate pleadings of either of the parties, this Court has not expressed any final opinion with regard to the claim of the petitioners which has to be only adjudicated and decided by the respondents as per their own policy decision applicable in the case of all similar situated employees of the

Sheikhpura Nagar Parishad (Municipality).

Thus, while this Court, for the time being, refuses to grant any relief to the petitioners, nothing said in this order will stand in the way of the petitioners to approach the competent authority of Sheikhpura Municipality to satisfy that the petitioners were entitled for certain payment either by way of payment of salary or retirement benefit. In case the petitioners do so, the authorities will take appropriate decision in accordance with law preferably within a period of three months from the date of filing of the individual and separate representation by the petitioners.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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