IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16643 of 2011

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1. Subodh Narain Jha S/O Late Bhup Narain Jha R/O Mohalla-Paithanpura,P.O.- Kahalgaon, District- Bhagalpur

.... Petitioner

Versus

1. The State Of Bihar Through District Magistrate, Bhagalpur
2. The Kahalgaon Nagar Panchayat, Through Its Chairman, Kahalgaon
3. The Chairman, Kahalgaon Nagar Panchayat, Kahalgaon
4. The Executive Officer, Kahalgaon Nagar Panchayat, Kahalgaon

.... Respondents

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Appearance :

For the Petitioner/	:	Mr. Manojeshwar Prasad Sinha Mr. Ratan Kumar Sinha
For the State	:	Mr. Pradeep Chandra Mr. Deepak Kumar
For Resp. Nos. 2 to 4	:	Mr. Rajesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

15 18-07-2016 Heard learned Counsel for the petitioner and learned Counsel appearing on behalf of the State-respondents.

The petitioner retired from Kahalgaon Municipality with effect from 31.01.2009. There is no dispute that service condition of employees of the Municipality is governed by the Bihar Municipal Officers and Servants Pension Rules, 1987. The Rules came into force with effect from November, 1992. Rule 4 (i) of the 1987 Rules prescribes that Municipal employees on roll on the date of confirmation of the Rules and who had subscribed to the Contributory Provident Fund under Provident Fund

Rules and want to be governed by these Rules shall have option to do so and such option shall be exercised in writing in the prescribed form submitted to their Head Office within 90 days from the date of framing of the said Rules, by the State Government. It further provides that if such option, in writing, as contemplated in prescribed form, is not received within the period of ninety days so fixed, he would be deemed to have retained the existing Contributory Provident Fund scheme.

Prior to coming into force of the 1987 Rules, employees of the concerned Municipality were entitled for the benefit under the Contributory Provident Fund Scheme. With the coming into force of the 1987 Rules, monthly pension scheme came to be introduced for the employees of the Municipality. As has been noticed, Rule 4 of the 1987 Rules specifically prescribed that those who intended to be governed by the 1987 Rules were required to express their willingness in this regard. It clearly provided that those who did not submit their application, in prescribed form within 90 days from the date the Rules became effective, it would be deemed that they retained the existing Contributory Provident Fund.

This is not in dispute that the petitioner did not express his willingness to be governed by the 1987 Rules within the stipulated period. A communication made by the petitioner to the Special Officer, Kahalgaon Municipality, dated 26.06.1998, has been brought on record through counter affidavit, wherein he is said to have specifically mentioned that he wanted to continue in the Contributory Provident Fund Scheme and did not want to be governed by 1987 Pension Rules. The said application has been brought on record by way of Annexure, wherein the petitioner had given specific reason as to why he did not want to be governed by the 1987 Pension Rules.

It is the specific stand of the Municipality that the petitioner's application was acted upon and entries to this effect were, accordingly, made in his service book.

The issue which is, now, being raised by the petitioner in the present application is that before the date of his retirement, he had submitted an application to the effect that he should be allowed to be governed by 1987 Rules. This is precisely the grievance which the petitioner has in the present proceeding. According to him, he should be allowed the benefits of 1987 Rules and should be given pensionary benefits under the said 1987 Rules.

The plea of the petitioner is being objected to by the Municipality on the ground that since the petitioner did not submit his application in prescribed proforma, as required under the 1987 Rules, within 90 days, he is not entitled to the benefits of pension scheme. It is also their case that the petitioner had rather expressed his willingness in clear terms through his communication, dated 26.06.1998, that he did not want to be governed by the 1987 Rules, rather, he wanted to remain in the Contributory Provident Fund Scheme.

In response to the said contention and stand of the Municipality, it is the petitioner's case that the petitioner is ready to refund part of the provident fund amount, which he has received or likely to receive against the employer's contribution which had been made to his provident fund account.

It is the further case of the petitioner that in similar circumstances, one Ram Pujan Singh, who had not submitted his application within 90 days, has been given benefit of pension. It is his case that Ram Pujan Singh had submitted his application beyond the period of ninety days, as prescribed in the said Rules, for being governed by 1987 Rules. It is accordingly the petitioner's case that since Ram Pujan Singh has been given benefits of pension, the petitioner should also be treated equally.

Rule 4 (i) of the 1987 Rules read as follows:

> "Municipal employee 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-1) and submitted to their head of office within 90 days from the date of framing of this rule by the State Government. If such option in writing in prescribed form is not received within the period so fixed, it will be deemed that they would retain the existing contributory provident fund”

The provision is unambiguous and clearly provides that a person who applies within 90 days of coming into force of the Rules only, shall be entitled to the benefit of pension scheme. Apparently, on the basis of admitted facts, the petitioner cannot be said to be entitled for such benefits.

The submission made on behalf of the petitioner that since Ram Pujan Singh has been given the benefit and, therefore, the petitioner should also be given such benefit is not at all convincing to the Court. The respondent-Municipality has taken specific stand that benefit of pension was wrongly given to Ram Pujan Singh against the Rules and steps are being taken to undo the illegality done in the case of Ram Pujan Singh.

In any view of the matter, it is the settled principle that an illegality cannot be allowed to perpetuate. The petitioner cannot contend that if something was given illegally to Ram Pujan Singh, same should be given to the petitioner also by invoking Articles 14 and 16 of the Constitution of India. The Courts are required to enforce and follow the statutory provisions and not the illegality committed in favour of one person or the others, by invoking the equity clauses.

I do not find any merit in this application to the extent the claim of the petitioner relates to pension under 1987 Rules.

In paragraph 17 of the counter affidavit filed on behalf of the Municipality, it has been stated that the petitioner has been paid his entire post-retiral dues after re-calculating the same and nothing remains to be paid. There is no specific denial to this statement.

However, in the facts and circumstances of the case, I direct the Executive Officer, Kahalgaon Municipality, to supply to the petitioner a chart showing calculation of his retiral dues, which have been paid to the petitioner within a period of one month from today.

If any grievance still remains to be redressed according to the petitioner, he will be at liberty to approach the Executive Officer, Kahalgaon Municipality, raising his specific claim within a period of one month thereafter.

If any claim is raised by the petitioner in the light of the present order, the Executive Officer, Kahalgaon Municipality, shall be obliged to consider it and dispose it of within one month and clear entire dues, if any, to the petitioner.

This application is disposed of with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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