

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.10595 of 2012**

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Surendra Prasad S/O Late Bharat Prasad R/O Mohalla-Rajguru Chowk, Bettiah,  
P.O.+P.S.-Bettiah, Distt-West Champaran

.... .... Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Urban Development And  
Housing Department, Government Of Bihar, Patna

2. The Principal Secretary, Urban Development And Housing Department,  
Government Of Bihar, Patna

3. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna

4. The Special Secretary, Urban Development And Housing Department,  
Government Of Bihar, Patna

5. The Deputy Secretary-Cum-Director, Urban Development And Housing  
Department, Government Of Bihar, Patna

6. The Under Secretary, Urban Development And Housing Department,  
Government Of Bihar, Patna

7. The Nagar Parishad, Bettiah through its Executive Officer, District-West  
Champaran

8. The Executive Officer, Nagar Parishad, Bettiah, District-West Champaran

.... .... Respondent/s

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**Appearance :**

For the Petitioner : Mr. Bibhakar Tiwary with  
Mr. Shiv Kumar Dwivedy, Advocates

For the State : Mr. Narendra Kumar Singh, AC to GP 2

For the Respondents No. 7 and 8 : Mr. Dhananjay Kumar No. 2, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

Date: 23-02-2016

Heard learned counsel for the parties.

The only controversy which still remains in the present case is whether the petitioner is entitled to pension under the Bihar Municipal Officers and Servants Pension Rules, 1987 (hereinafter referred to as the 'Rules').

Learned counsel for the petitioner submits that upon retirement, he had not received the entire Contributory Provident Fund amount and in light of the aforesaid Rules, he was entitled to pension and the respondents refusing to pay the same on the plea that it was adopted by the respondent no. 7 with effect from 01.08.2011 and the petitioner had superannuated prior to that on 31.05.2011, he was forced to approach the Court in the present writ application. Learned counsel submits that the Rules came into force with effect from 13<sup>th</sup> November, 1987 and it is immaterial as to when the particular Local Body adopted it. Learned counsel submits that the Hon'ble Supreme Court has also held that the correct view was that the Rules would be effective from 13<sup>th</sup> November, 1987. For such proposition, he has relied upon a decision of the Hon'ble Supreme Court in the case of **Sanchari Devi vs. Ara Municipal Corporation**

reported in **2015 (1) PLJR (SC) 370**, the relevant being at paragraph-8.

It is thus submitted that the petitioner, upon superannuation, having applied for pension, denial of the same on the ground that the said Rules have been adopted by the respondent no. 7 only with effect from 01.08.2011 is untenable and discriminatory.

Learned counsel for the respondents no. 7 and 8 submits that the petitioner cannot be granted the benefit of pension, firstly, for the reason that once the Government has clearly held that the pension can be given by the Local Body from their own resources without the government having any financial liability, it is the concerned Local Body to take a decision with regard to payment of pension from its own resources and unless the same is justified from its financial condition, such benefit cannot be given. It is submitted that in the present case, the respondent no. 7 took a conscious decision of implementing the pension scheme with effect from 01.08.2011 which cannot be faulted. Learned counsel further submits that the decision relied upon by learned counsel for the petitioner in the case of **Sanchari Devi** (*supra*), the facts are distinguishable, inasmuch as the Court has held that the statutory right to get pension of an employee of the concerned Local Body is subject to them not having retired before the date of effect of the Rules and had not received part or whole of Contributory Provident Fund. It is submitted that unless



both the conditions are fulfilled the entitlement to pension cannot be upheld and in the present case it is an admitted position that the petitioner has received the entire Contributory Provident Fund amount. Learned counsel further submits that the Hon'ble Supreme Court in paragraph-10 has also made it clear that the said judgment was being delivered in the facts of the said case and will not be treated as a precedent applicable to all other cases, the facts of which were not before the Hon'ble Supreme Court whereas in the present case the facts being distinguishable inasmuch as the petitioner before the Hon'ble Supreme Court had not received part or whole of the Contributory Provident Fund amount, the petitioner cannot be granted the said benefit.

Learned counsel for the petitioner, by way of reply, submits that after rejection of his claim for pension and during the pendency of the present writ application, he had been given Contributory Provident Fund amount and thus the case before the Hon'ble Supreme Court is not distinguishable from the facts of the present case.

Learned counsel for the respondents no. 7 and 8 submits that though the petitioner having moved the Court in the present writ application seeking pension being well aware that he was not entitled to Contributory Provident Fund and even any part amount which was



received by him had to be returned, still accepted, without any demur or protest, the entire Contributory Provident Fund amount clearly demonstrates his conduct of trying to receive both benefits and thus he would be deemed to have accepted the position of being satisfied with receiving the Contributory Provident Fund and thus cannot again take a U-turn before the Court and press the present writ application for grant of pension.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned counsel for the respondents no. 7 and 8. The decision of the Hon'ble Supreme Court in the case of **Sanchari Devi** (*supra*) has also been rightly distinguished by him. Furthermore, the conduct of the petitioner in accepting the entire Contributory Provident Fund amount, even after filing of the writ application, and that too without any objection, is indicative of the fact that the petitioner had reconciled himself to grant of Contributory Provident Fund and not pension.

For the reasons aforesaid, the Court does not find any ground to grant the relief claimed by the petitioner in the writ application.

After the order was dictated, learned counsel for the petitioner points out that even the amount which has been given to the

petitioner, from the same, the respondents no. 7 and 8 are proposing to recover Rs. 1,42,725/- on the ground that the calculation had wrongly been made and benefit given of the 5<sup>th</sup> Pay Revision which was not made applicable when the petitioner was in service.

Learned counsel for the respondents no. 7 and 8 submits that the petitioner may file an appropriate representation before the respondent no. 7.

In view of the aforesaid, the petitioner is at liberty to file an appropriate representation before the respondent no. 7 with regard to his aforesaid grievance within three weeks from today along with a copy of this order. The respondent no 7 shall look into the grievance and pass a reasoned order.

The writ petition stands disposed off in the aforementioned terms.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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