

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6970 of 2019

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Sheo Prasad Lal, S/o Late Kedar Nath Lal, resident of Vill.- Jamhore, P.S.-
Jamhore, Distt.- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Bihar, Patna
2. Municipal Administrator cum Additional Secretary, Urban Development and Housing Department, Bihar, Patna
3. District Magistrate Aurangabad
4. Executive Officer Nagar Parishad, Daudnagar, Distt.- Aurangabad
5. Presiding Officer Standing Committee, Nagar Parishad, Daudnagar, Distt.- Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vindhya Keshri Kumar, Sr. Advocate
		Mr. Bachan Jee Ojha, Advocate
For the State	:	Mr. Abbas Haider (SC-6)
For the Nagar Parishad	:	Mr. Rakesh Narayan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-11-2021

Petitioner is aggrieved by a decision of the Empowered Standing Committee, Nagar Parishad, Daudnagar dated 22.08.2016, passed in compliance of an order of this Court dated 28.06.2016, in CWJC No. 2926 of 2014, whereby the petitioner's claim for pension and other benefits has been rejected.

2. I have heard Mr. Vindhya Keshri Kumar, learned Senior Counsel appearing on behalf of the petitioner, Mr. Abbas Haider, learned SC-6 for the State of Bihar and Mr. Rakesh Narayan Singh, learned counsel representing the respondent No.



4.

3. The pleadings are complete, inasmuch as, counter affidavit and rejoinder to the said counter affidavit have been filed. A supplementary affidavit has also been filed on behalf of the petitioner. Further, a supplementary counter affidavit has been filed in compliance of the orders of this Court dated 07.07.2021 and 23.07.2021 passed in this case.

4. The petitioner has asserted in the writ petition that he was appointed on the post of Assistant in the Notified Area Committee, Jamhore in the district of Aurangabad. He has not mentioned the date when he was so appointed. He has also asserted that he was promoted to the post of Head Clerk-cum-Accountant in the said committee and worked till 2007. He has not given the date when he was promoted to the post of Head Clerk-cum Accountant in the said committee, in the writ petition.

5. It is the petitioner's case that the Notified Area Committee, Jamhore was abolished in the year 2007 but the petitioner's service was continued and adjusted in *Nagar Panchayat*, Rafiganj on the same post and he worked there till 07.07.2008. He was transferred from Rafiganj *Nagar Panchayat* to *Nagar Panchayat*, Daudnagar on 07.07.2008 on the same post till he attained the age of superannuation on 31.01.2013. No



transfer order, however, has been brought on record.

6. He claims that due to paucity of fund the petitioner was not paid his salary by the Notified Area Committee, Jamhore for the period August 2002 to June 2007. He had, thereafter, filed a writ petition giving rise to CWJC No. 14777 of 2007, which was disposed of by an order dated 30.08.2003 with a direction to the respondents to pay to the petitioner his unpaid dues. Non-compliance of this order compelled the petitioner to file a contempt petition giving rise to MJC No. 321 of 2014. During pendency of the contempt petition, the respondent authorities paid the dues amount by cheque in which the issuing authorities intentionally, with a view to harass the petitioner, added contributory amount of provident fund for the period August 2002 to June 2007, which the petitioner had accepted with protest. As the petitioner was not paid his post retiral dues including provident fund, pension etc., he filed a writ petition before this Court registered as CWJC No. 2926 of 2014, which was disposed of on 28.06.2016, with a direction to the respondents to process the petitioner's representation in that regard within three months and make payments of admitted dues. For non-compliance of this Court's order dated 28.06.2016, the petitioner filed a contempt petition giving rise to MJC No. 4174 of 2016, which has been



disposed of in the light of impugned decision of the Empowered Standing Committee dated 22.08.2016, denying most of the petitioner's claim. The said contempt petition, which was filed alleging non-compliance of the order of this Court dated 28.06.2016, stood disposed of by an order dated 07.01.2019.

7. The petitioner has asserted that he had joined his service in 1977 in Jamhore Notified Area Committee, whereafter Bihar Municipal Corporation Officers and Servants Pension Rules, 1986 (for short the Pension Rules) came into force. As required under the Pension Rules, he had submitted his option in prescribed form in the office. Thereafter he regularly deposited the 'contributory' amount in the provident fund till 2002. At that time there was no separate account in the bank for depositing contribution amount for pension which, according to him, is still lying in the government account. Since the salary of the petitioner for the month of August 2002 to June 2007 was not paid, he could not deposit his 'contributory' amount and thereafter he joined at Rafiganj *Nagar Panchayat* due to abolition of Notified Area Committee, Jamhore. The contributory fund amount from April 2007 till the date of his superannuation i.e. 31.01.2013 is still pending in the government account for payment of pension. It has been wrongly mentioned in the impugned order that the petitioner



did not choose the option of pension scheme as stipulated in the Pension Rules. The petitioner deposited his service book along with option paper on 08.02.2010 in Daudnagar *Nagar Parishad* to the Assistant of the Establishment, namely, 'Narendra Bhagart' since the Notified Area Committee, Jamhore was abolished. The petitioner has questioned the correctness of the impugned decision of *Nagar Parishad*, Daudnagar on the basis of aforesaid facts.

8. In the counter affidavit filed on behalf of *Nagar Parishad*, Daudnagar (respondent Nos. 4 and 5) it has been clearly stated that the petitioner worked in *Nagar Panchayat* Daudnagar only for the period from 07.07.2008 till he attained the age of superannuation on 31.01.2013. In any case, the petitioner's service does not qualify for pension. The petitioner was required to deposit certain amount in the monthly pension fund which he did not do. He cannot, therefore, claim any entitlement for pension. It has been stated that the petitioner, who was working in Jamhore Notified Area Committee, was sent to *Nagar Panchayat* Rafiganj after the said notified area committee was abolished. Later, under the orders of the District Magistrate, Aurangabad, his service was sent to Daudnagar *Nagar Panchayat* for absorption and accordingly he joined Daudnagar *Nagar*



Panchayat which later became Nagar Parishad on 07.07.2008.

9. It is the specific case of Daudnagar *Nagar Parishad* that the Parishad is liable to pay to the petitioner only such benefits which he is entitled to for the period during which he served under Daudnagar *Nagar Parishad* from 07.07.2008 to 31.01.2013. It is further asserted that due to abolition of Notified Area Committee Jamhore, the District Magistrate, Aurangabad had directed for absorption of petitioner's service in Rafiganj *Nagar Panchayat* and subsequently he was sent to Daudnagar *Nagar Parishad*. There is no decision of Daudnagar *Nagar Parishad* either by the Board of the *Nagar Parishad* or Empowered Standing Committee for the petitioner's absorption, though the petitioner has been paid his salary and other post retiral dues for the said period. It has been specifically stated in the counter affidavit that the petitioner was a fresh appointee in Daudnagar *Nagar Parishad* in 2008. It has also been stated that Daudnagar *Nagar Parishad* is under obligation to function under statutory provisions and can make payment of pension to its employees who are eligible for pension under statutory rules and not otherwise. Since the petitioner did not complete the minimum required service in Daudnagar and did not ever contribute any money in his pension fund, he is not eligible for pension of any



kind.

10. In respect of the period from August 2002 to June 2007, it is the stand of the *Nagar Parishad* that the petitioner was not an employee of Daudnagar *Nagar Parishad* for the aforesaid period. However, he was paid his salary for the said period under the orders of this Court, from the fund of Daudnagar *Nagar Parishad*. It has been stated that Daudnagar *Nagar Parishad* is an entity different and independent from Jamhore Notified Area Committee or Rafiganj *Nagar Panchayat*.

11. Further, the order impugned dated 22.08.2016 discloses that in a disciplinary proceeding initiated against the petitioner for misconduct a final order dismissing him from service was passed on 31.10.2012. However, the said decision was not communicated to the petitioner by the then Executive Officer of *Nagar Parishad* and he was, thus, treated to be a retired employee of the *Nagar Parishad*. In this regard, the concerned Board as well as this Court in the previous proceeding was kept in dark, the respondent *Nagar Parishad* asserts.

12. When this matter was heard on 07.07.2021, this Court, in view of the aforesaid stand of the *Nagar Parishad* had directed the petitioner to file a supplementary affidavit stating as to whether he was dismissed from service or not. In compliance



to the said order, a supplementary affidavit has been filed wherein it has been averred that the petitioner had never been dismissed from service and he retired on attaining the age of sixty years. He claims that he completed 36 years of his regular service. He has, however, admitted that because of certain dispute between the Chief Counsellor and the petitioner, the petitioner was put under suspension on 20.11.2011. The said order of suspension was challenged before this Court giving rise to CWJC No. 13100 of 2012, which was disposed of by an order dated 14.09.2012 directing the authorities to take a final decision and pass appropriate orders within one month failing which the order of suspension would automatically stand revoked. Subsequently, the order of suspension was revoked by a decision of the Empowered Standing Committee of the *Nagar Parishad* in its meeting held on 29.10.2012 and a letter was accordingly issued on 03.11.2012, revoking the order of suspension.

13. In the light of the aforesaid stand taken on behalf of the *Nagar Parishad* and the petitioner in their respective affidavits on the point of disciplinary action against this petitioner, this Court while hearing this case, on 23.07.2021 had passed the following order :-

“Let the Executive Officer, Nagar Parishad, Daudnagar file a



supplementary counter affidavit stating the circumstance in which decision of the petitioner's dismissal from service taken by the Board of Nagar Parishad was not communicated to him by the Executive Officer. The Executive Officer will also be required to inform this Court as to whether any disciplinary action has been initiated against the then Executive Officer of the Nagar Parishad for not communicating the order of dismissal to the petitioner.”

14. In compliance of the said order, a supplementary counter affidavit has been filed, stating therein that though a decision was taken by Daudnagar *Nagar Parishad* in its meeting dated 31.10.2012 to dismiss the petitioner from service, there is no record available in Daudnagar *Nagar Parishad* office from which it can be inferred that the petitioner was communicated about his dismissal from service. The then Executive Officer, Daudnagar *Nagar Parishad* was transferred in the year 2014, whereafter successive Executive Officers had taken charge of Daudnagar *Nagar Parishad*. The present Executive Officer assumed charge 2-3 months before, who could not find any evidence/ information or record available to suggest whether any disciplinary action has been initiated against the then Executive Officer of the *Nagar Parishad* or not for not communicating the order of dismissal of the petitioner from service.



15. Mr. Vindhya Keshri Kumar, learned Senior Counsel appearing on behalf of the petitioner has vehemently argued that the petitioner's service, right from the date when he was working in Jamhore Notified Area Committee, till he retired from Daudnagar *Nagar Parishad* should be counted for determining his entitlement of pension under the Pension Rules. He has submitted that evidently respondents No. 4 and 5 have paid the petitioner salary for the period during which he had worked under Rafiganj *Nagar Panchayat* and Jamhore Notified Area Committee in the light of an order of this Court and, therefore, now the respondents cannot deny the petitioner's claim for pensionary benefits by refusing to take into account the said period for the purpose of determining petitioner's entitlement of pension under the Pension Rules. He has also submitted that Daudnagar *Nagar Parishad* has wrongly and whimsically denied the petitioner's claim against various heads by rejecting the petitioner's representation, with the passing of the impugned order.

16. Mr. Rakesh Narayan Singh, learned counsel appearing on behalf of Daudnagar *Nagar Parishad*, on the other hand, has submitted that Daudnagar *Nagar Parishad* has no liability in respect of petitioner's entitlement against various



heads for the service rendered by him except for the period during which the petitioner actually worked under Daudnagar *Nagar Panchayat*. He has submitted that Daudnagar *Nagar Panchayat* is a totally different entity having no connection with Rafiganj *Nagar Panchayat* or Jamhore Notified Area Committee. He has argued that the petitioner cannot claim any benefit for the period during which he worked under Jamhore Notified Area Committee or Rafiganj *Nagar Panchayat*, against Daudnagar *Nagar Parishad*. He contends that the decision of the Empowered Standing Committee of the *Nagar Parishad* is well reasoned which has discussed all the points raised by the petitioner in his representation. He has submitted that the petitioner's claims have been properly dealt with in the impugned decision, which does not require any interference. He has also argued that the petitioner has not been able to make out a case for grant of pension under the Pension Rules on the basis of the facts asserted in the writ petition.

17. On perusal of the pleadings on record and careful consideration of the submissions advanced on behalf of the parties, in Court's opinion, three basic issues have emerged for the Court's consideration :-

(i) Whether the petitioner can be treated to be a dismissed employee of



Daudnagar *Nagar Parishad*?

(ii) Whether the petitioner is justified in raising his claim against Daudnagar *Nagar Parishad* for any payment or entitlement for the service rendered by him beyond the period 08.07.2008 to 31.01.2013?

(iii) Whether the petitioner has been able to establish his right to receive pension under the Pension Rules?

18. As regards the first issue, it is settled principle of law that an order of dismissal from service becomes effective only upon communication of the order to a dismissed employee. The respondent *Nagar Parishad* has not been able to demonstrate before this Court whether the order of dismissal from service was ever dispatched, let alone, served upon the petitioner. Accordingly, it is held that since the petitioner was allowed to retire upon attaining the age of superannuation without communication of the order of dismissal, he cannot be treated to be a dismissed employee.

19. The Court is, however, dismayed to notice that though it is the specific case of the *Nagar Parishad* that a decision was taken to impose punishment of dismissal from service on the petitioner for a proved misconduct against him and that the petitioner was working in the same office when the decision to dismiss him was taken by the competent authority, as



clearly mentioned in the impugned order, the order of dismissal was not communicated to him. The circumstance in which the order of dismissal was not issued by the Executive Officer has not at all been explained. Non-issuance of the order, based on the decision of dismissal taken, if any, is an uncondonable serious lapse, which may be a deliberate action or a *bonafide* mistake of the officer concerned. I need not comment on that. However, it is considered appropriate to direct the Principal Secretary, Urban Development and Housing Department, Government of Bihar to enquire into the conduct of the then Executive Officer of the *Nagar Parishad* and consider whether a case of disciplinary action against him is made out or not, and proceed accordingly.

20. In respect of second issue, this is an admitted fact that the petitioner worked in *Nagar Panchayat*, Daudnagar from 07.07.2008 to 31.01.2013. It is his own case that prior to the said period he had worked under the notified Area Committee, Jamhore and for some time in Rafiganj *Nagar Panchayat*. There is no reason shown to this Court as to why the liability of payment for the period during which he had worked in Notified Area Committee or *Nagar Panchayat*, Rafiganj can be attached to *Nagar Parishad*, Daudnagar. It is not denied that *Nagar Parishad* Daudnagar is an entity different from Notified Area Committee,



Jamhore or *Nagar Panchayat*, Rafiganj. It appears from the pleadings that under the order of the District Magistrate, Aurangabad the petitioner was allowed to work under *Nagar Panchayat*, Daudnagar from 07.07.2008 and there is no clue as to under what authority the District Magistrate made the petitioner work in *Nagar Panchayat*, Daudnagar. The assertion made in the counter affidavit that till date there is no decision of the Board/ Empowered Standing Committee of *Nagar Parishad* to appoint the petitioner, has remained undisputed.

21. Be that as it may, this fact is not being disputed that the petitioner had been working in *Nagar Panchayat*, Daudnagar from 08.07.2008 to 31.01.2013. The petitioner's case that he was transferred from *Nagar Panchayat*, Rafiganj to *Nagar Panchayat*, Daudnagar is not acceptable to this Court, in the absence of any material to show that the post which the petitioner was holding was transferable. Further, there is no document in the nature of letter, order or in any other form showing petitioner's transfer from *Nagar Panchayat* Rafiganj to *Nagar Panchayat* Daudnagar. In such circumstance, there is no reason for this Court to accept the petitioner's claim of continuity of service right from his appointment in Jamhore Notified Area Committee. This is to be noted that the petitioner's claim is against *Nagar Parishad*,



Daudnagar only, in the present writ application.

22. In view of the admitted facts, I am of the considered opinion that the petitioner's claim against Daudnagar *Nagar Parishad* for payment against any head for the period during which he did not serve the *Nagar Parishad* is wholly misconceived and not at all tenable in law.

23. As regards the third issue, on the applicability of Pension Rules in the petitioner's case, the petitioner has claimed that he had exercised the requisite option. The Pension Rules were notified in 1986. The petitioner claims that he had joined his service in the year 1977 in Notified Area Committee and he was working in the said Committee when the Pension Rules came into force. Under Rule 4(1) of the Pension Rules option was to be exercised within ninety days. The petitioner claims that he filed his option in prescribed form and had submitted in the office. He has also asserted that he regularly deposited the 'contributory' amount in his provident fund, which is lying in the government account. He has also stated that he deposited his service book along with option paper on 08.02.2010 in Daudnagar *Nagar Parishad*. There is clear stand of the *Nagar Parishad* that the petitioner, who himself was working as Head Clerk in *Nagar Panchayat*, did never deposit any amount in the pension fund and



he was a fresh appointee in Daudnagar *Nagar Panchayat* in 2008.

24. In view of my conclusion in relation to issue No. 2 as above, in my opinion, the petitioner cannot claim his entitlement for payment of pension against Daudnagar *Nagar Parishad*. The petitioner's claim for pension under the Pension Rules accordingly fails.

25. After having concluded as above, the petitioner's representation dated 06.06.2016, raising claims against various heads which have been considered by the Empowered Standing Committee of *Nagar Panchayat* Daudnagar, needs now to be addressed. The petitioner has raised claims against six heads. The first claim relates to arrears of pension for the period February 2013 to May 2016 of Rs. 7,72,560/-. The said claim has been rightly rejected by the impugned order in view of the above-noted discussion. It has been mentioned in the impugned order that the petitioner managed to receive as arrears of salary of a sum of Rs. 4,88,472/- for the period during which he had not worked in Daudnagar *Nagar Parishad* in compliance of this Court's order dated 30.08.2013, passed in CWJC No. 14777 of 2007. It is observed that *Nagar Parishad*, Daudnagar shall be at liberty to take steps for recovery of the said amount from *Nagar Panchayat*, Rafiganj or any other body, if payment relates to the



period during which the petitioner was working in *Nagar Panchayat* Rafiganj or under the notified area committee in accordance with law, if permissible. In any circumstance, no liability can be fastened to *Nagar Panchayat*, Daudnagar for the period during which the petitioner was not an employee of the said *Nagar Parishad* in the absence of any pleading or material to suggest that assets/ liabilities of *Nagar Panchayat*, Rafiganj or Jamhore Notified Area Committee stood transferred to Daudnagar *Nagar Parishad*.

26. The petitioner's second claim relates to payment of arrears for the month of November 2012 on implementation of 6th Pay Commission's Recommendations. In the impugned order it has been mentioned that the State Government has so far not granted sanction for implementation of 6th Pay Commission's recommendations. It has also been mentioned that the employees of *Nagar Parishad* are getting salary on the basis of 5th Pay Commission's recommendations. It is directed that let the *Nagar Parishad* reconsider the petitioner's claim in respect of second item of his representation and pay to the petitioner the said amount, if other employees of the *Nagar Parishad* are being paid their salary now, on the basis of 6th Pay Commission's recommendations.



27. The respondent Daudnagar *Nagar Panchayat* has rightly rejected the petitioner's claim for payment from 01.12.2007 to 07.07.2008 during which the petitioner claims to have worked under Rafiganj *Nagar Panchayat*.

28. The 4th item of the petitioner's representation relates to his claim for interest at the rate of 9% on the amount of gratuity for delay of 3 ½ months in payment of the said amount. The said claim has been rejected by the impugned decision. I do not find any such legal infirmity which would require this Court's interference in the present proceeding.

29. The 5th item of the petitioner's claim has been accepted as admitted dues in the impugned decision. It is directed that let the said amount be paid to the petitioner, if not already paid, within one month from the date of receipt/ production of a copy of this order.

30. The petitioner's 6th item of his representation relates to payment of amount deposited in the provident fund account. The said claim is apparently vague.

31. In view of the above discussion, I do not find any illegality in the impugned order dated 22.08.2016. This writ application is, however, disposed of with a direction to ensure that the petitioner's admitted claim, as raised in item No. 5 of his



representation for payment of the amount of provident fund, is paid to him, if not already paid, within one month from the date of receipt/ production of a copy of this order. The respondent *Nagar Parishad* shall also be obliged to pay to the petitioner the arrears of salary for the month of November 2012, once 6th Pay Commission's recommendations become applicable for the employees of the *Nagar Parishad*.

32. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.11.2021
Transmission Date	NA

