

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5792 of 2018**

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Ravindra Kumar Son of late Dr., Ram Govind Singh Resident of Chief Engineer's Residence , P.O. GPO, P.S. Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Vikas Bhawan, Ba
3. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok Complex, Patna.
4. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna.
5. The Additional Municipal commissioner Establishment, Patna Municipal Corporation, Patna.
6. The Executive Officer, Patna Nagar Nigam Water Supply.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                         |
|----------------------|---|---------------------------------------------------------|
| For the Petitioner/s | : | Mr.Kunal Tiwary                                         |
| For the Corporation  | : | Mr.Prasoon Sinha<br>with Mr. Prabhakar Singh, Advocates |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**CAV JUDGMENT**

**Date : 04-01-2021**

The petitioner retired while holding the rank of Superintending Engineer in Patna Municipal Corporation (PMC) with effect from 30.04.2017. In the present application filed on 28.03.2018, the petitioner has sought for a direction to the respondents to pay his post retiral dues. It has been specifically asserted in the writ application that till the date of the filing of the writ application, not even a single penny has been paid to him against post retiral dues, despite the fact that



there was no department proceeding ever initiated, against the petitioner.

2. The present case was heard online through video conference, during the course of which Mr. Kunal Tiwary, learned counsel for the petitioner and Mr. Prasoon Sinha, with Prabhakar Singh, learned counsel, representing the Patna Municipal Corporation made their extensive arguments on behalf of the rival parties.

3. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the Corporation. The petitioner has filed reply to the counter affidavit. A counter affidavit has also been filed on behalf of the State of Bihar.

4. Briefly narrated, the case of the petitioner is that after his appointment as Assistant Engineer in Patna Water Board in 1983, he was granted promotion to the post of Chief Engineer of the Board, which is equivalent in rank to the post of Executive Engineer in the Government. At the said point of time, the Patna Water Board was part of Patna Municipal Corporation. The petitioner, it has been asserted was granted promotion to the post of Chief Engineer of the Board ( equivalent to Executive Engineer in the Government) on the recommendation of the Bihar Public Service Commission vide



office order as contained in Memo No. 1895 dated 01.11.1996. Patna Municipal Corporation, Patna Regional Development Authority and the Board were decided to be merged by the State Government in the year 2006 and three posts equivalent to the post of Superintending Engineers under the State Government were created, which were to be filled up by granting promotion to the Engineers working in the Corporation. *Kalawadhi* of eight years was prescribed for promotion to the rank of Superintending Engineer from the rank of Executive Engineer and the petitioner having completed the said *Kalawadhi* was entitled to be considered for upgradation of his status to the rank of Superintending Engineer of the State Government. Before the petitioner's case could be considered for promotion, he was diagnosed suffering from cancer for which, with permission of the authority, he had left to the United States of America for proper medical treatment and he remained there from April 2010 to September, 2010. Apart from the difficulties, which arose in respect of the payment of regular salary after the petitioner rejoined the post on return from USA, he has asserted that as the respondents were not considering his case for promotion, he had to approach this Court invoking writ jurisdiction with filing of an application, which had given rise to



CWJC No. 15242 of 2012. The said writ application was disposed of by an order dated 05.10.2012 with a direction to the Corporation to consider his case for promotion to the next sanctioned post equivalent to the Superintending Engineer in the Government for which the petitioner was eligible since 2004. The petitioner, however, started getting salary from the month of August, 2012. It is the petitioner's case that the petitioner was not paid his salary from the month of April, 2010 to July, 2012 and August, 2014. This made the petitioner file another writ application, giving rise to CWJC No. 6014 of 2014, seeking direction for payment of salary for the said period(s). It has also been asserted that the petitioner had filed a writ application, bearing CWJC No. 6014 of 2017 on 08.04.2017. It is his grievance that as counter blast of the filing of the writ application, the respondents issued show cause notice on 20.04.2017, which was served on 27.04.2017, hardly two days before the date of superannuation, alleging that the petitioner was absent since the Month of August, 2014. The petitioner had submitted his show cause reply on 29.04.2017 itself categorically denying the allegation against him. He asserted in his reply that the allegation of his remaining unauthorized absent from duty was baseless and as a matter of fact, he had



remained on duty under the direction of the senior authorities. It is the petitioner's case, in the aforesaid background that his post retiral benefits have been illegally withheld.

5. In the counter affidavit filed on behalf of the Corporation, it has been stated that no document relating to appointment and service of the petitioner was available and, therefore, the petitioner was repeatedly asked to make available the required documents for preparation of second (duplicate) service book but he ignored the request as well as the direction issued by the Corporation. It has further been stated that vide Memo No. 1605 dated 03.04.2012 a direction was issued by the Municipal Commissioner of the Corporation to the petitioner to join his post and to execute his work regularly. It has been admitted that the petitioner submitted his joining on 03.04.2012 but from the records it did not appear that the petitioner performed any work. It has also been asserted that the petitioner remained absent from August, 2012 till date of his superannuation without any approval of the higher authorities. Accordingly, a show cause notice was sent to the petitioner on 29.04.2017 to his residence. For the aforesaid conduct a charge-sheet in parpatra 'ka' was issued on 04.05.2017 by the Additional Municipal Commissioner (Establishment) of the



Corporation.

6. The copy of the said charge-sheet issued after petitioner's superannuation on 04.05.2017 has been brought on record by way of Annexure R-6/B of the counter affidavit. It is apparent on reading of the said charge-sheet dated 04.05.2017 that the same has been issued under the Bihar Government Servant (Classification Control and Appeal ) Rules, 2005, when the petitioner had already retired.

7. The petitioner has controverted the assertion in the rejoinder affidavit that because of absence of records, the petitioner's post retiral dues have remained pending. The petitioner has termed the statement in the rejoinder affidavit regarding his absence from August, 2014 as incorrect. It has been stated that the petitioner had approached this Court under contempt jurisdiction, alleging disobedience of this Court's order dated 05.10.2012 passed in CWJC No. 15242 of 2012, in relation to grant of promotion to the rank of Superintending Engineer. In the said proceeding the same stand was taken that there were no documents relating to the petitioner's appointment and service of the petitioner and that the service book of the petitioner was untraceable and further that the petitioner was not cooperating in reconstruction of the service book. The Court



had taken serious note of such stand taken on behalf of the Corporation and had directed the Corporation to file an affidavit placing on record the name of the persons responsible for missing of the records and the action taken by the Corporation in this regard, to fix the accountability. This Court had taken note in the order dated 03.10.2018 passed in MJC No. 505 of 2016 that on the one hand the authorities were giving frivolous excuses of not having documents with respect to appointment and service of the petitioner, on the other hand, the Corporation had issued show cause notice and initiated departmental proceeding after his superannuation. The Court had opined that the plea of Corporation for not being able to comply with the order of the writ Court was a mere pretext in the garb of which the petitioner was being deprived of the benefits, which had already accrued to him under the orders of this Court passed in the writ jurisdiction. It has specifically been stated in the rejoinder affidavit that it was because of this Court's intervention that the service book of the petitioner was prepared by the Corporation, which fact was communicated by the learned counsel for the Corporation on 18.02.2019, when the said contempt application was taken up and when the Court had directed the petitioner to comply with the formality of signing



duplicate service book by approaching the Additional Commissioner of the Corporation on or before 15<sup>th</sup> March, 2019. It has further been stated that in compliance of this Court's order, the petitioner had approached the Additional Commissioner of the Corporation and had put his signature at the required place in the duplicate service book. It has also been asserted that the petitioner had put his signature on the duplicate service book before the same Additional Commissioner of the Corporation, who has sworn the counter affidavit filed in the instant case to demonstrate that the deponent of the counter affidavit was personally, fully aware with the development of the petitioner's case in MJC NO. 505 of 2016. It has been accordingly asserted that the deponent has sworn an incorrect affidavit by stating that there was no document of the petitioner available and that the service book of the petitioner had been lost and that the petitioner was not cooperating in reconstruction of the service book because of which the retiral benefits of the petitioner was not being paid. It is, thus, the specific case of the petitioner that his service book has duly been reconstructed and the stand taken in the counter affidavit alleging non-cooperation by the petitioner in relation to reconstruction of the service book is palpably wrong, frivolous and just in order to harass the



petitioner in one manner or the other. The petitioner has narrated the harassment, which he had to suffer at the hands of the respondents in the matter of grant of promotion and has asserted that it was only because of strong exception taken by this Court to recalcitrant and harassing attitude of the respondents that a finally the petitioner was granted promotion to the rank of Superintending Engineer. It has also been pointed out in the rejoinder affidavit that on an undertaking given on behalf of the Corporation in a contempt proceeding bearing MJC No. 505 of 2016 that this Court had directed the respondents to ensure payment of admissible dues, which despite the Court's observation and direction has not been paid so far.

8. After filing of the rejoinder affidavit a supplementary counter affidavit has been filed on behalf of the Corporation. No statement made in the rejoinder affidavit has been denied in the counter affidavit. It has been merely stated in the supplementary counter affidavit that after reconstruction of petitioner's service book the Executive Officer, Water Supply Circle, PMC has perused the records, has taken steps for redressal of the petitioner's grievance and has found that the account number, IFSC Code, name of the bank and the Branch



as well as pension application in proper form had not been made available by the petitioner for which several letters were issued to the petitioner. He has been requested now to make available the said documents as soon as possible. A communication dated 05.10.2020 in this regard, has been brought on record by way of Annexure R6/D. It has further been stated that the Executive Engineer, Water Supply Circle of the Corporation has passed an order on 12.10.2020 and has granted sanction for payment of the amount of gratuity, cash equivalent to unutilized earned leave, differential amount of salary and re-fixation of pay on the basis of 2<sup>nd</sup> promotion from 01.04.2010 to 29.02.2012 and differential amount of dearness allowance for the period of 01.07.2010 to 28.02.2012. The sanction order has been brought on record by way of Annexure R6/E from which it transpires that a total sum of Rs. 27,45,395.00 has been found admissible by the Corporation itself against the aforesaid four heads. It has been stated in paragraph 5 of the supplementary counter affidavit that because of laches on the part of the petitioner, who did not supply the required information and documents, payment of retirement benefits as well as pension is not being paid to him in respect of which, learned counsel for the petitioner has been communicated by the learned counsel for the Corporation. To



say the least, the statement made in paragraph 5 of the supplementary counter affidavit is shameless, which reads as under:-

*“5. That it is humbly submitted that due to latches opf the part of the petitioner who has not supplied the required informant and documents, payment of retirement benefits as well as pension is not being paid to him for which counsel for the PMC also communicated to the counsel appearing for the petitioner.”*

9. As has been noticed hereinabove, initially, the Corporation took a plea that no document in relation to petitioner's appointment and service was available and he was not cooperating in reconstruction of the service book. The said aspect was described in the counter affidavit as the main reason for non-payment of retirement benefits and other dues. In any event, the service book was reconstructed with this Court's intervention that too, in the contempt proceeding registered as MJC No. 505 of 2016. The payment of sum which the petitioner was admittedly entitled to receive as on the date of his superannuation on 29.02.2017 has been computed to be Rs. 27,45,395/- against four heads, namely, gratuity, leave encashment, differential amount of salary on the basis of second



promotion and differential amount of dearness allowance payments of which have been sanctioned nearly three and half years after his retirement. The explanation given in the counter affidavit for delay in payment is not acceptable to this Court. In view of the clear factual position that it was only after strong view was taken by this Court in the contempt proceeding that the respondents-Corporation took serious steps for reconstruction of the service book. There was no role of the petitioner in maintaining the service book nor any role has been attributed to him for disappearance of the original service book. The petitioner had retired on 30.04.2017 whereas the charge memo for initiation of departmental proceeding under the Rules was issued on 04.05.2017. No proceeding under the provisions of said Rules could be initiated against a retired employees as no punishment stipulated therein could be imposed against a retired employee. There is no material on record to suggest that any proceeding has been initiated for withholding of pension in accordance with law.

10. Pension is a deferred compensation for services rendered as defined in the Blacks Law dictionary (6<sup>th</sup> edition 1134). The Supreme Court nearly five decades ago in the case of **Deoki Nandan Prasad Vs. State of Bihar** reported in (1971)



**1 SCC 330** opined in paragraph 16 thereof that right to get pension is a property and by withholding the same, employees' fundamental rights guaranteed under Articles 19(1) (f) and 31(1) of the Constitution of India are affected.

11. Pension is a reward for past services stated the Supreme Court in case of **State of Bihar Vs. S.S. Diwan** reported in **(1997) 4 SCC 569**. In case of **All India Reserve Bank Retired Officers' Association Vs. Union of India** reported in **(1992) suppl. 1 SCC 664** has in clear termed held that pension is not a charity or bounty nor is it a gratuitous payment. It is earned for rendering long service and it is often described as deferred portion of compensation for past service. It is in the nature of social security plan to provide for the December of life of a superannuated employee. The Supreme Court further ruled that such security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution of India. Right to pension is statutory right which a superannuated employee can be deprived only in accordance with law.

12. In the present case the respondents withheld the petitioner's legitimate admitted pensionary and other dues



without any valid justification on the pretext of petitioner's non-cooperation. Initiation of issuance of notice with the charge-sheet in parpatra 'ka' under the Rules after petitioner's superannuation is meaningless.

13. Considering the admitted facts as noted above and the conduct of the respondents-Corporation, this writ application is allowed with the following directions:-

(i) The petitioner shall be entitled to interest at the rate of 5% per annum on all his entitlements from the date of his superannuation till the date of actual payments.

(ii) Accordingly, the petitioner shall be entitled to interest at the rate of 5% on the total sum of Rs. 27,45,395/-, which has been sanctioned for payment by the order of the Corporation dated 12.10.2020 from the date of the petitioner's superannuation till the date of actual payment. The said amount of Rs. 27,45,395/- should be credited in the petitioner's account within a fortnight from today, if not already credited.

(iii) The amount of interest shall be calculated and credited in the petitioner's account by the Corporation within one month from today. In case the Corporation fails to credit the said amount of Rs. 27,45,395/- in the petitioner's account within stipulated time, the Corporation shall be liable to pay interest at



the rate of 12% per annum on the said amount after expiry of stipulated period as fixed in the present order.

(iv) The Respondent-Corporation shall ensure that petitioner's pension is finalized, his arrears of pension is paid and he starts getting monthly pension on regular basis within one month from the date of receipt/production of a copy of this order.

14. It is considered apt, in the facts and circumstances of the case, to impose cost for compelling the petitioner to approach this Court in this matter, which is quantified at Rs.20,000/- (twenty thousand), which also must be paid by the Corporation to the petitioner within one month from the date of receipt/production of a copy of this order.

**(Chakradhari Sharan Singh, J)**

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