

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.670 of 2021

In
Civil Writ Jurisdiction Case No.6970 of 2019

=====

Sheo Prasad Lal S/o Late Kedar Nath Lal, Resident of Village - Jamhore, P.S.
- Jamhore, District - Aurangabad.

... .. Appellant/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, District - Aurangabad.
5. Presiding Officer, Standing Committee, Nagar Parishad, Daudnagar, District - Aurangabad.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Rajendra Narain, Senior Advocate
For the Respondent/s	:	Mr.Yogendra Prasad Sinha (Aag7)
	:	Mr. Rakesh Narayan Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 21-02-2022

1. The present appeal is directed against the judgment and order dated 02.11.2021, passed by a learned Single Judge of this Court in C.W.J.C. no. 6970 of 2019.

2. A writ petition bearing C.W.J.C. no. 6970 of 2019 was filed by the appellant for quashing that part of the decision dated 22.08.2016, passed by the Presiding Officer-cum-Executive Officer, Empowered Standing Committee, Nagar



Parishad, Daudnagar, Aurangabad (respondent no. 4), whereby and whereunder pension has been denied to the petitioner. The learned Single Judge by the impugned judgment dated 02.11.2021 has held that the petitioner is not entitled to grant of pension and has also not found any illegality in the order dated 22.08.2016, passed by the respondent no. 4.

3. It would be apt to reproduce the relevant paragraphs of the impugned judgment dated 02.11.2021 hereinbelow :-

“ 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, Rafigang 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."

4. The learned Senior Counsel for the appellant Sri Rajendra Narain has assailed the impugned judgment dated 02.11.2021 by submitting that the learned Single Judge has erred by not considering the fact that there was no break in services of the petitioner, whether it be under the Nagar Panchayat, Rafiganj or Nagar Parishad, Daudnagar and continuity in service had been maintained, inasmuch as the District Magistrate, Aurangabad had absorbed the petitioner in the services of the Daudnagar Nagar Parishad and Rafiganj Nagar Panchayat respectively. Hence, it is submitted that consequently, the appellant is required to be paid pension.

5. We have heard the learned counsel for the parties and perused the materials available on record as also the impugned judgment dated 02.11.2021, from which, it is apparent that it is not in dispute that the appellant had worked in



Nagar Parishad, Daudnagar only from 07.07.2008 to 31.01.2013, thus the tenure of the petitioner in Nagar Parishad, Daudnagar has been rightly held by the learned Single Judge to be a fresh appointment. Moreover, it is an undisputed fact that the petitioner had never deposited any amount in the pension fund, thus, the learned Single Judge has rightly arrived at a conclusion that the petitioner cannot claim his entitlement for grant of pension, as against the Nagar Parishad, Daudnagar, more so, in view of the fact that the petitioner has not put in number of years of service, required for grant of pension. We also find that prior to 07.07.2008, the appellant had worked under the Rafiganj Nagar Panchayat, however the appellant has not claimed any relief as against the Rafiganj Nagar Panchayat, thus the learned Single Judge has rightly held that the claim of the appellant against Nagar Parishad, Daudnagar for payment against any head for the period, during which he had served the said Rafiganj Nagar Panchayat, is wholly misconceived and not at all tenable in the eyes of law.

We also find that no decision of the Board of the Municipality or of the Special Empowered Committee of the Nagar Parishad, Daudnagar has been brought to our notice, showing absorption/ appointment of the petitioner but still a



sympathetic view appears to have been taken by the respondent-
authorities, inasmuch as the petitioner has been paid salary and
other post-retiral dues and this fact has not been controverted by
the appellant or his Counsel. In such view of the matter, the
learned Single Judge has appositely rejected the claim of the
petitioner for grant of pension.

6. Having regard to the facts and circumstances of the
case and for the reasons mentioned hereinabove, we do not find
any infirmity in the impugned judgment dated 02.11.2021,
passed by a learned Single Judge of this Court in C.W.J.C. no.
6970 of 2019, hence the Letters Patent Appeal stands dismissed.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2022
Transmission Date	NA

