

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3665 of 2018**

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Raj Kumar Roy Son of Late Dukhan Roy, Residet of Nand Gola, Police  
Station Malsalami, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Patna Municipal Corporation through Municipal Commissioner,  
Maurya Lok, Patna.
3. The Additional Commissioner, Patna Municipal Corporation, Maurya Lok,  
Patna.
4. The Executive Officer, Patna City Circle, Patna Municipal Corporation,  
Patna.

... .. Respondent/s

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**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Rupak Kumar, Advocate.      |
| For the PMC          | : | Mr. Prabhakar Singh, Advocate.  |
|                      |   | Ms. Rana Neha Kumari, Advocate. |
| For the Respondent/s | : | Mr. Ravish Chandra, AC to SC 6. |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 07-12-2022**

Heard Mr. Rupak Kumar, learned counsel for the  
petitioner, Mr. Prabhakar Singh, learned counsel for the respondent  
Patna Municipal Corporation duly assisted by learned counsel Ms.  
Rana Neha Kumari and Mr. Ravish Chandra, learned AC to SC 6  
for the State.

The only grievance of the petitioner survived in the writ  
petition is with regard to the payment of pension for the period  
from 01.02.2018 to 12.11.2019, which has not been paid till date.



In compliance of the order of this court, a supplementary counter affidavit has been filed on behalf of the Patna Municipal Corporation. Mr. Prabhakar Singh, by referring the averments made in the paragraph nos. 4 to 8 of the counter affidavit have categorically submitted that the arrears of pension of an amount of Rs.5,52,992/- has stood paid to the petitioner for the period from 13.11.2019 to 30.04.2021.

He further contended that as the petitioner had never availed the opportunity and never opted for the pension scheme provided in 1986 and 1991, no pension prior to 13.11.2019 is admissible to him. He also submits that Permanent Empowerment Committee and the Municipal Corporation Board has taken a conscious decision that those who have not opted for the pension in the year 1986 and 1991, they shall be allowed the benefits of pension only with effect from 13.11.2019 and in support of the averments, he brought on record the order of the Municipal Commissioner as contained in Annexure R/B to the supplementary counter affidavit.

Per Contra, learned counsel for the petitioner drawn the attention of this court towards Annexure-7 to the rejoinder to the counter affidavit and submits that the averments made by the learned counsel for the Patna Municipal Corporation is wholly



incorrect as the petitioner had already exercised his option for pension as far back as on 14.05.1986, which was duly endorsed by the then Executive Officer, New Capital Circle, Patna Municipal Corporation on 30.05.1986 and this document has never been questioned at any point of time.

If this be the position, then this court left with no option but to direct the Municipal Commissioner, Patna Municipal Corporation, to consider the claim of the petitioner for arrears of pension for the period of 01.02.2018 to 12.11.2019, as from the materials available on record, it is *prima facie* found that the petitioner had already exercised his option way back in the year 1986 itself. Hence, the respondent Municipal Commissioner would be under obligation to consider the claim of the petitioner for payment of the arrears of pension for the period in question.

Accordingly, the writ petition stands disposed of with a hope and trust that the Municipal Commissioner, Patna Municipal Corporation, shall consider the case of the petitioner after due verification of the genuineness of the Annexure-7 which suggests that the petitioner had already exercised option for his pension way back in the year 1986 and if the same is found true, necessary consequential order would be passed preferably within a period of



eight weeks from the date of receipt/production of a copy of this order.

It is made clear that while considering the claim of the petitioner, the affidavit filed by the petitioner as contained in Annexure R/A to the supplementary counter affidavit will not come in the way in passing the necessary order, as it is trite law that, “if the consent is given in duress, plea of estoppel taken by the State and its instrumentalities is not applicable”.

**(Harish Kumar, J)**

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| AFR/NAFR          | NAFR        |
| CAV DATE          | NA          |
| Uploading Date    | 12.12.2022. |
| Transmission Date | NA          |

