IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17997 of 2017

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Sonajhari Devi Wife of Late Ram Pujan Singh R/o Village- Sarabdipur, P.O.- Kahalgaon, P.S.- Kahalgaon, District- Bhagalpur, Pin- 813203.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Executive Officer, Nagar Panchayat, Khalgaon, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. S.P. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 04-05-2023

Heard Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the petitioner and Mr. S.P. Singh, learned counsel appearing for the State.

2. Learned Senior Counsel appearing on behalf of the petitioner submitted that petitioner had retired on 31.12.1993 from the post of Tax Daroga and he is entitled for benefit as contained in Rule 4(i) of the Bihar Municipal Officers and Servants Pension Rules, 1987 (in short 1987 Rules), which *inter alia* reads as follows:-

> ***"4(i) Municipal employees on roll on the date of confirmation of this rule and who had subscribed to***

the contributory provident fund under provident fund rules and want to be governed by these rules shall have the option to do so and such option shall be exercised in writing in the prescribed form (Annexure-I) and submitted to their head of office within 90 days from the date of framing of this rule by the state Government. If such option in writing in prescribed form is not received within the period so fixed it will be deemed that they would retain the existing contributory Provident Fund."

3. Learned Senior Counsel further submitted that petitioner had applied within 90 days before coming into force of the said 1987 Rules and he is entitled for the benefit of scheme, however, the respondent No.3 the Executive Officer, Nagar Panchyat, Khalgaon, Bhagalpur took a final decision on the basis of application made by the petitioner within a statutory period, which has been granted by the said Rules in the year, 2001. Learned counsel has referred to pension book (Annexure-7), which has been counter sign by the Special Officer, Kahalgaon Municipality. The petitioner was getting pension of Rs. 693/- per month, thereafter, it was revised at the applicable rate to the employee of the municipality from time to time and he was paid regular pension till 2016. The limited grievance of the petitioner is that the authority of the municipality have admitted that petitioner is entitled for pension after fulfilling the

requisite terms and conditions of 1987 Rules.

4. The authority, by stopping the pension payable to the petitioner, has taken a decision in meeting dated 30.06.2016 and the decision of the said meeting was communicated to the petitioner by the respondents vide letter No. 883, dated 09.07.2016 (Annexure-P-12). Learned Senior Counsel further submitted that the reason assigned for stopping the pension of the petitioner in the said letter is that the petitioner had not opted for the benefit of pension within the stipulated period of time. Learned counsel, emphatically, submitted that no evidence has been adduced in support and only on the basis of opinion of the Government illegal action has been taken to deny benefit. Learned counsel further submitted that petitioner was not informed before the stopping of the pension which has a penal consequence. In absence of evidence brought on record to show that the petitioner has not applied within the stipulated period of time, action is without jurisdiction. The petitioner has brought on record Annexure-P-7, which shows that pension of the petitioner was fixed and he had received pension continuously for 16 years. The action of the concerned respondent is penal in nature in stopping the pension of the petitioner without informing him is arbitrary, illegal and without jurisdiction.

5. The petitioner is also aggrieved by order contained in Annexure-P-12 by which the entire amount, which has been paid to the petitioner on account of pension has been directed to be recovered. Learned counsel submits that recovery from him is illegal and in support of his claim has placed reliacne to the Apex Court law laid down in the ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others.*** reported in ***(2015) 4 SCC 334*** and subsequent Judgment of the Hon'ble Apex Court and in case of **Thomas Daniel Versus State of Kerala and Others** reported in ***2022 SCC OnLine SC 536***.

6. Learned counsel in these background submits that the petitioner admittedly superannuated from the Class-IV post. The concerned respondent cannot resort to recover the amount from the petitioner, who had retired in the year 1993. The pension were being paid to the petitioner from the year 2001 till 2016. Learned counsel further submitted that the relief sought by the petitioner is not similar to that of one employee Subodh Naraian Jha, whose case was rejected by this Court vide order dated 18.07.2016 passed in C.W.J.C. No. 16643 of 2011. The writ petitioner of the said case had sought parity with petitioner for being granted benefit of pension. The State

respondents have admitted in paragraph no. 15 that show cause notice was issued only after the decision with respect to recovery was made.

7. The State have filed counter affidavit on behalf of respondent No.3. A specific statement has been made that the petitioner had not applied within the stipulated period of time in accordance with provisions of the 1987 Rules came into force. The stipulated time granted in the said Rules is 90 days and within the said period, the petitioner had not applied. It is further stated in paragraph no.11 of the counter affidavit that the petitioner had also not filed pension papers for which several correspondences/reminders were made, to deposit the C.P.F. amount. The petitioner is himself responsible for delay in payment of the pension. In the said paragraph, the respondents have relied on letter dated 22.07.1994 (Annexure-P-4) for denying the pensionary benefits to the petitioner. The respondents have denied the claim of the petitioner by relying on the statement made in paragraph no. 13 of the counter affidavit that one another employee namely, Subodh Narain Jha had filed C.W.J.C. No. 16643 of 2011 for claiming equity with the petitioner, who was getting pension till the year 2016. The said writ petition was rejected vide order dated 18.07.2016.

8. Heard the parties. On perusal of the records as well as counter affidavit filed on behalf of the respondent no.3, it appears that the sole ground of rejection of the case of the petitioner is that the petitioner had not applied within stipulated period of time i.e. 90 days coming into force of the 1987, Rules and one similarly situated employee namely, Subodh Narain Jha, who had approached this Court in C.W.J.C. No. 16643 of 2011. The State stand was rejected, this Court had passed *inter alia* following order:-

> **"It is the further case of the petitioner that in similar circumstances, one Ram Pujan Singh, who had not submitted his application within 90 days, has been given benefit of pension. It is his case that Ram Pujan Singh had submitted his application beyond the period of ninety days, as prescribed in the said Rules, for being governed by 1987 Rules. It is accordingly the petitioner's case that since Ram Pujan Singh has been given benefits of pension, the petitioner should also be treated equally.**
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> **Rule 4 (i) of the 1987 Rules read as follows:**
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> > **"Municipal employee on roll on the date of confirmation of this rule and who had subscribed to**

the contributory provident fund under provident fund rules and want to be governed by these rules shall have the option to do so and such option shall be exercised in writing in the prescribed form (Annexure-1) and submitted to their head of office within 90 days from the date of framing of this rule by the State Government. If such option in writing in prescribed form is not received within the period so fixed, it will be deemed that they would retain the existing contributory provident fund"

The provision is unambiguous and clearly provides that a person who applies within 90 days of coming into force of the Rules only, shall be entitled to the benefit of pension scheme. Apparently, on the basis of admitted facts, the petitioner cannot be said to be entitled for such benefits.

The submission made on behalf of the petitioner that since Ram Pujan Singh has been given the benefit and, therefore, the petitioner should also be given such benefit is not at all convincing to the Court. The respondent-Municipality has taken specific stand that benefit of pension

was wrongly given to Ram Pujan Singh against the Rules and steps are being taken to undo the illegality done in the case of Ram Pujan Singh."

9. The relief was not granted to the concerned petitioner namely, Subodh Narain Jha because he had not applied within 90 days, whereas for the reason that the petitioner of the said case had himself admitted, which has been taken note of by this Court, which inter alia reproduce as follows:

"A communication made by the petitioner to the Special Officer, Kahalgaon Municipality, dated 26.06.1998, has been brought on record through counter affidavit, wherein he is said to have specifically mentioned that he wanted to continue in the Contributory Provident Fund Scheme and did not want to be governed by 1987 Pension Rules. The said application has been brought on record by way of Annexure, wherein the petitioner had given specific reason as to why he did not want to be governed by the 1987 Pension Rules.

It is the specific stand of the Municipality that the petitioner's application was acted upon and entries to this effect were, accordingly, made in his service book.

The issue which is, now, being raised by the

petitioner in the present application is that before the date of his retirement, he had submitted an application to the effect that he should be allowed to be governed by 1987 Rules. This is precisely the grievance which the petitioner has in the present proceeding. According to him, he should be allowed the benefits of 1987 Rules and should be given pensionary benefits under the said 1987 Rules.

The plea of the petitioner is being objected to by the Municipality on the ground that since the petitioner did not submit his application in prescribed proforma, as required under the 1987 Rules, within 90 days, he is not entitled to the benefits of pension scheme. It is also their case that the petitioner had rather expressed his willingness in clear terms through his communication, dated 26.06.1998, that he did not want to be governed by the 1987 Rules, rather, he wanted to remain in the Contributory Provident Fund Scheme.

In response to the said contention and stand of the Municipality, it is the petitioner's case that the petitioner is ready to refund part of the provident fund amount, which he has received or likely to receive against the employer's contribution which had been made to his provident fund account."

"21. <u>It is manifest on plain reading of sub-rule (i)</u>

of Rule 4 of the PMC Pension Rules that it applies to such employees of the Corporation who were on roll on the date of confirmation of the Rules and who had subscribed to the contributory provident fund under the Patna Municipal Corporation Employee Provident Fund Rules. Such employees, already on the roll, if they wanted to be governed by the PMC Pension Rules, they had the option under Rule 4(i) to do so which option was to be exercised in writing in prescribed form by submitting it to the Chief Executive Officer within 90 days from the framing of the Rules. It further prescribes that if such option in writing in prescribed form was not received within the period so fixed, it would be deemed that they would retain the then existing contributory provident fund rules. Sub-rule (i) of Rule 4 is apparently applicable only for such employees of the Corporation who were already on roll on the date of confirmation of the Rules. Those appointed in the Corporation after the prescribed date, were not required to exercise their option, as such employees would be automatically covered by the said Pension Rules. Requirement of giving option or not giving option under Rule 4(i) was limited to the existing employees of the Corporation as on the date of coming into force of the said Pension Rules, who were covered by the

Corporation Employee Provident Fund Rules".

"23. In case of ***Sanchari Devi vs. Ara Municipal Corporation*** reported in ***(2014) 15 SCC 648*** the Supreme Court had the occasion to examine the scope of similar provision under Rule 4(i) and 4(ii) of the Bihar Municipal Officers and Servants Pension Rules which are in pari materia with Rule 4(i) and 4(ii) of the PMC Pension Rules. Upon examining the language of the said provisions the Supreme Court held in paragraph 5 as under :-

> "5. A bare reading of the Rules 1 and 4(i) of the Rules makes it clear that the Rules apply to permanent employees of the Municipalities and Notified Area Committees in the State of Bihar. Thus, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation were statutorily entitled to the pension under the Rules. Rule 4(ii) of the Rules provided further that municipal employees who retired before the date of effect of the Rules and received part or whole amount of provident fund contribution will not be eligible for pension. Hence, Municipal employees who had retired before the date of effect of the Rules and had received part or whole of provident fund contribution were not entitled for the pension under the Rules. In other words, all permanent employees of Municipalities and Notified Area Committees including the Ara Municipal Corporation had a statutory right to get pension if they had not retired before the date of effect of the Rules and had not received part or whole of provident fund contribution." (Underlined for emphasis)

"24. By virtue of Rule 4(i) of the Bihar Municipal Officers and Servants Pension Rules, the Supreme Court held in case of Sanchari Devi (supra), that every permanent employee of a municipality or notified area committee, if he had not retired before the date of effect of the Rule and had not received part or whole of the provident fund contribution was statutorily entitled to the pension. Only such employees of the Corporation who had retired before coming into force of the said Pension Rules and had received the amount of provident fund contribution could not avail the benefit of pension under the Pension Rules".

"25. After having analysed the scope of Rule 4 of the Pension Rules, coming to the facts of the case of these petitioners, admittedly they became the employees of the Corporation when the PMC Pension Rules was already in force. They being employees of the Corporation, by operation of Rule 1 of the Pension Rules, they became entitled to the benefits under the Pension Rules. It is evident from the materials on record and from the order of this Court dated 15.05.2017, passed in ***CWJC No. 14307 of 2016 (Avinash Singh vs. The State of Bihar)*** that despite there being clear provision under the PMC Pension Rules, the Corporation was not certain on admissibility of pension under the said Rules for employees of the dissolved PRDA after their absorption in Corporation. A query was made by letter dated 21.01.2017 by the Municipal Commissioner, addressed to the Principal Secretary, Urban Development and Housing Department, Government of Bihar and in response to the said query, after having obtained legal opinion from the Law Department, the Corporation was communicated through letter dated 24.04.2017 of the Department that the salary, pension and other retiral benefits would be payable to the employees of the dissolved PRDA at par with the employees of the Corporation. Nearly two years thereafter, the Municipal Commissioner of the Corporation came out with a resolution in the nature of proposal for implementation of pension scheme for the employees of the dissolved PRDA with effect from 01.01.2019. Accordingly, the proposal was accepted by the Empowered Standing Committee of the Corporation in its meeting held on 16.01.2019 and on that basis it is the case of the Corporation that such employees of the dissolved PRDA are entitled to pension under the PMC Pension Rules with effect from 01.01.2019".

"28.14. Rule 1 of the Pension Rules reads thus :-

"1. Those rules may be called the Patna Municipal Corporation Officers and Servants Pension Rules, 1986 and shall apply to all permanent employees of the Corporation." (Emphasis added)

"29. By operation of Rule 1 of the Pension Rules, the petitioners after having become permanent employees of the Corporation, became entitled to application of the PMC Pension Rules. In view of the abovementioned discussion, since reliance on Rule 4(i) and Rule 4(ii) of the Pension Rules by the Corporation for rejecting the claim of the petitioners for grant of pension under the scheme, in Court's opinion, is completely misplaced, the impugned decision of the Empowered Standing Committee taken in its meeting held on 29.06.2021 is accordingly held to be illegal. The consequential order issued under the signature of the Municipal Commissioner of the Corporation dated 23.08.2021 is also held to be illegal and unsustainable, for the same reason".

16. The Apex Court in ***Manilal Mohan Lal Sah vs. Sardar Sayed Ahmed Sayed Mahmad*** reported in ***(1955) 1 SCR 108*** has held that law is well settled that a defaulting party cannot be allowed to take advantage of its own wrong. The Corporation cannot benefit itself by the mistake to which it itself has contributed. In this regard, another case taking similar view in case of ***Haryana Financial Corporation vs. Rajesh Gupta***

reported in ***(2010) 1 SCC 655***, the Apex Court held that the Corporation in case having acted unfairly could not be permitted to take advantage of its wrong.

17. In view of the facts and circumstances which have been noticed hereinabove, and the conduct of the Corporation despite clear observations made by this Court in previous orders, the Court is of the definite opinion that the Corporation is trying to take advantage of its own lapses which is impermissible.

18. For the reasons noted above, I am of the considered view that the petitioners are entitled to benefits of pension/ family pension under the provisions of the PMC Pension Rules. The provident fund contribution was wrongly paid to them. They ought to have been given pension under the PMC Pension Rules, since on the date of their superannuation there was no reason for the Corporation to deny them the benefit of pension under the PMC Pension Rules. Receiving of provident fund contribution by the petitioners, in Court's opinion, will not amount to waiver of their legal right to receive pension under the statutory Pension Rules in view of the facts and circumstances of the case as noted above. As has been noticed above, the petitioners are ready to refund the provident

fund contribution to the Corporation with interest.

19. From the aforesaid facts, it appears that the decision which was taken in the meeting dated 30.06.2016 by the respondents deliberately not considered the claim of the present petitioner. The said fact has been taken note of by this court while considering the case of one employee Subodh Narain Jha, this Court must appreciate the admitted fact that the petitioner was regularly being paid pension. The decision of the general meeting of the Nagar Panchayat in denying the benefit of pension is held to be without jurisdiction, misconceived and accordingly set aside and quashed for having giving post decisional opportunity. The benefits which was granted to the petitioner till year 2016 is directed to be continued by making payment of pension to the petitioner every month.

20. The consequential order of the recovery from the petitioner after delay of almost 23 years is unwarranted and set aside in view of law settled in case of ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others.*** reported in ***(2015) 4 SCC 334*** and case of **Thomas Daniel Versus State of Kerala and Others** reported in ***2022 SCC OnLine SC 536***. The letter no. 885, dated 09.07.2016 as contained in Annexure-P-12 is also hereby set aside.

21. The Respondents are directed to make payment of entire amount of pension payable to the petitioner from the year 1993 till date.

22. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2023
Transmission Date	