IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.240 of 2021
In
Civil Writ Jurisdiction Case No.18940 of 2018

==

The Municipal Commissioner Municipal Corporation Munger through Shir Srikant Shashtree Aged about 48 Son of Late Sukndeo Prasad Presently posted as Municipal Commissioner, Munger

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing dept., Govt. of Bihar, Patna
2. The District Magistrate, Munger
3. The Chairman Munger Municipal Corporation, Munger
4. Binod Raut @ Binod Mehtor, Son of Late Tunni Raut, Resident of Gumti No. 2, Munger Bazar, P.s.- Kotwali, District- Munger

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Sanjay Prasad, Advocate Mr. Amit Kumar Jha, Advocate
For the Respondent/s	:	Mr. Rajeev Kumar Verma, Sr. Advocate Mr. Y. P. Sinha, AAG-7 Mr. Karuna Nath Sahay, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-08-2023

The petitioner, who retired in 2018 was before the Writ Court seeking the differential pay as per the 4th , 5th & 6th pay revisions, the benefit of ACP, pension from the date of retirement, amount of un-utilized leave and amount of contributory provident fund with interest. The respondent, Munger Municipal Corporation submitted that gratuity and leave encashment has been paid to the petitioner. The learned Single Judge directed consideration of the pay revisions sought for by the petitioner, within a period of three months and also directed payment thereof, failing which 9% interest would be due. As far as the pension is concerned, the learned Single Judge followed ***Sanchari Devi v. Ara Municipal Corporation, (2015) 1 PLJR (SC) 370.***

2. Mr. Anjani Kumar, the learned Additional Advocate General specifically pointed out that *Sanchari Devi* (*supra*) was on the peculiar facts coming out in the said case and the Hon'ble Supreme Court had specifically noticed that it would not have the effect of a binding precedent. It is pointed out that the Bihar Municipal Officers and Servants Pension Rules, 1987 (for brevity Rules of 1987) provided for an option to be given, if an employee has to be paid the pension. The failure to give the option, as per the statutory mandate would be deemed to be an expression of interest to continue the existing contributory provident fund. The petitioner-respondent had never exercised the option. It is also submitted that claims for pay revision were never made when he was in service and it cannot be agitated after his retirement.

3. Learned Senior Counsel appearing for the respondent Mr. Rajeev Kumar Verma, however, would read out *Sanchari Devi* (*supra*) and assert that there is a statutory right to pension conferred on every employee of the Municipality. It is also pointed out that the response to the various queries made under the Right to Information Act would indicate that many of the employees in the other Municipalities within the State of Bihar were granted pension. Annexure-3 and 4 in the writ petition is specifically pointed out to argue that the State authorities directed payment of pension to all the employees in the Municipalities.

4. We have first gone through the decision in *Sanchari Devi* (*supra*) which at paragraph 10 specifically notices that the judgment is delivered on the facts of the present case and will not be treated as a precedent. The Hon'ble Supreme Court had also considered the provisions of Rules of 1987, which according to the Court applied to permanent employees of the Municipalities and Notified Area Committees in the State of Bihar. The Rules statutorily entitled pension to the employees who were continuing in employment on the date of effect of the Rules. Noticing Rule 4 (ii), which was also quoted in the judgment, it was held that Municipal employees on the rolls, as on the date of effect of the Rules and who had subscribed to the provident fund, according to their option would be governed by the pension rules; on such option being exercised within 90 days from the date of framing of the Rules. It was also found that the Rules further provided that if such option in writing in the prescribed forum is not received, it will be deemed to be an option, to be retained under the existing Contributory Provident Fund Rules. It was declared that by the option, a right was given to the employee to either continue with the contributory provident fund or to switch over to the pension under the Rules. On the facts of that case, it was noticed that the Ara Municipal Corporation adopted the resolution only in 19.06.2004 with the provision that pensionary benefits would be applicable only to those employees who had retired from service from the year 2000 onwards. This was held to be in clear contravention of Rule 1 and Rule 4 (ii) of the Rules of 1987. It was also held that if the Corporation had taken the correct view, that the Rules of 1987 would be applicable from 13.11.1987 and the two employees, whose pension was the subject matter of consideration, had not exercised their options then the employees would be found to have had a fair opportunity to exercise the option as per the statute. However, the delayed adoption of the Rules by the Corporation, disabled the employees from exercising their option as per the pension rules and such disability which was against the statutory rule could not be used to deny their statutory right to pension under the Rules, was the finding.

5. In the present case, no such distinct or peculiar facts are available. There is no case that the Munger Municipality did not accept the Rules on its promulgation or that the employees were denied an opportunity to make an option. The first respondent, who is the petitioner in the writ petition, admittedly, did not make any option; in whch circumstance he is deemed to have opted to continue under the contributory provident fund rules. The respondent has also paid the entire retirement dues as per the Contributory Provident Fund Rules and he cannot have a claim for pension under the Rules of 1987.

6. The responses received under the RTI queries does not indicate any employee having been granted pension without the exercise of option under the rules. Further Annexure 3 only directs pension to be paid in accordance to the Rules, if the option under the rules was exercised. Annexure 4 also directs pension to be paid in accordance with law.

7. As far as the differential pay in accordance with the 4th , 5th and 6th pay revisions; it is to be noticed that the 4th pay revision was between 1989-1997, the 5th between 1997-2007 and the 6th was from October 2007 to the date of retirement. These were all pay revisions which came within the period of service of the respondent. The respondent did not seek for such differential pay when he was in service and within a reasonable time from the revisions being effectuated. As far as the un-utilized leave and contributory provident fund, the Munger Municipality submitted before the learned Single Judge that the amounts have been paid.

8. We find the reliance placed by the learned Single Judge on *Sanchari Devi* (*supra*) to be not possible, as a binding precedent and also by reason of the distinctive facts noticed in the said decision being not applicable in the respondent's case. The respondent is not entitled to the pay revisions, for reason of the delay occasioned in seeking the same as also the pension; for which he failed to exercise the option as per the rules which granted pension to the employees.

9. The L.P.A. stands allowed, the impugned judgment is set aside and the writ petition, as a necessary consequence is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.08.2023
Transmission Date	