IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1339 of 2018
In
Civil Writ Jurisdiction Case No.4311 of 2015

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Parshuram Jha, Son of late Rajendra Jha, resident of Mohalla- Adarsh Chowk, Ward No. 2, Police Station- Dumra, Post Office- Sitamarhi Head Post Office, District- Sitamarhi Bihar.

... ... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Principal Secretary, Department of Nagar Development and Housing, Government of Bihar, Patna.
4. The Joint Secretary, Department of Nagar Development and Housing Government of Bihar, Patna.
5. The Deputy Secretary-Cum-Director, Department of Nagar Development and Housing , Government Bihar, Patna.
6. The Under Secretary, Department of Nagar Development and Housing , Government of Bihar, Patna.
7. The Collector, District-Sitamarhi.
8. The Sub-Divisional Officer-cum-Chief Executive Officer, Sadar, District-Sitmarhi.
9. The Executive Officer, Nagar Panchayat Dumra, District - Sitamarhi.
10. The Chairman, Nagar Panchayat Dumara, District- Sitamarhi.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajendra Lal Das, Advocate
For the State	:	Mr.Yogendra Prasad Sinha, AAG-7 Mr. Shankar Kumar, AC to AAG-7
For Nagar Nigam	:	Mr. Surendra Kishore Thakur, Advocate Mr. Subodh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-02-2023

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present L.P.A. is directed against the judgment dated 13.08.2018 passed in CWJC No. 4311 of 2015 by the learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the appellant has been dismissed.

3. In the writ petition, the appellant-petitioner has sought following relief :

> *"(A) For quashing of the order dated 26.09.2012 of the Nagar Panchayat Dumra Presided by the Chairman, Nagar Panchayat Dumra whereby the decision had taken to grant Vth Pay Revision Scale with effect from October, 2012, mentioned at Agenda No. 11 under the proceeding of the General Meeting of the Nagar Panchayat Dumra, held on 26.09.2012, instead of with effect from 01.01.1996 under the Rule and Circulars of the Government of Bihar which is payable with effect from 01.04.1997.*
> *(B) For granting of Vth Pay Revision Scale effective from 01.01.2006 of the employees of Nagar Panchayat Dumra including the petitioner as per the Rule and Circulars of the Government of Bihar which is also applicable to the autonomous bodies of employees.*
> *(C) For granting of arrear of salary after sanctioning of the Vth and VIth Pay Scale effective from 01.01.1996 and 01.01.2006*

respectively with consequential monetary benefit thereon to the petitioner who is now retired employees of the Nagar Panchayat Dumra, Sitamarhi from the post of Clerk-cum-Cashier after his successful service tenure about 36 years in the Nagar Panchayat Dumra, District-Sitamarchi (Bihar).

(D) For any other relief or reliefs to which the petitioner found entitled for from the concerned Respondents No. 9 and 10".

4. Brief facts of the case are that the appellant was appointed on the post of Clerk and he joined in the office of the Sitamarhi Municipality Notified Area, Dumra on 12.07.1976 and later on Dumra Notified Area was converted into Nagar Panchayat, Dumra, which was an autonomous body under the control of Ex-Officio Chairman, Sub-Divisional Officer, Sadar, Dumra at its own pay scale. The employees of such local bodies had been facilitated the equivalent pay scale similar to the State Government employees vide memo dated 29.06.1990 issued by Under Secretary, Nagar Development and Housing Department, Bihar, Patna and, accordingly, the appellant was granted old pay scale w.e.f. 01.01.1986. The State Government vide its notification dated 24.08.1990 further extended the same facilities to employees of local body on par with government

employees. When the State Government accepted the recommendation of 5th Pay Revision to its employees with effect from 01.01.1996 and had granted its monetary benefit with effect from 01.04.1997, the appellant filed a representation dated 10.01.1998 before the Sub-Divisional Officer-cum-Chairman, Dumra Notified Area for granting 5th Pay Revision Scale alike the Bihar State Government Employees with effect from 01.01.1996, but no action has been taken. When the employees of the Government of Bihar had again been granted 6th Pay Revision Scale and the appellant was working in the old pay scale granted to him w.e.f. 01.01.1986, being aggrieved, he again filed a representation dated 15.06.2009 before the Executive Officer, Nagar Panchayat, Dumra, Sitamarhi for granting 5th and 6th Pay Revision Scale with effect from 01.01.1996 and 01.01.2006, but again no action was taken on it and remained pending. Thereafter, the appellant again filed a representation dated 11.01.2012 for granting him 5th and 6th pay revision scale before the Executive Officer, Nagar Panchayat, Dumra, Sitamarhi as he was due to retire from service on 31.01.2012, but all in vain. On 26.09.2012, the issue of grant of 5th and 6th pay revision was placed before the Board, the then Nagar Parishad, Sitamari, who in turn resolved to extend the facility of 5th pay revision with effect from 01.10.2012 and as such the facility of 5th pay revision to the employees of the local body (now Municipality, Sitamarhi) has been extended with effect from 01.10.2012.

5. The appellant had moved earlier before this Court by filing CWJC No. 14830 of 2013 for seeking pension and other benefits including the benefit of 5th Pay Revision Committee, which was dismissed vide order dated 27.08.2014 passed by a learned Single Judge of this Court.

6. Thereafter, the petitioner (appellant herein) preferred CWJC No.4311 of 2015. The learned Single Judge dismissed the appellant's writ petition. Hence, the present L.P.A.

7. The learned counsel for the appellant has submitted that since the appellant has all along been treated at par with the other government servants in the matter of all service benefits, the decision of the Board to implement the recommendations of the 5th Pay Revision Committee with effect from October, 2012 is not sustainable. The date of implementation with effect from October, 2012 has been assailed since the appellant has retired in January, 2012 and thus, under Resolution dated 26.09.2012, the appellant stands excluded. The learned counsel further submitted that the benefits arising out of the recommendations

of the revised scale made under 5th Pay Revision Committee should have been implemented with effect from 01.01.1996 i.e. the date on which it was made applicable to the State Government employees and the employees of the Nagar Panchayat and Urban Municipal bodies were asked to be treated similarly.

8. *Per contra*, the learned counsel for the respondents has submitted that in the meeting dated 26.09.2012, the matter was placed for consideration of acceptance of 5th Pay Revision in which the recommendation of 5th Pay Revision was accepted by the Nagar Panchayat, Dumra with effect from 01.10.2012 and at that time, the appellant had already superannuated from service, whereas the recommendation of 6th Pay Revision was not accepted by the Nagar Panchayat, Dumra in its meeting dated 31.05.2013 due to poor financial condition of the Nagar Panchayat. The State Government did not issue any direction or release the fund to the Municipality for the purpose of granting the benefit of 5th Pay Revision or 6th Pay Revision to its employees rather it was directed that the Municipalities have to make payment from their own sources of income to grant the benefits of such revision to its employees taking into consideration their financial condition. Since the financial

condition of the Nagar Panchayat, Dumra is not good, therefore, the Nagar Panchayat, Dumra implemented the recommendation of 5^{th} Pay Revision with effect from 01.10.2012 and did not accept the 6^{th} Pay Revision. Hence, no interference in the impugned judgment of learned Single Judge is called for in the facts and circumstances of the case.

9. The core issue involved in this case is whether the appellant was entitled to the benefits of 5^{th} and 6^{th} pay revision at par with the other employees of the State Government.

10. From the resolution dated 13.04.2017, it transpires that earlier a Notification No. 329 dated 16.01.2010 was issued by the Urban Development and Housing Department to consider grant of revised pay with effect from 01.01.1996 and 01.01.2006 to the officers and staff of Urban Bodies at par with the Government employees along with other permissible perquisites and it was also made clear that before granting such pay revisions and perquisites, the Urban Bodies were at liberty to take a decision after assessing their financial capability and it was further made clear that the Government would not be liable for financial burden arising out of such implementation.

11. From the resolutions dated 08.02.1999 and 21.01.2010, respectively, the recommendation of the 5^{th} and 6^{th}

Pay Revision Commission were adopted with effect from 01.01.1996 and 01.01.2006 while extending monetary benefit from 01.04.1997 and 01.04.2007, respectively. Perusal of resolution dated 13.04.2017 of Urban Development and Housing Department shows the Government decided to allow salary structure of 5th and 6th Pay Revision Commission with effect from 01.01.1996 and 01.01.2006 with monetary benefit with effect from 01.04.1997 and 01.04.2007, respectively to the employees of the Municipalities with the rider that the extra burden arising out of these pay revisions would be borne by the municipal bodies from their internal resources and the State Government would not provide any funds under these headings for this purpose. It has been further ordered that the arrears of difference of salary would be paid in easy installments by the municipal bodies through their internal resources. It has been further ordered that such pay revision would be granted only after verification of the same by the Urban Development and Housing Department. It was again reiterated that for the financial burden arising out of the aforesaid pay revisions, the Government would not be responsible.

12. Perusal of aforesaid resolution makes it clear that the Urban Development and Housing Department, which is over all supervisory and controlling body over the Nagar Panchayat, issued certain directions regarding implementation of 5th and 6th Pay

Revision Commission to the employees of such Nagar Panchayat, of course, subject to their capacity to bear the financial burden arising out of it. If the Government has issued directives after taking a resolution, it appears harsh on the employees of Nagar Panchayat/Municipal Bodies that the benefit of pay revision had been kept pending for years though the said benefits were extended to the Government employees vide respective resolutions taken in the year 1999 and in the year 2010 with effect from 01.01.1996 and 01.01.2006 with monetary benefit with effect from 01.04.1997 and 01.04.2007, respectively. On the ground of lack of fund, the employees of municipal bodies could not be left in lurch since the Government was duty bound to maintain the good financial health of the municipal bodies and to keep them viable under the mandate of Constitution specially Article 243H (c) and even the municipal body where the appellant had been working was under an obligation to extend the benefits of 5th and 6th Pay Revision Commission to its employees within a reasonable time being a model employer.

13. It has been submitted on behalf of the respondents that Nagar Panchayat, Dumra and subsequently Nagar Nigam, Sitamarhi are autonomous bodies and vide a resolution taken in its meeting dated 26.09.2012, decided to extend the benefit of 5th Pay Revision to its employees with effect from 01.10.2012 and the said

resolution was passed pertaining to the request of Urban Development Department. As per the respondents, the said decision was taken having regard to the fact that the municipal body was to bear the excessive financial burden on its own for extending the benefit of 5^{th} Pay Revision to its employees and these cut off date 01.10.2012 was arrived at. Thus, economic condition of the Nagar Panchayat, Dumra was considered while taking a decision regarding extension of benefits of 5^{th} Pay Revision to the employees with effect from 01.10.2012. Further contention is that the municipal body was not in a position to carry this extra financial burden to the employees who retired after 01.01.1996. However, we do not think the municipal body or the government could shirk their responsibility taking excuse of lack of fund. As observed earlier, the State as well as Municipal Bodies are duty bound to ensure that if the beneficial provision is ordered to be extended to its employees with a policy decision fixing the date, different sets of employees working in different bodies, who have been treated at par while granting benefits, could not be left to the mercy of their respective employers when the State needed to intervene and ensure equitable apportion of burden arising out of such benefits being extended to those employees. On this account, we do not find any merit in the contention of the respondents.

14. However, another relevant fact which has been brought to the notice of this Court in different counter affidavits filed by the respondents has not been stressed upon by the parties at the time of hearing of the matter. Annexure R/B appended with the 2nd supplementary counter affidavit filed on behalf of the respondent nos. 8 and 9 shows the appellant had earlier moved before this Court by filing CWJC No. 14830 of 2013 with the claim or demands for payment of pension to him with other claim of the appellant with regard to extension of 5th pay revision. The learned Single Judge did not find any merit in the aforesaid petition and dismissed the same vide order dated 27.08.2014. The appellant did not challenge the aforesaid order before any court of competent jurisdiction and thus, this order has attained its finality. The appellant again filed another writ petition bearing CWJC No. 4311 of 2015 which was again dismissed vide order dated 13.08.2018 by a learned Single Judge which is subject matter of challenge in the instant LPA.

15. Though in the light of discussions made here-in-above, in principle this Court finds the appellant to be entitled for the benefits of 5th and 6th Pay Revision Commissions' Recommendations. However, the claim of the appellant for grant of benefits of 5th Pay Revision was already rejected by a learned Single Judge vide order dated 27.08.2014 passed in

CWJC No. 14830 of 2013, which in absence of any challenge has attained finality. The appellant could not re-agitate the same matter before this Court in another writ petition so far as grant of benefit of 5th Pay Revision Commission is concerned. Hence, the claim of the appellant for grant of 5th Pay Revision could not be acceded to and is hereby rejected.

16. However, the appellant is found entitled to the benefits of 6th Pay Revision with effect from 01.01.2006 and the respondents are directed to ensure the payment of arrear arising out of 6th Pay Revision Commission's recommendation to the appellant within three months, failing which they will be liable to pay interest @ 9% per annum.

17. In the light of aforementioned observations and directions, the present LPA stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
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