

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15331 of 2023

=====

Dashrath Ram S/o Baleshwar Ram, Resident of Ward No. 07, Kashipur, P.O.
and P.S.- Kashipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Municipal Commissioner, Samastipur Municipal Corporation, Samastipur.
3. The Standing Committee through the Chairman, Municipal Corporation, Samastipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha, Advocate
		Mr. Vikash Kumar Jha, Advocate
For the Respondent/s	:	Mr. Shiv Kumar, AC to GA-3

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 11-01-2024

Heard Mr. Satish Chandra Jha, learned counsel appearing on behalf of the petitioner, Mr. Ashok Kumar, learned counsel for the Municipal Corporation, Samastipur and Mr. Shiv Kumar, learned AC to GA-3.

2. The petitioner claimed to be superannuated w.e.f. 31.08.2015, as a sweeper from the service of, the then, Nagar Parishad, Samastipur, at present, Municipal Corporation, Samastipur, has filed the present writ petition seeking a direction upon the respondent municipal corporation to ensure payment of all the retiral benefits of the petitioner, payable to him under different heads, like, provident fund, gratuity, leave



encashment, GIC etc, after fixing the pay and pension, accordingly, in the light of revised 5th and 6th Pay Scale, including, arrears amount of revised salary and pension with interest.

3. A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the Municipal Corporation, Samastipur, stating therein, that the concerned record and service book of the petitioner and other employees were in the custody of Ashok Kumar Gupta, who was, the then, head clerk cum accountant of the Municipal Corporation, Samastipur and it appears that the same has been misappropriated by him, resulting into lodging of the FIR, apart from dismissal and proceeding, which culminated into his dismissal. It is further submitted on behalf of the Municipal Corporation that letters have been issued to the petitioner that, in case, he is in possession of any of the papers, showing his appointment/regular service, the same be placed before the office of the Corporation, so that further action be taken, but the same has not been done.

4. In this regard, a guideline has also been sought for from the State Government for grant of payment of salary and for grant of benefit of 5th and 6th pay revision, in absence of the



service book and records of the employees of the corporation vide Letter No. 1034 dated 18.06.2022, and further vide Letter as contained in Memo No. 3390 dated 18.11.2023. However, till date, the Corporation has not received any guidelines.

5. On the last occasion, when the matter was taken up, the learned counsel for the petitioner submitted before the Court that identically situated persons, who were also appointed like the petitioner, they have been allowed all the retiral benefits. In response to the aforesaid submissions, supplementary counter affidavit has been filed, bringing on record the name of five of the similarly situated persons, who have been allowed the admissible retiral dues, however, it is submitted that the payments have been made in compliance of the order/direction of the Hon'ble Court.

6. At this stage, Mr. Jha, learned counsel for the petitioner submits that irrespective of all the aforesaid odds, it has not been denied by the Municipal Corporation that the petitioner was not the employee of Municipal Corporation and this is also the admitted fact that one "Ashok Kumar Gupta", the head clerk-cum-accountant of Municipal Corporation, Samastipur was the custodian of all the records of the employees and thus, in any case, the petitioner cannot be held



responsible for disappearance or loss of service book and document/paper. He next submitted that, in case of any loss or disappearance of service book, the Municipal Corporation, who was/is the custodian of record/service book is under the obligation to recast/reconstruct service book of the petitioner and ensure the payment of the admissible retiral dues. He next submits that such submission is being made on the premise that the petitioner has been paid certain retiral dues under the head of provident fund, gratuity and LIC, accepting him to be a permanent employee of the Corporation.

7. In view of the aforesaid submissions made at the bar, as also the materials available on record, this Court directs the Municipal Commissioner, Samastipur, Municipal Corporation to take all endeavours to ensure the recasting of the service book of the petitioner and after receipt of the guidelines by the State Government, ensure the payment of all the admissible dues, on the basis of the newly reconstructed service book. The entire exercise must be completed preferably within a period of 12 weeks, from the date of receipt/production of a copy of this order.

8. This disposes the writ petition.

9. It is needless to observe that the respondent State



shall also render assistance and issue guidelines in this regard,
in order to facilitate the payment of the petitioner.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024.
Transmission Date	NA

