IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2056 of 2022

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1. Jahangir Ali, S/o Late- Shamlul Haque @ Shamashul Haq, R/o- Chanpatia, P.O. and P.S.-Chanpatia, District- West Champaran.
2. Kanhaiya Mishra, S/o Late- Upendra Mishra, R/o Village and P.O.- Satwariya, P.S.- Lauriya, District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Govt of Bihar, Patna.
2. The District Magistrate, West Champaran at Bettiah.
3. The Nagar Panhayat Chanpatia through its Chairmen, Chanpatia, West Champaran.
4. The Executive Officer, Nagar Panchayat, Chanpatia, West Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Akhileshwar Kumar Shrivastva, Advocate Ms. Amrit Kriti, Advocate
For the Respondent/s	:	Mr. Yogendra Pd. Sinha, AAG- 7 Mr. Rajeev Kumar Sinha, AC to AAG- 7
For the NP Chanpatiya	:	Dr. Amitesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 13-02-2025

Heard Mr. Rajendra Narain, learned Senior Advocate for the petitioners, Dr. Amitesh Kumar, learned Advocate for the Nagar Parishad, Chanpatiya, West Champaran and Mr. Rajeev Kumar Sinha, learned Advocate for the State.

2. The issue involved in the present writ petition is confined to the entitlement of the petitioners for pension and its arrears.

3. The petitioners, who superannuated from the post

of Amin and Tax Daroga way back in the year 2011 and 2009 respectively, have approached this Court seeking a direction upon the respondents, especially respondent no.4 to pay regular pension, which has been illegally stopped/withheld since July, 2019.

4. Learned Senior Advocate for the petitioners has contended that on being superannuated from the aforenoted post, after attaining the age of superannuation, as has been disclosed hereinabove, the calculation of the monthly pension as well as arrears thereof was done at the level of respondent no.4 and with respect to petitioner no.1, the arrears of pension was calculated to the tune of Rs.10,54,641/- and against the said due pension, Rs.3,00,000/- was paid to the petitioner and the rest due amount of Rs.7,54,641/- is still unpaid. Likewise, calculation of arrears of pension of petitioner no. 2 was also finalized and fixed at Rs.13,200/- and since 01.11.2009 to 30.06.2019, arrears of pension was calculated, which comes to Rs.12,42,465/- and against the aforesaid due amount only Rs.2,00,000/- has been paid and rest due amount of Rs.10,42,465/- is yet to be paid.

5. It is contended by the learned Senior Advocate for the petitioners that after coming into force of Bihar

Municipal Officers and Servants Pension Rules, 1987 (hereinafter referred to as 'the Rules, 1987'), the scheme of pension was formulated for the employees of the Corporation and thus the petitioners are also entitled to get pension in view of the Rules, 1987 as also the mandate of the Hon'ble Supreme Court in the case of ***Sanchari Devi & Ors. v. Ara Municipal Corpn. & Ors.***, reported in ***(2014) 15 SCC 648***.

6. The learned Senior Advocate for the petitioner urged that the Hon'ble Supreme Court in no uncertain term held that 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. Referring to para.7 of the aforenoted decision, it has further contended that the Hon'ble Supreme Court has made it clear that the option was, therefore, a right of the employee either to continue with the contributory provident fund or to switch over to pension under the Rules and the statutory right of the municipal employee to receive pension was not dependent upon the exercise of option as held by the High Court. The Hon'ble Court indicated that by virtue of what is provided in Rule 1 of the Rules, every permanent employee of

a Municipality or Notified Area Committee, if he had not retired before the date of coming into effect of the Rules and had not received part or whole of provident fund contribution was statutorily entitled to the pension.

7. It is lastly contended that though the share of the provident fund amount of the petitioners was deducted from their salary right from very beginning, but there was no share on the part of the employer concerned and, as such, there was a clear violation of Sections 13 and 14 of the Rules, 1987.

8. Per contra, learned Advocate for the respondent Corporation dispelling the aforenoted contention, referring to the averments made in the counter affidavit as well as supplementary counter affidavit submits that, in fact, the share of Municipal Corporation had been duly deposited in the provident fund account, whereas there is no share from the petitioners' side. It is also urged by the learned Advocate for the Municipal Corporation that since the petitioners have never opted for the pension in terms of Rule, 1987, thus in no circumstances, the petitioners may be allowed pension. Moreover, the claim of the identically situated persons was duly considered at the level of the Principal Secretary, Urban Development & Housing Department, Government of Bihar and

the same came to be rejected in the light of Rule 4 of Rules, 1987, which clearly stipulates that in case of non-opting for the pension scheme prior to cut off date, the benefit of pension could not be extended to the employees. It has further been clarified that after the period prescribed for giving option, there is no provision of extension of the time for giving further option.

9. The contention of the learned Senior Advocate for the petitioners is also noted herein that the counter affidavit as well as supplementary counter affidavits are only confined to petitioner no.1. So far petitioner no.2 is concerned, there is no whisper as such.

10. Having heard the learned Advocate for the respective parties and on discussions of the materials available on record, the moot question for consideration before this Court is confined with regard to entitlement of the petitioner for pension.

11. On the last occasion when the matter was taken up, this Court had directed the Municipal Corporation to clarify the position as to whether the employer has deposited his equal contributory share in provident fund account of the petitioners, whereas the same contributory provident fund share has been

regularly deducted from the salary of the petitioners.

12. 4th Supplementary counter affidavit has been filed on behalf of respondent nos. 3 and 4 containing a detailed chart from the year 1994 to February, 2011 reflecting the PF/CPF payment described in a tabular form.

13. It would be worth while to note that the Rules, 1987 came into force and made applicable to all permanent employees of the Municipalities and Notified Area Committee, by the date it is made effective. By the said Rules, 1987, for the first time the scheme of pension was introduced with stipulation as referred under Rule 4 of the Rules, 1987.

14. The aforenoted Rule, qua, the entitlement of the employees was under consideration and duly considered by the Hon'ble Supreme Court in the case of **Sanichari Devi** (supra) where the Hon'ble Supreme Court referring to Rules 1 and 4(ii) observed that the Rules, 1987 applied to permanent employees of the Municipalities and Notified Area Committee in the State of Bihar and the employees of Ara Municipal Corporation were held statutorily entitled to pension under the Rules. The Hon'ble Supreme Court further clarified that 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.

15. To crystallize the issue posed before this Court, it would be worth benefiting to encapsulate para. 7 of the said decision.

> "**7.** In the facts of the present case, the Ara Municipal Corpn. itself had taken a view that the Rules were not applicable until a resolution is adopted by the Corporation and adopted the resolution only on 19-6-2004 saying that the pensionary benefits of the Rules will be given to those employees who had retired from service from the year 2000 onwards. The resolution was clearly in contravention of Rule 1 as well as Rule 4(*ii*) of the Rules. If the Corporation had taken the correct view that the Rules would be effective from 13-11-1987, the two employees Ramashish Prasad and Vishwanath Ram who were employees of the Ara Municipal Corpn. on that date, could have exercised their respective options to switchover to pension scheme under the Rules. This is a case where the Ara Municipal Corpn. by taking the view that the Rules were not applicable until adopted by the Corporation had disabled the aforesaid two employees from

> exercising their option and cannot take advantage of such a disability caused by the Municipal Corporation itself and deny their statutory right to pension under the Rules. Moreover, the two employees have also not received part or whole of the provident fund contribution although they have retired in 1996 and 1997 and hence they could not have been deemed to have exercised their option to retain existing provident fund."

16. Bare reading of the aforenoted decision, though it has been clarified that the decision rendered in the said case will not be treated as a precedent applicable to all other cases, the facts of which are not before this Court; and thus extended the benefit to the appellants, as they have not received part or whole of the provident fund contribution, although they had retired in 1990 and 1997 and hence the Hon'ble Supreme Court ruled that they could not be deemed to have exercised their option to retain existing provident fund. In such circumstances, the impugned order of the learned Division Bench was set aside with a direction to the respondent Corporation to extend the pensionary benefits, including pension and family pension in accordance with the Rules.

17. In the case in hand, the petitioners have taken a specific stand that the respondent no.4 has deliberately violated the provisions of Sections 13 and 14 of the Rules, inasmuch as from the commencement of Rules, 1987 till date of superannuation of the petitioners, the respondent no.4 has not deposited his equal contribution share fund in provident fund account of the petitioners, whereas the same contributory share fund has been regularly deducted from the salary of the petitioners. Despite the counter affidavit as well as supplementary counter affidavits when the clear stand of the respondents did not meet to the aforenoted contention of the petitioners, this Court vide its order dated 09.01.2025 directed the Municipal Corporation to clarify the position as to whether the employer has deposited his equal contributory share in the provident fund account of the petitioners, whereas the same contributory funds share has been regularly deducted from the salary of the petitioners.

18. In compliance with the order of this Court 4th supplementary counter affidavit has been filed on behalf of respondent nos. 3 and 4 containing the chart from the year 1994 to February, 2011, which only confined to petitioner no.1 showing deposit of employer's share to the provident fund

account for the year 1994 to 2011. The answering respondent also averred that the provident fund/CPF , the petitioners may file a detailed representation and mention his date of joining and retirement and from the record if more dues be seen then they will be paid in priority basis in accordance with law.

19. This Court is appalled to see the casual and cavalier approach of respondent Municipal Corporation. Admittedly after superannuation of the petitioners, the pensions of the petitioners were finalized and fixed at the rate of Rs.13,200/- and accordingly arrears of pension were calculated and certain amounts have been paid. At the relevant point of time, when the pension was accorded, the plea, which has now been taken before this Court had never been raised that the employer share has also been deducted in the provident fund account. For the first time, the respondent has come out with the chart that too only confined to petitioner no.1

20. From the discussions, made hereinabove, this Court finds that the only fact, which is required to be examined at the level of the respondent Municipal Corporation, is as to whether the petitioners have received part or whole of the provident fund contribution after their superannuation and in case the answer is negative, in such circumstances, the

petitioners shall be entitled to get pension as was accorded to them long back in the year 2019.

21. In view of the legal position crystallized in the case of **Sanichari Devi** (supra), this Court reprimand the action of the respondents and while allowing the writ petition relegate the matter afresh to the concerned respondents to examine the fact as to whether the petitioners have ever received part or whole of the provident fund contribution.

22. In case, the stand of the petitioners find favour that at no point of time, they have been extended provident fund amount, ensure all the benefits of pension and the arrears thereof, pursuant to the fixation of pension, as has already been done in the year, 2019 itself.

23. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2025
Transmission Date	NA