

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1352 of 2017

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Tuniya Devi wife of Late Baban Ram, Resident of Mohalla- Malgodam,
Station Road, Ara, P.O.- Ara, P.S.- Nawada, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Nagar Nigam Ara The Municipal Corporation, Ara Bhojpur.
3. The Municipal Comissioner Nagar Ayukta Municipal Corporation, Ara, Bhojpur.
4. The Executive Officer, Ara Nagar Nigam, Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gopal Govind Mishra, Advocate
For the State	:	Mr. Nalin Vilochan Tiwary, AC to GA-9
For the Corporation	:	Mr. Bishwa Bibhuti Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 21-02-2025 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Municipal
Corporation, Ara.

2. The present application has been filed seeking a
direction from the respondent authority for the payment of
arrears of salary to the petitioner for the period from 31-03-2011
to 18-10-2014 for the post of sweeper in the office of the
Municipal Commissioner, Ara, Bhojpur, along with interest at
the rate of 12% *per annum* for the delayed payment, in the
interest of justice.

3. Learned counsel for the petitioner submits that the



petitioner was appointed as a sweeper in the Municipal Corporation, Ara, on 01-04-1982 in Bhojpur District. She was forcibly retired from the service of the Municipal Corporation vide memo number 1104 dated 31-03-2011, effective from 31-03-2011. Subsequently, the petitioner filed C.W.J.C. No. 5892/12, which was disposed of vide order dated 27-03-2012, with a direction to the Commissioner, Patna Division, Patna to decide the matter by passing a reasoned order in accordance with law. Learned counsel further submits that the petitioner filed Miscellaneous Appeal No. 171/2012 in the Court of Commissioner, which was allowed with a direction to constitute a medical board to determine the petitioner's age. Pursuant to the said order, a medical board was constituted, and her age was determined to be between 54 and 56 years. Based on the medical board's report regarding the petitioner's age, memo number 1804 dated 17-10-2014 was issued by the respondent authority, which allowed the petitioner to remain in service until 31-05-2019.

4. Learned counsel for the petitioner submits that the period during which the petitioner was directed to be retired with effect from 31-03-2011 until her fresh joining on 18-10-2014 has not been compensated. Counsel further submits that



the entire litigation during the said period was initiated at the instance of the Corporation, and it is not the fault of the petitioner. Therefore, after the litigation, when she was permitted to join, her services during this period should be treated as continuous, and payment should be directed accordingly.

5. Learned counsel for the Municipal Corporation, Ara, submits that, admittedly, the records indicate that from 31.03.2011 to 17.10.2014, the petitioner did not work for the Corporation. During this period, she was engaged in litigation; therefore, the Corporation has rightly decided not to make any payment for the said period.

6. Learned counsel for the State submits that a counter affidavit has been filed on behalf of the State annexing order dated 04.05.2015 passed by the Hon'ble Division Bench of this Court in LPA No. 960 of 2007 (The State of Bihar vs. Bhuwan & Anr.), wherein it has been held that the Municipal Corporation is a State entity, and the Bihar Municipal Act has been enacted for specific purposes with special provisions. Special budgets have been allocated for the Municipal Corporation. Therefore, it is the Municipal Corporation that must fulfill all legal obligations, if any, and not the State.



Learned counsel for the State also refers to the Full Bench decision of this Court in the case of ***Manikant Pathak vs. The State of Bihar***, reported in ***1997 (1) PLJR 664***, wherein it was held that '*the employee cannot maintain the claim against the State Government; their claim can only be against the Corporation*'.

7. In light of the submissions made, it transpires to this Court that the primary issue in question is that the Municipal Corporation issued a retirement letter to the petitioner, effective from 31.03.2011. Subsequently, due to the intervention of this Hon'ble Court in CWJC No. 5892 of 2012, the petitioner's services were restored, and she rejoined on 18.10.2014 and the petitioner retired in the year 2018. The period of service from 18.10.2014 to the date of retirement is not in dispute. The contention arises regarding the period from 31.03.2011 to 18.10.2014, during which the petitioner was restrained from working due to the actions of the Municipal Corporation, Ara, and for which payment has not been made.

8. In view of this Court, once the action of the Municipal Corporation was set aside by this Hon'ble Court and the petitioner was directed to join, the Municipal Corporation, having failed in the litigation, cannot treat the period of non-



work as a gap period. The situation arose due to the actions of the Municipal Corporation, and therefore, this Court directs the Municipal Corporation, Ara to make payment to the petitioner for the period from 31.03.2011 to 18.10.2014 within three months from the date of receipt/production of a copy of this order. If the payment is not made within the specified period, the Corporation shall pay an interest of 6% *per annum*, calculated from the date of this Court's order until the payment is made in full.

9. With the aforesaid observation and direction, the writ petition stands allowed.

(Dr. Anshuman, J)

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