
(2018) 06 JH CK 0098

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5719 of 2016

Bisheshwar Nand Goswami

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Bihar Municipal Officers and Servants Pension Rules, 1987 — Section 12, 15, 16, 19, 20, 43, 44

Citation : (2018) 06 JH CK 0098

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Rajendra Prasad, Chaitali C. Sinha, Arpan Mishra

Final Decision : Disposed Off

Judgement

1. Aggrieved of order dated 07.09.2016, the petitioner seeks a direction upon the respondent-Dhanbad Municipal Corporation to calculate and fix his

pension on the basis of his last drawn salary in the last ten months prior to his superannuation from service.

2. The petitioner, who was appointed as Lower Division Assistant on 01.04.1971 under Dhanbad Municipal Corporation, was promoted to the post of

Head Clerk w.e.f. 01.01.2002. He has superannuated from service w.e.f. 01.04.2007. He approached this Court in W.P.(S) No.3559 of 2015 for

a similar relief, that is, for calculation and payment of pension on the basis of last ten months salary drawn by him. The writ petition stood

disposed of by an order dated 05.08.2015 with a direction to the respondent-Dhanbad Municipal Corporation to take a decision on the

petitioner's claim within a period of 10 weeks. In purported compliance of the Writ Court's order, the respondent-authority has passed an

order dated 07.09.2016 by which his claim for pension was declined. This is the order under challenge. During pendency

of this writ petition several affidavits have been filed by the parties and now the respondent-Dhanbad Municipal Corporation has pleaded that it has

taken a decision to grant pension to the petitioner in terms of Rule 16 of the Bihar Municipal Officers and Servants Pension Rules, 1987. In its

counter-affidavit dated 16.02.2017, the respondent-Dhanbad Municipal Corporation has taken a stand that in terms of Rule 19 the petitioner is entitled

for pension in the following manner; (a) Upto first Rs.1,000/- - 50% of pensionable pay, (b) Net Rs.500/- of pensionable pay - 45% of

pensionable pay, (c) Balance of pensionable pay above Rs.1,500 - 40% of pensionable pay and as per Note of Rule 19 the monthly pension

will be subject to overall ceiling of Rs.1,500/- per month.

3. Petitioner's pension has been calculated in the aforesaid terms and it has been found that he is entitled for pension @ Rs.3,465/- per month

[Rs.1500+Rs.750 (50% of the DA)+Rs.1215 (54% of DA)]. The respondent-Corporation has further pleaded that a sum of Rs.55,830/- has been

paid to the petitioner on 21.01.2010 on account of GPF. Further stand of the respondent-Corporation is that previously pension of the petitioner was

calculated and fixed contrary to what has been provided under Rule 16 and in fact the petitioner who is entitled to get pension @ Rs.3,465/- per month

has been paid pension @ Rs.7,673/- and Rs.12,250/- for the months of February 2011 and July 2014 respectively. In fact total amount of pension

payable to the petitioner for the period between 01.04.2007 to 13.01.2017 would come at Rs.4,08,870/-, whereas he has been paid Rs.2,67,870/- in

excess to what he is entitled for. Stand taken by the respondent-Corporation is reflected in the paragraph nos.15 to 20 of the counter-affidavit dated

16.02.2017 which are reproduced below:

15. That I say that in accordance with the aforesaid Rules, it was decided by the said Committee that the petitioner is entitled for pension of

Rs.1500+Rs.750 (50% of the DA)+Rs.1215 (54% of DA)=Rs.3,465/- per month.

16. That I say that on retirement the petitioner paid a sum of Rs.55,830/- towards GPF on 21.1.2010 and Rs.60,913/- towards GPF is due to be paid to

the petitioner.

17. That I say that the pension of the petitioner has been calculated ignoring

Rule 16 of the Bihar Municipal Officers and Servants Pension Rules, 1987 due to which a sum of Rs.2,67,870/- excess was paid.

18. That I say that according to the said Rules the petitioner is entitled to be paid pension at the rate of Rs.3,465/- per month and he was paid

Rs.7673/- and Rs.12,250/- for the months of February, 2011 and July, 2014, which is excess.

19. That I say that according to the said Rules, the petitioner is entitled for a sum of Rs.4,08,870/- for the period from 1.4.2007 to 13.1.2017 (total 118 months) towards pension.

20. That I say that the petitioner has illegally occupied the quarter for 118 months (1.4.2007 to 13.1.2017) and for which market rate has been

calculated at Rs.4,000/- per month, which comes to Rs.4,72,000/-, and the same is required to be recovered from the petitioner.â??

4. Controverting the aforesaid stand taken by the respondent-Corporation, the petitioner has filed supplementary-affidavits dated

16.01.2018, 19.02.2018 and a rejoinder-affidavit dated 27.06.2018. The petitioner has pleaded that he has drawn net salary @ Rs.10,208/- which is the last pay drawn by him.

5. Mr. Rajendra Prasad, the learned counsel for the petitioner contends that under Rule 43 of Bihar Municipal Officers and Servants Pension Rules,

1987 any increase in pension which would include the pay revisions shall be admissible to the Municipal employees and under Rule 44 if the amount of

pension is revised in case of government servant, it shall be admissible to Municipal employees also and while so, calculation of pension of the

petitioner in unrevised pay-scale is contrary to the aforesaid rules. To fortify his contention the learned counsel for the petitioner has referred to

order passed by a learned Single Judge of this Court in W.P.(S) No.6066 of 2012.

6. The pension rules are applicable to the permanent employees of the Municipalities and Notified Area Committees. Under Rule 12 the local

bodies are required to open a pension fund which shall be called 'The Municipal Pension Fund' in which the following amounts shall be credited:

13(a) All portion of provident fund contribution (Local Bodies share) at the credit of the Employees (who have opted for pension)

Provident Fund Account.

(b) An amount equivalent to 12 per cent of the pay of such employees who are governed under pension rules. This amount may be deposited in the

fund monthly, quarterly, halfyearly or annually as it suits to the Local Bodies.

(c) All interests and profits arising from any investment of or from any transaction in connection with any money belonging to this fund.

7. Rule 15 enumerates different class of pension which may be granted to the employees of the local bodies. Mode and manner of calculation of

pension is provided under Chapter IV. Rule 16 provides that the amount of pension shall be determined by length of service. Rules 19 and 20 lay

down the procedure as to how the amount of monthly pension has to be calculated. Rule 19 provides as under:

19. The amount of pension to a Municipal employees who completed the maximum qualifying service of thirty-three years i.e. sixty-six completed

six months period will be fixed as follows:

Pensionable Pay Amount of Monthly Pension

(a) Upto first Rs.1,000/- 50% of pensionable pay

(b) Net Rs.500/- of pensionable pay 45% of pensionable pay (c) Balance of pensionable pay 40% of pensionable pay above

Rs.1,500

Note- The monthly pension arrived at as above will be subject to overall ceiling of Rs.1,500/- per month.

8. From the scheme of the Pension Rules, it can be gathered that only certain category of employees under the local bodies are entitled for pension

"the pension fund created under Rule 12 is different from the fund from which other government employees are paid pension" and pension

payable to an employee has to be calculated in the manner provided therein. Rule 43 makes things clear where it is provided that any increase or

relief either temporary or permanent in pension as sanctioned by government to the Municipal employees over and above what has already

been sanctioned shall be paid. Nowhere it has been claimed by the petitioner that what is provided under Rule 16 read with Rules 19 and 20 has

been revised by the government and necessary notification in terms of Rule 43 has been issued. Rule 44 is also in the similar terms. Calculation

of pension to an employee, when the rules provide mode and manner of calculation, must be calculated in terms of those rules and an employee would

be entitled for pension only to what is calculated in terms of the extant rules.Â Calculation of pension payable to the petitioner in terms of Rule 16

read with Rules 19 and 20 is erroneous or factually incorrect is not the stand taken by the petitioner.Â On the contrary, stand now taken by the

petitioner is that he is entitled for pension similar to what has been paid to the government employees after pay revision.Â In view of the specific

provisions under the Pension Rules, this contention is liable to be rejected.

9. At this stage, it is pertinent to record that in W.P.(S) No.6066 of 2012 the applicants were seeking a direction for payment of pension in terms of

Patna Municipal Corporation Officers and Servants PensionÂ Rules, 1986, provisions of which are pari materia to Bihar Municipal Officers and

Servants Pension Rules, 1987.Â The learned Single Judge has issued a direction in the said case in the following terms:

11. â??After bestowing my anxious consideration to the various affidavits filed on behalf of respective parties, this Court feels it expedient to direct

the respondents to calculate and fix the pension of the petitioners on the basis of last pay drawn and release the pension and arrears in accordance

with Jharkhand Municipal Corporation Act read with Jharkhand Municipal Service Cadre Rule, 2014 and other relevant circulars as expeditiously as

possible, preferably within a period of six months from the date of receipt of a copy of the order.â??

10. From the aforesaid direction issued by the learned Single Judge, it does not appear that the employees of the Municipal Corporations can claim

pension beyond what has been provided under the Jharkhand Municipal Corporation Act, 2011 and the Rules framed in this regard.Â After pension to

the petitioner is granted, the impugned order dated 07.09.2016 renders infructuous and to that extent the writ petition stands allowed.Â Finding no

infirmity in calculation of pension payable to the petitioner as pleaded in the counter-affidavit filed on behalf of the respondent-Dhanbad Municipal

Corporation, no further direction is required to be issued.

11. The writ petition stands disposed of.Â Â Â Â