

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1657 of 2012

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Prem Kumar Gupta Son of Late Badri Prasad, Resident of Makhdumpur Sarai,
Police Station-Town Siwan, District-Siwan.

.... Petitioner/s

Versus

1. Nagar Parishad, Siwan through its Executive Officer.
2. The Chairman, Nagar Parishad, Siwan.
3. The Executive Officer, Nagar Parishad, Siwan.
4. The State of Bihar through the Principal Secretary, Finance Department,
Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of
Bihar, Patna.
6. The Principal Secretary, Urban Development Department, Government of
Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajanan Arun & Mr. Gajendra Kumar Singh Advocates.
For the State	:	Mr. Sanjeev Kumar Mishra, A.C. to S.C. 17.
For the Nagar Parishad Siwan :	:	Mr. Ravi Bhushan Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-10-2015

Heard learned counsel for the parties.

The petitioner having retired from service of Nagar Parishad, Siwan had initially moved the Court for a direction to the respondents to pay his retiral dues. However, during the pendency of the writ petition, while fixing the post retiral benefits of the petitioner, the respondents have come up with a plea that the petitioner continued for more than 40 years in service and thus the excess period being unauthorized, the amount paid for the same was liable to be recovered.

Learned counsel for the petitioner submits that in view of the State Government having enhanced the age of



superannuation to 60 years, in the normal course of things, he ought to have superannuated in July, 2011. It is submitted that accordingly he was also made to superannuate on 31.07.2011. Learned counsel submits that the State has now unnecessarily created a controversy treating the period spent in service by the petitioner beyond 40 years to be unauthorized and directed for recovery. Learned counsel submits that the petitioner had joined service on 06.05.1969 but in view of there being no rule prescribing any maximum period of service, the petitioner, as per the existing rule, when a person superannuates upon reaching a particular age, as may be determined by the Appointing Authority/Competent Authority, was to superannuate in July, 2011 after attaining the age of 60 years. Learned counsel submits that the subsequent letter of the State Government on which the authorities rely being Letter No. 2106 dated 19.04.2011 of the Urban Development and Housing Department, Government of Bihar holding that an employee either attaining the age of 60 years or having worked for 40 years, whichever is earlier, can only remain in service till such period and not beyond, is both erroneous and unsustainable in law. Learned counsel submits that the background of issuance of such direction by the State Government was an order of the High Court in the case of **Gaya Municipal Corporation vs. Jogendra Kumar Singh (L.P.A. No. 645 of 2006)** decided on 12.04.2007 in which the Court had held in the background of the fact that the age of superannuation at



the relevant time was 58 years and the age prescribed for entering into Government service was 18 years, an employee was entitled to continue in service for a maximum period of 40 years or upon completing 58 years of age, whichever is earlier. Learned counsel submits that subsequent to that the age of superannuation of an employee was enhanced from 58 years to 60 years with effect from 25.09.2006 and thus the L.P.A. No. 645 of 2006 which arose out of C.W.J.C. No. 4875 of 2005 was based on that factual position i.e., taking into account the existing age of superannuation which in the year 2005 was admittedly 58 years. Learned counsel submits that the Division Bench of the Court holding that person was entitled to be in service either for a maximum period of 40 years or on attaining the age of 58 years, if applied to the subsequent development of the age of enhancement itself having been increased to 60 years, would lead to the inescapable conclusion that if the principle on which L.P.A. No. 645 of 2006 was decided is extended to the changed factual position the entitlement of a person to be in service after 25.09.2006 would be either a maximum period of 42 years or upon attaining the age of 60 years, whichever is earlier. Learned counsel has also relied on another decision of a Bench of this Court dated 01.07.2015 in the case of **Rabindra Kumar Manjhi vs. Nagar Parishad, Gopalganj and Ors. (C.W.J.C. No. 9264 of 2015)** in which also the Court has held that under the changed circumstances, the age of superannuation having been enhanced to 60 years, an employee

would be entitled to continue in service either for a maximum period of 42 years or attaining 60 years of age, whichever is earlier.

Learned counsel for the respondents relied on the above referred circular of the State Government dated 19.04.2011 for justifying recovery from the petitioner.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the reasoning of the Courts in the decisions rendered in L.P.A. No. 645 of 2006 and appropriatly expounded to apply in the changed circumstances in the case of **Rabindra Kumar Manjhi** (supra) dated 01.07.2015, this Court holds that the petitioner shall be entitled for his service to be counted for a period of 42 years since he joined service i.e., May, 2011. However, in the peculiar facts of the case, when there was no deliberate or willful lapses or misrepresentation or fraud committed by the petitioner and he continued till the month he attained the age of 60 years, this Court finds that him having worked and made to superannuate upon reaching the age of 60 years, no fault can be attributed on his part. The Court would also take note of the fact that the government letter was issued only on 19.04.2011 and it is not the stand of the respondents that it was communicated but suppressed by the petitioner and in any case he was made to superannuate in July, 2011. In this connection, the Court would also like to refer to the decision of the Hon'ble Supreme Court in

the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334** relating to recovery and adjustment in such cases and finds that in the present case, punitive action against the petitioner would be iniquitous.

Accordingly, the respondents shall be required to pay all retiral benefits of the petitioner without making any deduction. If the same has been done, it shall be refunded to him within four weeks from the date of production of a copy of this order before respondent no. 3. It is further clarified that for the purposes of calculating the pensionary benefits due to the petitioner, his length of service for 42 years shall be taken into account.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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