

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9264 of 2015

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Rabindra Kumar Manjhi s/o Late Grahan Ram r/o village Purani Chowk,
Gopalganj, Police Station Gopalganj, District Gopalganj.

.... Petitioner/s

Versus

- 1.Nagar Parishad, Gopalganj through its Executive Officer.
- 2.The Chairman, Nagar Parishad, Gopalganj.
- 3.The Executive Officer, Nagar Parishad, Gopalganj.
4. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajanan Arun, Adv

For the Respondent/s : Mr. Ravi Bhushan Verma, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

(Date - 01-07-2015)

Heard learned counsel for the parties as with
regard to the following relief prayed in this writ
application:

“That this writ petition is for quashing the letter
No. 865 dated 30.5.2015 passed by Executive
Officer Nagar Parishad, Gopalganj whereby and
whereunder petitioner has been directed to retire
on completion of 40 years of service with effect
from 30.6.2015.”

2. Learned counsel for the petitioner has placed
reliance on a judgment of this Court dated 13.2.2015
passed in C.W.J.C.No. 2664/2015 (Brahmdeo Singh vs.

the State of Bihar & ors.) which according to him squarely covers also the case of the petitioner.

3. Learned counsel for the respondent Nagar Parishad, Gopalganj, on the other hand, has submitted that in view of the order of the State Government dated 19.4.2011 all the Nagar Nigam, Nagar Parishad, Nagar Panchayat are bound to direct for retirement of their employees on completion of 60 years of age or 40 years of service, whichever is earlier, especially when the same have been issued by the State Government in view of the judgment of this Court dated 12.4.2007 in L.P.A.No. 645/2006 (Gaya Municipal Corporation vs. Jogendra Kumar Singh).

4. This Court, accordingly, has examined the records of L.P.A.No. 645/2006 which arose out of C.W.J.C.No. 4871/2005 (Yogendra Kumar Singh vs. the State of Bihar & ors.). From such records it would transpire that the Gaya Municipal Corporation in the meeting held on 19.4.2005 had resolved to enhance the



age of superannuation of its employees from 58 years to 60 years. Subsequently the petitioner of that case, namely, Yogendra Kumar Singh, a employee of Gaya Municipal Corporation, on being informed that he will superannuate only on completion of 58 years of age had moved this Court for quashing of such an order of Gaya Municipal Corporation dated 22.4.2006.

5. This Court on finding that the Government decision of enhancing the age of superannuation of its own employees from 58 years to 60 years dated 24.3.2005 when the same was also acted upon by Gaya Municipal Corporation on 22.2.2006 enhancing the age of superannuation of its employees from 58 years to 60 years with effect from 24.3.2005 had gone to hold that Yogendra Kumar Singh, the petitioner of that case, whose date of birth was 7.3.1945 and was appointed in the service of the Corporation on 7.2.1966 was entitled to the benefit of extended age of retirement in terms of the aforementioned resolution of Gaya Municipal

Corporation dated 22.2.2006.



6. As a matter of fact this Court had also taken into consideration the judgment of the Full Bench of this Court in the case of Ragiawa Narayan Mishra & ors. vs. the C.E.O., Bihar Rajya Khadigrama Udyog & ors., reported in 2006(1) PLJR 401 (F.B.) which had taken into consideration the age of 58 years and not 60 years as per amendment made in Rule 73 of the Bihar Service Code. In that context it was noted that the Government decision of 40 years of service or 58 years of age as taken on 28.1.2002 in relation to an employee of Purnea Municipality was not to be made applicable after amendment in Rule 73 of the Bihar Service Code, especially when Gaya Municipal Corporation had already passed a resolution on 22.2.2006 enhancing the age of superannuation from 58 years to 60 years.

7. This Court in the case of Yogendra Kumar Singh (supra) had also taken into consideration the possibility of maximum length of service on the basis of



law laid down in the case of Ragiawa Narayan Mishra (supra) and had held that the provision of 40 years of maximum service referable to entry of a person at the minimum age of 18 years was in respect of such employee whose age of superannuation was 58 years. Having held so this Court had quashed the order of Gaya Municipal Corporation dated 22.4.2006 and had directed the Gaya Municipal Corporation to give benefit of extended age of superannuation to Yogendra Kumar Singh in form of arrears of salary because as on the date of judgment i.e. 17.8.2006 Yogendra Kumar Singh on the basis of his date of birth of 7.3.1947 and his appointment in Gaya Municipal Corporation on 7.2.1966 had not completed the age of superannuation of 60 years or 42 years of service.

8. It is this judgment which became subject matter of an appeal at the instance of Gaya Municipal Corporation (L.P.A.No. 645/2006) and the Division Bench in its judgment dated 12th April, 2007 had held



that the plea of the petitioner Yogendra Kumar Singh of his continuing in service till he attained the age of 60 years irrespective of length of service was devoid of any merit. Consequently the order of the learned Single Judge was set aside and the appeal filed by Gaya Municipal Corporation was allowed.

9. As noted above, the restriction of 40 years of service based on entry at the age of 18 years was prescribed by the State Government and also followed by the Municipal Corporations all over the State when an employee could not have continued in service for a period of more than 40 years. That decision of the Government, however, has been subsequently modified after the age of retirement of the Government employees has been enhanced from 58 years to 60 years. That would mean that the Government servant can continue in service for a maximum period of 42 years or attaining 60 years of age, whichever is earlier. Thus, whatever was said by either this Court in the case



of Yogendra Kumar Singh (supra) having itself undergone a change on account of the Government taking a decision to continue the services of an employee till 42 years of completion of his service or attaining 60 years of age, whichever is earlier, or any consequential order issued by the State Government on 19.4.2011 cannot be made applicable.

10. It is this aspect of the matter which was decided by this Court in the case of Brahmdeo Singh (supra), wherein it was held as follows:

“5. This Court, however, in the fact of the present case will not be required to go into this issue of violation of principles of natural justice, inasmuch as even otherwise the Nagar Parishad had failed to take into consideration that the maximum age of retirement of employees in Nagar Parishad from 58 to 60 years, had already been enhanced in view of the Government order dated 13.3.2007. On 13.3.2007 the petitioner was continuing in service and therefore, the maximum period of continuation of service for any employee of Nagar Parishad after 13.3.2007



could not be 40 years but 42 years for a simple reason that earlier the Government had decided while maximum age of retirement was 58 years that one could continue either up to the age of 58 years or completion of 40 years of service whichever was earlier. Once however this maximum age of retirement for employees of Nagar Parishad had itself got enhanced from 58 years to 60 years, the stretch of maximum service automatically got extended upto 42 years as has been also made applicable in the State Government.”

11. Having regard to the judgment of this Court in the case of Brahmdeo Singh (supra) and the admitted position that the date of birth of the petitioner is 29th September, 1956 and that he had entered in service of Gopalganj Nagar Parishad on 9.6.1975, the decision to retire the petitioner with effect from 1.7.2015 on completion of 40 years of service is definitely incorrect. Let it be noted that the case of Brahmdeo Singh (supra) was also in relation to an employee of Siwan Nagar Parishad.



12. Having regard to the aforesaid facts as also the law laid down by this Court in the case of Brahmdeo Singh (supra) it becomes clear that the petitioner cannot be superannuated on account of completion of 40 years of his service but then he shall also not be entitled to continue for a period of 42 years because in the meantime he shall attain the age of 60 years only on 29th September, 2016, whereas he would be completing 42 years of service on 9th June, 2017. Thus, in the case of the petitioner his superannuation shall come into effect on attaining the age of 60 years i.e. in the month of September, 2016.

13. Thus, for the reasons indicated above, the impugned order dated 30.5.2015 is hereby quashed and the petitioner, who was sought to be superannuated with effect from 30.6.2015, shall stand reinstated in service for completing his remaining period of service till September, 2016.

14. With the aforementioned observation and

direction, this application is disposed of.

15. Let a copy of this order be sent to the Principal Secretary, Urban Development Department for reconsideration of his circular dated 19.4.2011 which would require a reconsideration on account of the fact that now the Government itself has decided that an employee can continue in service either for a maximum period of 42 years of service or attaining 60 years of age, whichever is earlier. Such reconsideration will be absolutely necessary keeping in view that not only the view taken by this Court in the case of Brahmdeo Singh (supra) has become final but on account of circular of the Government dated 19.4.2011 a large number of employees working in Nagarpalika, Nagar Parishad and Nagar Panchayat are being indiscriminately being made to superannuate only on the basis of maximum service of 40 years. Thus, a conscious decision should be taken by the State Government through the Principal Secretary of Urban Development Department as with



regard to revising the circular dated 19.4.2011 and making a similar provision for superannuation of an employee of Nagarpalika/ Nagar Parishad/ Nagar Panchayat on the same parameter as that of the State Government.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 1st July 2015
N.A.F.R./Ranjan/-

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