

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2914 of 2015

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Lal Mohan, son of late Titay, R/o Kurkuri, P.O. and P.S.- Fhulwarisarif
town and district- Patna.

.... Petitioner/s

Versus

1. Patna Municipal Corporation through Patna Municipal Commissioner,
Patna.
2. Patna Municipal Commissioner, Patna Municipal Corporation, Patna.
3. Additional Municipal Commissioner (Establishment), Patna Municipal
Corporation, Patna.
4. Executive Officer, Bankipore Circle, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Kishor Poddar, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 19-02-2015 Heard Mr. Jai Kishore Poddar, learned counsel for the

petitioner. No one appears for the Patna Municipal Corporation
(hereinafter referred to as 'the Corporation').

2. The petitioner is aggrieved by order dated
12.12.2014 whereby and whereunder he has been sought to be
retired from service with retrospective effect i.e. 30.04.2014.

3. Mr. Poddar has referred to the documents, annexed
with the writ application, showing that it was at the behest of the
Corporation that the petitioner was sent to the Medical Board
headed by the Civil Surgeon, Patna for determination of his age
and the Medical Board, based on its various medical test including
osification test report dated 28.02.2014, had determined the age of



the petitioner between 45 to 50 years. Mr. Poddar has submitted that thereafter the petitioner was surprisingly asked by the Executive Officer to produce the original papers and X-ray report of his medical examination conducted by the Medical Board, within a period of one week from the date of order dated 12.12.2014, but on 12.12.2014 itself, the petitioner was sought to be retired with retrospective effect by the impugned order dated 12.12.2014 on the ground that as per entry of 35 years made in the relevant column of date of birth in the service book of the petitioner as on 24.04.1989, he had already completed his age of superannuation of 60 years on 30.04.2014 and as such he will be deemed to have retired from service of the Corporation on 30.04.2014.

4. As noted above, learned counsel for the Corporation has not appeared and, in fact, whatever has been stated by the petitioner in his writ application would require reconsideration of his case from two angles. Firstly, it is not clear that what was the basis of the petitioner for entering of his age in his service book as 35 years and secondly whether that entry was made after getting its authenticated by way of signature/thumb impression of the petitioner in the service book so as to bind the petitioner with the aforementioned entry of age made in the service book.



5. Additionally, the authorities will have to again understand that whatever entry was made in the service book relating to his age was not sought to be believed because they themselves had referred to the petitioner to a Medical Board on 03.01.2014 and, therefore, if the report of the Medical Board was in favour of the petitioner, any action against him could have been taken only after giving notice and/or affording of opportunity for hearing to him.

6. Admittedly, on 12.12.2014, on one hand, the authorities had sought for certain information and documents from the petitioner, which, of course, was not in his possession, and on the other hand, they had also passed an order retiring the petitioner from retrospective effect. This cannot be said to be a fair approach of the Respondents while dealing with case of an employee like the petitioner who had served the institution, namely, the Patna Municipal Corporation for a period of 25 years.

7. In that view of the matter, this Court would quash the impugned order, contained in Anenxure-1 dated 12.12.2014.

8. It is however made clear that as a result of quashing of the impugned order, the petitioner will not be reinstated in service till an enquiry is held as with regard to the age of the petitioner. The Executive Officer, Bankipore Circle, Patna, will,

therefore, be under obligation to give a show cause notice to the petitioner as to why the petitioner should be retired with effect from 30.04.2014 by ignoring the medical report in favour of the petitioner, specially when such medical report has been relied and acted upon in case of other employee.

9. This Court hopes and believes that this exercise would be completed within a period of two months from the date of receipt of a copy of this order and the decision of further continuance of the service of the petitioner will be squarely dependent on the result of such enquiry and final order to be passed by the Executive Officer, Bankipore Circle, Patna.

10. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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