

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6239 of 2015

=====

Chandarma son of Late Lakhu, resident of Ambedkar Nagar, P.S. Town
Siwan, District Siwan.

.... Petitioner/s

Versus

The Nagar Parishad Siwan through it's Executive Officer.

2.The Chairman, Nagar Parishad, Siwan.

3.The Executive Officer, Nagar Parishad, Siwan.

.... Respondent/s

=====

Appearance :

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

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

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 21-04-2015 Heard learned counsel for the parties as with

regard to following reliefs, prayed in this writ

application:-

“Issuance of appropriate writ in the nature of certiorari for quashing the letter no. 1901 dated 17.12.2014 issued by Executive Officer, Nagar Parishad, Siwan whereby and whereunder direction has been issued to deposit the sum of Rs. 1,41,890/- failing which the amount will be adjusted from Pension/Arrears on the ground that the petitioner has worked more than 40 years service.

Issuance of appropriate writ in the nature of Mandamus commanding/directing the respondents to pay the rest due amount of P.F. and pension.”

Learned counsel for the parties agree that the case

in hand is squarely covered by an order of this Court

dated 13.02.2015 passed in C.W.J.C No. 2664 of 2015,

wherein, this very aspect has been gone into that as to



whether recovery of the salary drawn by the petitioner on account of his continuation in service for a period over 40 years can be made by the employer. The answer will always be in negative because unless it is proved that the employee has played a fraud or had misrepresented in any manner to continue in service, he/she cannot be subjected to recovery of amount which was paid to him/her by way of salary and emoluments for the work done. Presently in this case it is also found that the petitioner had retired from service on 31.08.2009, after attaining the age of 60 years. The audit objection after the retirement of the petitioner that he ought to have not been allowed to continue in service after completing 40 years of service and the amount paid in excess was need to be recovered had to be examined by the authorities of Nagar Parishad, Siwan in the backdrop as to whether the petitioner had further made any misrepresentation regarding his age and/or continuing in service. It appears that nothing of this sort



was done and the petitioner was directed by the impugned order dated 17.12.2014 for refund of amount of Rs. 1,41,890/- even without complying the principles of natural justice. The impugned order also does not give inkling to any fraud or misrepresentation played by the petitioner in continuation of his service. Therefore, this Court will have no difficulty in following its earlier order dated 13.02.2015 passed in C.W.J.C No. 2664 of 2015 and quash the impugned order dated 17.12.2014.

It is made clear that all the retirement benefit of the petitioner shall be calculated on the basis of his completion of 40 years of service. In other words, the date of retirement of the petitioner will be on the date on which he has completed 40 years of service and his length of service for the purposes of retirement benefit would be counted only up to that date. The salary paid to the petitioner after that date for the work done, of course cannot be recovered but at the same time, Nagar Parishad, Siwan cannot be held liable to compute the

extra period of service of the petitioner for computation of retirement benefit.

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

(Mihir Kumar Jha, J)



Ranjan/-

U			
---	--	--	--