

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15628 of 2015

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Basant, son of late Tulsi, resident of:- House no. N/D-145/B, New Yarpur,
Janta Raod, Devi Asthan, P.O.- GPO, Patna, P.S.-Gardanibag, District-
Patna.

.... Petitioner/s

Versus

1. The Patna Municipal Corporation through its Municipal Commissioner,
Maurya Lok Complex, Budha Marg, Patna.
2. Additional Municipal Commissioner (Establishment), Patna Municipal
Corporation, Maurya Lok Complex, Budha Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalit Kishore, Sr. Advocate.
Mr. Bishwa Bibhuti Kr. Singh, Advocate.

For the Respondent/s : Mr. Ranjeet Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 30-09-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:-

"i. A direction/writ in the nature of certiorari for quashing of office order contained in memo no. 7261/Est., Patna, dated 23-9-2015 (Annexure-3 to the writ application) issued by respondent no. 2 by which, the petitioner has been directed to retire from service with effect from 30th of September 2015 on the ground that he ahs completed 40 years of service including service period rendered as a daily wager, despite awaiting the necessary instructions from the Principal Secretary, Urban Development and Housing Department, Government of Bihar, sought for in this regard by the Municipal Commissioner, Patna Municipal Corporation, respondent no. 1 vide letter no. 7062 dated 18-9-2015."

3. Mr. Lalit Kishore, learned senior counsel appearing

on behalf of the petitioner, has submitted that the impugned order seeking to superannuate the petitioner with effect from 30.06.2015 on the basis of the petitioner having completed 40 years of service in Patna Municipal Corporation (hereinafter

referred to as 'the Corporation'), is bad both on fact and in law inasmuch as once the age of superannuation of the employees of the Corporation has been fixed at 60 years, the petitioner, having his date of birth of 01.06.1957, would have retired only in the month of June, 2017. He has also explained that even if the maximum period of length of service is taken into consideration that cannot be 40 years in view of the decision of the Corporation itself to superannuate its employees upon completion of 60 years of age which will give them a length of service of 42 years.

4. In this regard, he relies on an exactly similar issue having been decided by this Court in the order dated 13.02.2015 in C.W.J.C. No. 2664 of 2015(***Brahmdeo Singh vs. The State of Bihar & Ors.***) and another order of this Court dated 01.07.2015 in C.W.J.C. No. 9264 of 2015 (***Rabindra Kumar Manjhi vs. Nagar Parishad, Gopalganj & Ors.***) wherein similar decision taken by the Siwan Nagar Parishad of superannuating the employee on completion of 40 years of service was held to be bad.

5. Learned counsel appearing on behalf of the Corporation is not in a position to controvert the aforementioned submission of the Mr. Lalit Kishore but then he relies on a Circular of the Urban Development and Housing Board dated 19.04.2011 whereby and whereunder all the controlling authority

of the Nagar Palika, Nagar Parishad and Nagar Panchayat have been directed to allow an employee of the Corporation to continue in service till attaining the age of 60 years or 40 years of continued service whichever is earlier.

6. In the considered opinion of this Court, the issue in hand has already been decided by this Court earlier in the case of ***Brahmdeo Singh*** (supra) wherein this Court had held as follows:

5. This Court, however, in the facts 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.

6. In that view of the matter, whatever was said by this Court in L.P.A.No. 645/2006 could not have been made applicable by the rule of thumb because L.P.A.No. 645/2006 was definitely in relation of the person whose maximum age of retirement was 58 years. Had the authorities of the Nagar Parishad followed the principles of natural justice and given an opportunity to the petitioner to explain this aspect probably it could have become clear to them that neither the circular of the Government dated 19.4.2011 nor the judgment of this Court in L.P.A.No. 645/2006 could be made applicable in the facts of the case of the petitioner.

7. Finally, it has to be also made in mind that the petitioner had continued in service upto 30.4.2011 as per his date of birth recorded in the service book. He did not misrepresent in any manner and became a retired employee. The authorities of the Nagar Parishad who were probably aware of the circular dated 19.4.2011 could not have in fact also retired the petitioner from service on any date prior to 19.4.2011. Therefore, even if the circular dated 19.4.2011 was to be given effect to in the case of the petitioner all that should have been done was even if the petitioner had to be retired

that could have been done only on 19.4.2011. Admittedly prior to 19.4.2011 neither Nagar Parishad nor the State Government had taken any decision to retire someone retrospectively by allowing someone to continue for a maximum period of 40 years."

7. It has to be also kept in mind that this Court had again considered the applicability of the aforesaid Circular of the State Government dated 19.4.2011 in the case of **Rabindra Kumar Manjhi** (supra) wherein it was held that an employee of Municipal Corporation would be entitled to continue for a period of 42 years of service and a direction was issued to the Urban Development Department of the State Government to reconsider its Circular dated 19.04.2011 in the following terms:

"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."

8. Thus in view of issue already having been decided by this Court in the case of **Brahmdeo Singh** (supra) and **Rabindra Kumar Manjhi** (supra), there would be no difficulty in holding that the petitioner's date of birth being 01.06.1957 and his

entry in service in Patna Municipal Corporation on 30.06.1975, his superannuation could not have been made with effect from 30.09.2015 on the basis of his completed 40 years of service in the Corporation. The petitioner infact could be superannuated either on completing 42 years of service or 60 years of age whichever is earlier.

9. Additionally, since the petitioner's date of birth is 01.06.1957, his superannuation as per the Government decision, will take effect from 31.05.2017 and as such his completion of 42 years of service being 30.06.2017, the petitioner will be liable to superannuated only with effect from 31.05.2017.

10. Thus, for the reasons indicated above, the impugned order dated 23.9.2015 superannuating the petitioner from service of the Corporation is quashed with a direction to continue in service of the Corporation till 31.05.2017, unless there is some other fresh justified reason for his being not allowed to continue in service of the Corporation.

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

(Mihir Kumar Jha, J)

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