

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14010 of 2012

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Balakant Prasad Singh S/O Late Chandrika Singh R/O Lodipur, P.S.- Bind,
District- Nalanda, at present resident of SRT 61, Rajendra Nagar-16, P.S.-
Bahadurpur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Urban Development, Govt. Of Bihar,
Patna
2. Commissioner, Patna Municipal Corporation at Mourya Lok, Patna
3. The Additional Municipal Commissioner Establishment-in-Charge, Patna
Municipal Corporation, Mourya Lok, Patna
4. The Executive Officer, Patna City Anchal

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. U.P. Chainpuri,
Mr. Ram Sumiran Singh,
Mr. Kumar Manglam, Advocates.
For the State : Mr. Rakesh Ambastha, AC to AAG-15
Doe the Corporation: Mr. Ranjeet Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-01-2015

Heard learned counsel for the petitioner and learned
counsel for the State as well as Patna Municipal Corporation.

In the present writ petition petitioner is challenging the
order as contained in memo no.3877 dated 21.7.2012
(Annexure-4) issued by the Commissioner, Patna Municipal
Corporation by which he has been compulsorily retired from
service.

In appears from the record that petitioner has filed an
application for his leave on account of marriage of his son for



the period from 10.4.2012 to 30.4.2-012 as on account of marriage in his family he was not in position to attend his official duty. His application was not allowed and he was directed to report to the duty. In the event of his non-joining to the duty the Commissioner, Patna Municipal Corporation in exercise of power under Rule 74 of the Bihar Service Code vide Office Order no.3877 dated 21.7.2012 compulsorily retired the petitioner from service. From the order it appears that he has been dismissed from service on account of charge of misconduct and the Chairman, Patna Municipal Corporation cannot apply the provision for compulsory retirement when he has been discharged on the charge of misconduct. If the Corporation was so sanguine to dismiss an employee, the Corporation has to initiate a proceeding against him and the manner he has been dismissed on the ground of compulsory retirement suffers from illegality as termination of service on compulsory retirement applies when after examining the service record the employer arrived to a conclusion that the employee is dead wood and cannot be carried further.

In the present case the petitioner has been dismissed from service on account of misconduct that has been mentioned in the office order dated 21.7.2012 which is not sustainable.

Accordingly the same is quashed.

As has been informed by the parties there is stay order by this Court and the petitioner has been allowed to join the duty and also Corporation has decided to proceed departmentally against him. This Court is not giving any opinion on the decision of the Corporation but certainly the order by which petitioner has been dismissed from service on the charge of misconduct without holding any departmental proceeding is not sustainable. Accordingly the same is quashed.

Accordingly this writ petition is allowed. In view of the order dated 7.8.2012 by which this Court has stayed the impugned order the petitioner cannot be deprived of his back salary from the date of stay dated 7.8.2012 till today.

(Shivaji Pandey, J)

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