IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2664 of 2015

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Brahmdeo Singh Son of Late Ram Parichhan Singh Resident of village - Rupas Tola Baba Ram Dihal Singh, Kamrapar, Police Station - Athmalgola, District - Patna

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Government of Bihar, Patna
2. Nagar Parishad, Siwan through its Executive officer
3. The Chairman, Nagar Parishad, Siwan
4. The Executive officer, Nagar Parishad, Siwan

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gajanan Arun, Adv.
Mr. Gajendra Kumar Singh, Adv.
For the Respondent/s : Mr. Sunil Kr. Mandal, SC14
For Siwan Nagar Parishad: Mr. Ravi Bhushan Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 13-02-2015 Heard learned counsel for the parties.

2. Having regard to the very limited scope of this writ application wherein the petitioner has assailed an order passed by the Executive Officer of Nagar Parishad, Siwan dated 17th December, 2014 subjecting the petitioner to recover a sum of Rs.3,06,216/- on the ground that he had continued in service beyond the prescribed limit of maximum service of 40 years, learned counsel for the petitioner has submitted that the aforesaid order has been passed, firstly in complete violation of the principles of natural justice and secondly, on a complete misreading of the Government circular as with regard to maximum period of continuation of an employee in service in Nagar

Parishad, Siwan.

3. Learned counsel for Nagar Parishad, Siwan in fact has not been able to controvert the first part of the submission of the learned counsel for the petitioner that the impugned order was passed without giving any show cause notice and/or opportunity of hearing and in fact he had defended the impugned order on the ground that there was an audit objection of the Accountant General and therefore, the authority was helpless. He has also submitted that such action was taken in view of the letter of the State Government dated 19.4.2011 which was issued by way of general direction for continuation of employees only for a maximum period of forty years in service of the Municipality.

4. Having regard to the aforementioned submissions and the core issue that the petitioner has been subjected to evil and civil consequences by way of penal order of recovery of Rs.3,06,216/- after more than 3½ years of his retirement, this Court is inclined to quash the impugned order only on the ground of violation of the principles of natural justice. By-now it is well settled that any person being subjected to civil and evil consequences as in this case recovery of a huge sum of more than three lacs from the retirement benefit of the petitioner could not have been done even without giving an opportunity to the

petitioner to place his case that he had neither continued by making any fraud or misrepresentation nor he could have been made liable for recovery in any manner.

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.

8. Recovery of salary from a retired employee from his retirement benefit where there is no evidence of having misrepresented his case was not even allowed by the Apex Court in the case of Chandi Prasad Uniyal & ors. v. State of Uttarakhand & ors., reported in (2012)8 SCC 417, wherein an exception has been carved out that normally recovery can be made only from the excess amount but not in the case of retired employee. Here the petitioner had retired in the year 2011 and the order of recovery was passed in the year 2014 and that too in complete violation of the principles of natural justice as also by wrongly applying the Government circular dated 19.4.2011.

9. Let it be noted that all the audit objection of the Accountant General never meant that the same has to be followed in letter and spirit even if there be a valid explanation for it. The procedure of meeting the audit objection by its rectification with explanation is also a well known and well accepted principle. Thus, merely because the Auditor of the office of the Accountant General had objected with regard to continuation of service of the petitioner, the authorities of the Nagar Parishad ought to have not passed an adverse order where the petitioner till 19.4.2011 even otherwise was allowed to continue as per the earlier Rules and Regulation. There was in fact no anomaly much less any

misappropriation of Government fund in making payment of salary to the petitioner. A day therefore has come where the authorities whose accounts are being subjected to audit by the office of the Accountant General will have to make their issue clear by taking a firm stand instead of succumbing to each and every audit objection.

10. Judged from all these angles this Court would find that the impugned order of recovery cannot be sustained. Consequently the impugned order dated 17.12.2014, as contained in Annexure 3, is hereby quashed and the respondents officials of the Nagar Parishad, Siwan are hereby directed to ensure that whatever amount of the petitioner has been withheld on account of the impugned order must be released to the petitioner forthwith.

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

(Mihir Kumar Jha, J)

surendra/-

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