

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1610 of 2016
IN
Civil Writ Jurisdiction Case No. 6378 of 2016**

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1. Md. Azam son of Late Aboo Md. resident of Village - Pijranwan, P.S. - Kurtha,
District - Arwal.

.... Appellant/s

Versus

1. The State of Bihar.
2. Commissioner-cum-Secretary, Rural Development Department, Govt. of Bihar,
Patna.
3. The Director, Panchayati Raj, Bihar, Patna.
4. Deputy Development Commissioner-cum-Chief Executive Officer, Zila
Parishad, Arwal.
5. The Chairman, Zila Parishad, Arwal.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Ataur Rahman, Advocate

For the Respondent/s : Mr. Anjani Kumar, AAG-4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-08-2017

Mr. Md. Ataur Rahman, learned Counsel, appears for
the appellant, Shri Anjani Kumar, AAG-4, for respondent No.1 to 3.

None appears for respondent Nos.4 and 5, even though served.

There being a delay of one year and 154 days, I.A.
No.6478 of 2016 has been filed seeking condonation of delay. The
delay was caused on account of improper advice given to the
petitioner inasmuch as the petitioner was advised to file an
application for restoration as the writ petition was decided without



hearing the petitioner. Accordingly, petitioner filed M.J.C. No.3396 of 2015, but when the matter came up for hearing on 20th of February, 2015, it was pointed out to the petitioner that the writ petition has been dismissed on merit and, therefore, he withdrew the M.J.C. and filed this appeal.

Keeping in view the aforesaid, we accept the explanation for delay and allow the application for delay. I.A. No.6478 of 2016 is disposed of.

This appeal has been filed seeking exception to the order dated 6.2.2015 by the learned Writ Court in C.W.J.C. No.6378 of 2007. The writ petition in question was filed by the petitioner who was an employee in the Zila Parishad, Arwal, inter alia contending that he has been retired with effect from 5.4.2007 on the ground that he has attained the age of 58 years. According to the petitioner, in view of provisions of Rules 4 and 5 of the Bihar Panchayat Samiti Rules, 1964 and in view of the law laid down by a Bench of this Court in the case of Bihar Rajya Zila Parishad Karmchari Mahasangh and Anr. Vs. State of Bihar & Ors and Ramjee Singh vs. State of Bihar & Ors. in C.W.J.C. Nos.8583 of 2005 and 7598 of 2006 decided on 15.9.2006, petitioner is now to work up to the age of 60 years and his retirement at the age of 58 years is unsustainable. Records of the writ petition go to show that notices were issued, but



no reply was filed. In the meanwhile, on two occasions, the writ petition was dismissed for want of prosecution. It was thereafter restored, but when the matter came up for hearing on 6.2.2015, the writ petition was dismissed by only recording the following finding:

“I have perused the relief sought for in the writ petition. There is no ground for interference.

The writ petition stands dismissed.”

The learned Writ Court observed that it does not see any ground for interference and dismissed the writ petition. However, while doing so, the Court lost sight of the fact that in the cases of Bihar Rajya Zila Parishad Karmchari Mahasangh and Ramji Singh(supra) it has been clearly laid down that the age of retirement of the employees like the petitioner in the Zila Parishad shall be 60 years and not 58 years. When this matter was taken up on the last date, the Court made a query as to whether the orders passed in the cases of Bihar Rajya Zila Parishad Karmchari Mahasangh and Ramji Singh(supra) have attained finality and we are informed today that these orders have attained finality and are being followed.

Once the order passed in the cases of Bihar Rajya Zila Parishad Karmchari Mahasangh and Ramji Singh(supra) have attained finality and are being followed in the cases of other employees like the appellant, we see no reason as to why the said



benefit should not be conferred on the petitioner.

Accordingly, we allow this appeal. The order dated 6.2.2015 passed by the learned Writ Court in C.W.J.C. No.6378 of 2007 is quashed. The writ petition is allowed. The order retiring the petitioner on 5.4.2007 on his attaining the age of 58 years is also quashed and it is directed that the petitioner be treated to have worked till he attained the age of 60 years. All his pensionary claims be settled accordingly.

The appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

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