

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1228 of 2014
IN
Civil Writ Jurisdiction Case No. 2526 of 2012**

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1. Sudhir Kumar Sah Son of Late Ramashish Sah Resident of Mohalla-Ward No. 6,
Ambedkar Nagar, Dalsingsarai, District-Samastipur

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development
Department, Govt. of Bihar, Patna.
2. The Dalsingsarai Nagar Panchayat through Its Executive Officer, Dalsinghsarai,
District-Samastipur
3. The Executive Officer, Dalsingsarai Nagar Panchayat, Dalsinghsarai, District-
Samastipur

.... Respondent/s

with

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**Letters Patent Appeal No. 1137 of 2014
IN
Civil Writ Jurisdiction Case No. 2526 of 2012**

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1. The Dalsingsarai Nagar Panchayat through its Executive Officer, Dalsingsarai,
Dist. - Samastipur.
2. The Executive Officer, Dalsingsarai Nagar Panchayat Dalsingsarai, Dist. -
Samastipur.

.... Appellant/s

Versus

1. Sudhir Kumar Sah S/o Late Ramashish Sah R/o Mohalla - Ward No. - 6,
Ambedkar Nagar, P.S. Dalsingsarai, Dist. : Samastipur.
2. The State of Bihar through the Principal Secretary, Urban Development Deptt.,
Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

(In LPA No.1228 of 2014)

For the Appellant/s : Mr. Kumar Praveen
For the Nagar Parishad : Mr. Dhrub Narain, Sr. Advocate
Mr O.P.Agrawal
Mr A.K.Sinha No.1
For the State : Mrs Archana Meenakshi, GP 6
Mr Prabhat Ranjan, AC to GP 6

(In LPA No.1137 of 2014)

For the Appellant : Mr. Dhrub Narain, Sr. Advocate
Mr O.P.Agrawal
Mr A.K.Sinha No.1
For Private Respondent : Mr Kumar Praveen



For the State : Mrs Archana Meenakshi, GP 6
Mr Prabhat Ranjan, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 10-07-2017

Heard learned counsel for the appellant, learned senior counsel for the Nagar Parishad, Dalsingsarai and the State.

There are two Letters Patent Appeals arising out of the common order dated 17.6.2014 passed in CWJC No.2526 of 2012. The first LPA i.e. LPA No.1228 of 2014 is by the employee, who is aggrieved by non- payment of gratuity, both by the Nagar Parishad as well as refusal by the learned Single Judge to allow so. The other significant aspect is non- payment of salary for the extended period of age of superannuation, which arose out of the decision rendered by the High Court in the case of Tapeswar Singh v. State i.e. CWJC No.6729 of 2005, decided on 23.1.2006. The second LPA 1137 of 2014 is by Nagar Parishad.

There is also grievance raised with regard to non-payment of medical allowance as well as actual payment of earned leave.

The stand of the learned senior counsel representing the Nagar Parishad is that there is no provision for gratuity in the rule,



which is Bihar Municipal Officers and Servants Pension Rules, 1987.

To such a stand taken by the Nagar Parishad, counsel for the appellant submits that the payment of Gratuity Act will have a reflection on such claim and, therefore, the said Rule is not sacrosanct.

The Court is not willing to go into this dispute. If the appellant feels that this case can be covered and brought in the ambit under the Gratuity Act, he is free to move the competent authority within the framework of law i.e. Payment of Gratuity Act, 1972. The Court expresses no opinion on such assertion of the appellant.

After the decision was rendered in the case of Tapeswar Singh, a notification has been issued by the State of Bihar, especially the Department of Urban Development, a copy of which has been annexed as Annexure- 6 to the writ application, and is dated 25.9.2006. The notification very clearly indicates that even though the State Government accepts the decision and direction of the High Court extending the benefit of retirement to 60 years at par with government servants with effect from 24.3.2005 but the payment of salary for that period was not a matter of right but on the basis of actual work, which may have been done or performed.

In the present case, the appellant superannuated on 31.7.2005. Judgment of the High Court was rendered for extending



the age of retirement on 23.1.2006. The Government notification accepting that position is dated 25.9.2006. In all these period it is an accepted position that the appellant did not work but then the appellant did file an application before the Executive Officer, Nagar Parishad, Dalsingsarai to consider his case for putting him back in service pursuant to the High Court order and the State Government notification. There was obligation upon the Executive Officer to take quick decision because a right was created in favour of the appellant by virtue of the High Court decision as well as the State Government notification, therefore, this Court does not agree with the finding of the learned Single Judge that he will not be entitled for any salary for the period 1.8.2005 till 31.7.2007.

The Court, however, does not order payment of any salary to the appellant till 28.9.2006, the date an application was filed and received by the Executive Officer, Nagar Parishad. Even if the appellant had not worked because of indecision on the part of the Nagar Parishad, the appellant would be entitled for payment of his salary between 29.9.2006 to 31.7.2007.

Both the appeals stand disposed of in terms of the above order. The respondent Nagar Parishad has an obligation to ensure payment of medical allowance and the earned leave. They cannot hide behind their stand that they do not have requisite records in this



regard. Maintenance of record is their responsibility.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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