

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15635 of 2016

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1. Sudama Singh, Son of Late Surith Singh, resident of Village- Aabopur, P.S.- Danapur, P.O.- Khagaul, District- Patna.
 2. Subhash Chandra Rai, Son of Late Bholai Rai, resident of Village- Khaspur, P.O.- Daudpur, P.S.- Maner, District- Patna.
 3. Md. Ishrat Imam, Son of Mh. Younis, resident of Danapur Cant., P.O.+P.S.- Danapur Cant, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
3. The Chairman, Nagar Parishad, Danapur.
4. The Executive Officer, Nagar Parishad, Danapur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.
For the Respondent/s : Mr. Shankar Kumar, A.C. to AAG7
For the Nagar Parishad : Mr. Ajat Shatru, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 23-01-2017

Heard Mr. Kumar Kaushik learned counsel for the petitioners, Mr. Shankar Kumar, A.C. to AAG 7 for the State and Mr. Azat Shatru learned counsel for the Nagar Parishad, Danapur and its authorities i.e the respondent Nos. 3 and 4.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission itself.

The petitioners are aggrieved by the orders of superannuation passed against them bearing memo No. 119 dated 22.1.2016 in so far as the petitioner No.1 is concerned, memo No. 891 dated 06.6.2015 in



so far as the petitioner no.2 is concerned and memo No.22 dated 3.1.2015 in so far as the petitioner No.3 is concerned. The three petitioners have been superannuated from service on completion of 40 years of service in tune with the provisions underlying Rule 73 of the Bihar Service Code (hereinafter referred to as 'the Code'). On an interpretation of the said rule while the petitioner No.1 was made to superannuate on 31.1.2016, the petitioner No.2 got superannuated on 31.7.2015 while the petitioner No.3 was superannuated on 31.1.2015.

The main plank for the petitioners to question the respective superannuation is the judgment of this Court rendered in the case of **Brahmdeo Singh Vs. the State of Bihar & Ors.** arising from **C.W.J.C.No.2664 of 2015** followed in the judgment of **Rabindra Kumar Manjhi vs. Nagar Parishad, Gopalganj & Ors.** arising from **C.W.J.C. No. 9264 of 2015**. A bench of this Court while interpreting the circular of the State Government dated 13.8.2007, issued under Rule 73 of 'the Code' has concluded that since the State Government had enhanced the retirement age of the Government Employees from 58 years to 60 years and which decision was followed by the Nagar Parishad, it would mean that the maximum period of service also got enhanced from 40 years to 42 years.

It is the contention of Mr. Kumar Kaushik learned counsel appearing for the petitioners that in view of the legal position settled



by this Court in the case of **Brahmdeo Singh**(supra) and **Rabindra Kuamr Manjhi** (supra) which judgment has not been appealed against by the State or the Nagar Parishad and has thus attained finality, the petitioners could not have been made to superannuate on the basis of their service of 40 years. According to learned counsel in view of the interpretation given by the Bench to the circular dated 13.3.2007, all these petitioners were entitled to 42 years of service or 60 years of age whichever comes earlier. He submits that since admittedly these petitioners had not completed 42 years of service nor had reached 60 years of age, they could not have been superannuated.

The argument of Mr. Kaushik has been contested by learned counsel for the State and Mr. Azat Shatru learned counsel for the Nagar Parishad, who while filing a counter affidavit has relied upon a circular of the Urban Development and Housing Department, Government of Bihar dated 19.4.2011 to submit that it is in the light of the legal position settled by the division bench in a matter arising from **L.P.A. No.645 of 2006 (Gaya Municipal Corporation vs. Yogendra Kumar Singh and others)** that an advisory was issued to all municipal bodies to allow their employees to continue until attainment of 60 years of age or 40 years of service whichever is earlier. It stated that it is in the light of the circular so issued that the employees were superannuated and after the judgment of **Brahmdeo**



Singh and **Rabindra Kumar Manjhi** (surpa) that a second circular had been issued by the Urban Development and Housing Department of the Government of Bihar on 9.2.2016 modifying the earlier circular and whereunder now the employees of the Municipal bodies have been allowed to continue until the age of 60 years or 42 years of service whichever is earlier but since the petitioners had been superannuated earlier thereto hence they would not be entitled to the benefits.

I have heard learned counsel for the parties and I have perused the records.

The facts are not in dispute and even the legal position is not in dispute regarding an interpretation of Rule 73 of 'the Code' and continuation of the Municipal Employees until attaining the age of 60 years or 42 years of continuous service whichever is earlier. The issue is whether or not the petitioners would be entitled to the benefit of the judgment passed in the case of **Brahmdeo Singh** (supra) as reiterated in the subsequent judgment of **Rabindra Kumar Manjhi** (supra).

Rule 73 of 'the Code' was sought to be amended by the Finance Department Resolution dated 24.3.2005 enhancing the retirement age of the Government employees from 58 years to 60 years and it is following such resolution that the Bihar Service Code Amendment, 2006 was notified on 29.3.2006. Unfortunately, the amended statutory



prescriptions have not been accordingly incorporated in the book. The amendment was enforced in the Nagar Panchayat on 13.3.2007 as taken note of by the bench at paragraph 5 of the judgment rendered in the case of **Brahmdeo Singh** (supra) which runs as follows:

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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.”

The judgment was delivered on 13.2.2015 and when the bench settled the legal position that an enhancement in the maximum age of retirement from 58 to 60 years, automatically stretched the maximum service period from 40 years to 42 years. This judgment was delivered in context with a case relating to Nagar Parishad, Siwan. Since no consequential steps were taken by the Urban Development and Housing Department in issuing advisory accordingly, that it led to the filing of the 2nd case by **Rabindra Kumar Manjhi** arising from **C.W.J.C.No.9264 of 2015**. The bench while taking note of the legal



position settled in the case of **Brahmdeo Singh**(supra) and the Division Bench pronouncement in the case of **Gaya Municipal Corporation Vs. Yogendra Kumar Singh** (supra) as well as the judgment in the case of **Ragiawa Narayan Mishra Vs. the Chief Executive Officer** reported in **2006(1)PLJR 410** reinforced the law laid down in the case of **Brahmdeo Singh** (supra). Paragraph 15 of the judgment rendered in the case of **Rabindra Kumar Manjhi** (supra) is a direction to the Principal Secretary, Urban Development Department for reconsideration of the Circular dated 19.4.2011 in view of the law settled by the bench in the case of **Brahmdeo Singh** (supra) bearing in mind that despite the said position, large number of employees were being made to retire.

Although the judgment in the case of **Rabindra Kumar Manjhi** (supra) was delivered on 1.7.2015 but the State Government in its Urban Development and Housing Department has taken its own sweet time to issue the advisory on 9.2.2016 i.e. almost 8 months thereafter and which is present at Annexure-B to the counter affidavit of the Nagar Parishad. It is uncontested that the Bench decision in the case of **Brahmdeo Singh** and **Rabindra Kumar Manjhi** (supra) has attained finality and have not been appealed against rather has been acted upon as is reflecting from the Circular dated 9.2.2016. The issue would be whether the petitioners are covered by the judgment.



As I have already noted, the legal position so settled by this Court in the case of **Brahmdeo Singh** (supra) which was delivered on 13.2.2015, is in context with the Nagar Parishad, Siwan. Meaning thereby whatsoever confusion that was prevailing in the minds of the respondents stood settled under the judgment. This position has been reiterated in the case of **Rabindra Kumar Manjhi** (supra) and in between while the petitioner No.1 has been superannuated on 31.1.2016 the petitioner No.2 has been superannuated on 31.7.2015, both after the judgments was already delivered in the case of **Brahmdeo Singh**. The petitioner No.3 however, was superannuated much before the judgment on 31.1.2015 vide order dated 3.1.2015. It is the laches on the part of the State in not having issued advisory in tune with the legal position settled by this Court in the case of **Brahmdeo Singh** (supra) on 3.2.2015 which has led to the superannuation of the petitioner Nos. 1 and 2. In fact it is for this reason that the bench of this Court in **Rabindra Kumar Manjhi** (supra) has observed as such in paragraph 15 which runs as follows:-

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 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.”

In view of the legal position so settled by the Bench in the case of **Brahmdeo Singh**, the petitioner Nos. 1 and 2 could not have been made to superannuate on completion of 40 years of service rather they should have been allowed 42 years of service or 60 years of age whichever was earlier before ordering their superannuation.

In the circumstances, the order dated 22.1.2016 impugned at Annexure-1 in so far as petitioner No.1 is concerned and order dated 6.6.2015 impugned at Annexure-2 in so far as petitioner No.2 is concerned, cannot be upheld and are accordingly quashed and set aside. The writ petition in so far as petitioner No.1 and petitioner 2 is concerned, is allowed. As a consequence the petitioner Nos. 1 and 2 stands reinstated on their respective posts together with consequential benefits.

Having held as such, this Court is not persuaded to grant indulgence in the case of petitioner No.3 who has been made to



superannuate on 31.1.2015 vide order dated 3.1.2015 impugned at Annexure-3 and the reason is plain and simple. The issue raised, suffers from gross laches and delay on the part of the petitioner No.3. It is not in dispute that the petitioner No.3 after his superannuation has obtained retiral benefits without raising objection and has woken to question his termination in September, 2016 i.e. after a lapse of 1 year and 9 months. Despite the judgment of **Brahmdeo Singh** (supra) being delivered in February, 2015, the petitioner no. 3 never tried to prevent his superannuation. The reasons may be there but the delay of 1 year and 9 months as well as the fact that the superannuation of the petitioner no. 3 took place prior to the judgment in **Brahmdeo Singh** and he has also obtained his retiral benefits with no objection, I am not persuaded to grant indulgence in so far as claim raised by the petitioner No. 3, is concerned. This writ petition in so far as petitioner no. 3 is concerned is accordingly dismissed.

The writ petition is allowed in part.

(Jyoti Saran, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	17.02.2017
Transmission Date	NA

