

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6117 of 2016

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Satyanarayan Prasad Son of Late Raghunandan Prasad, resident of village -
Parsenganj Bazar, Bagaha, P.O. + P.S. Bagaha, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Urban Development & Housing Department Government of Bihar, New Secretariat, Patna.
2. The Secretary, Urban Development & Housing Department Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, West Champaran at Bettiah.
4. The Vice - Chairman of Nagar Parishad, Bagaha, West Champaran.
5. The Executive Officer, Nagar Parishad, Bagaha, West Champaran.
6. Nagar Parishad, Bagaha, West Champaran through its Executive Officer.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Sinha No. 2, Advocate
For the State	:	Mr. Utsav Kumar, A.C. to G.A. 4
For the Nagar Parishad, Bagaha :		Ms. Sushmita Mishra and Mr. Rakesh Kumar Pandey, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-05-2018

Heard learned counsel for the petitioner; State and
Nagar Parishad, Bagaha.

2. The petitioner has moved the Court for the following
reliefs:

“That this application is for issuance of an appropriate writ, order or direction commanding upon the respondents to pay the petitioner his retiral dues viz. Provident Fund amount, Group Insurance, Gratuity and the pension after fixing the same after the date of his superannuation.”

3. The petitioner was appointed on 22.02.1978, on the



post of clerk in the then Bagaha Notified Area Committee. In the meantime, he was suspended on 20.12.1985 by the District Magistrate and the suspension was revoked on 19.05.1986. Thereafter, in the year 1989, he was imprisoned in connection with Bagaha P.S. Case No. 163 of 1989, in which he was also convicted on 18.07.2000. But in the meantime, in March 1990, he superannuated. He claims retiral benefits in the present writ application.

4. Learned counsel for the petitioner submitted that after having put in more than 10 years of service, he is entitled to pensionary benefits in terms of the Bihar Municipal Officers and Servants Pension Rules, 1987 (hereinafter referred to as the 'Rules'), which came into effect from 01.04.1986. It was further submitted that the appointment of the petitioner and his working in the Nagar Parishad, Bagaha is not disputed and, thus, he is entitled to payment of retiral benefits. Learned counsel submitted that the ground taken by the respondents that his appointment is bad cannot be a ground to deny retiral benefits as he was neither removed from service nor any objection raised during his entire service period. It was further submitted that the petitioner was appointed in terms of the prevalent rules which permitted recruitment beyond the age of 25 years and the petitioner despite being 48 years old, could be appointed. However,



on a query of the Court as to whether there was any reason recorded for such relaxation of age, learned counsel for the petitioner could not show to the Court any such pleading or document.

5. Learned counsel for the Nagar Parishad, Bagaha submitted that the recruitment under the Notified Area Committee, Bagaha was required to be made under the Rules for Regulating the Appointment & Qualifications for the Officers and Servants of Municipalities and N.A.C., dated 25th June, 1977, which stipulates that the age of appointment on the post of L.D.C. is 18 years to 27 years, with no power to relax, and further, such appointment has to be through a Selection Committee and not the Vice Chairman, who in the present case has issued the appointment letter without stating as to whether the same was pursuant to a Selection Committee recommendation. It was further submitted that after his implication in Bagaha P.S. Case No. 163 of 1989, when the petitioner was taken into custody, till his date of retirement in March, 2000, he had not rejoined on his post. It was submitted that after 26 years of his superannuation in the year 1990, only in the year 2016, the matter was raked up by sending legal notice and thereafter filing the present case. Learned counsel further submitted that the authorities were never informed with regard to the outcome of Bagaha P.S. Case No. 163 of 1989, the petitioner conviction or even the later acquittal in



appeal on 05.02.2005.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. First and foremost, the petitioner having approached the Court after 26 years of the cause of action, clearly the writ petition suffers from gross delay and laches. Further, on merits also, when the Rules stipulate the age of 18 to 27 years for recruitment on the post on which the petitioner claims to have been appointed, there being no material brought on record to even indicate that such upper limit could be relaxed and also the fact that even if there may have been some provision for such relaxation, the same could not be stretched to such an extent where the upper age of 27 years is extended to 48 years. Moreover, even in the Rules which petitioner relies upon, which are much prior to the 1977 Rules, the stipulation was that reason had to be assigned why such relaxation was being made i.e., it had to be written as to how such recruitment was in the interest of the Institution. That has also not been shown by the petitioner. The other objection by the Nagar Parishad, Bagaha that there had to be a Selection Committee, existence of the same has neither been averred nor shown to the Court by the petitioner.

7. Law stipulates that employment under a body which



is State under Article 12 of the Constitution has to be in terms of the Constitutional Provisions, especially Article 14 of the Constitution of India which mandates a due selection process pursuant to an open advertisement. None of the procedures have either been pleaded or material brought on record to show that the same was followed, including advertisement, formation of a Selection Committee, interview or otherwise of all persons who had applied and thereafter preparation of merit list. Right to salary, pension and other service benefits are entirely statutory in nature in public service, especially, the right to salary or pension, which flows from a valid and legal appointment. Once the appointment itself is clearly illegal, no right to pension can accrue.

8. In the present case, the authorities have not directed for any recovery of salary and the same is also on cogent ground i.e., the petitioner having worked on the post being entitled to salary has not been called upon to refund the same but the claim of pension based on such appointment, which has been found to be totally illegal, no right to pension can follow. An appointment flagrantly contrary to the statutory requirements is *non est* and cannot be validated on any theory of *factum valet*, as has been held by a Full Bench of this Court in the case of **Rita Mishra & Ors. vs. Director, Primary Education, Bihar & Ors.** reported as **AIR 1988, Patna**



26. The same has also been approvingly noted by the Hon’ble Supreme Court in the case of **R. Vishwanatha Pillai vs. State of Kerala & Ors.** reported as **2004 (2) PLJR (SC) 106**. Moreover, in a decision of another Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013 (1) PLJR 964**, the Court has categorically held that such type of appointment *de-hors* the mandatory requirement of satisfying the mandate of Article 14 of the Constitution of India is an appointment void *ab initio*. The same has been approvingly noted by the Hon’ble Supreme Court in the case of **Upendra Singh vs. State of Bihar & Ors.** in **Civil Appeal No. 2356 of 2018** by judgment dated 23.02.2018.

9. In view of the discussions made hereinabove, entry/appointment of the petitioner itself being totally illegal, no claim for pensionary benefits is maintainable in the eyes of law.

10. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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