

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.653 of 2018

IN

Civil Writ Jurisdiction Case No. 16893 of 2016

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Shivji Kuwar, Son of Late Gita Kuwar, resident of Kuwar Sadan,
Saidpur Khatal Gali, P.S.-Kadamkuan, District-Patna.

.... Appellant/s

Versus

1. The Municipal Corporation, Patna, through its Municipal Commissioner.
2. The Municipal Commissioner, Patna Municipal Corporation, Patna.
3. The Executive Officer, Bankipur Circle, Patna Municipal Corporation.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.B.K. Manglam, Advocate

For the Respondent/s : Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 13-09-2018

The present Letters Patent Appeal has been preferred by the appellant against the judgment and order dated 15.11.2017, passed by the learned Single Judge in C.W.J.C. No. 16893 of 2016.



2. The appellant was communicated *vide* Memo No. 930, dated 24.08.2016, that he has retired on completion of 42 years of service. He claims that on 24.08.2016, he was only 56 years of age and he was made to retire prematurely. The reason for the aforesaid contention of the appellant is that his services were wrongly counted to be continuous from 1974 even when he had obtained fresh appointment in the year 1983. The challenge of the appellant to the aforesaid communication by which he was declared retired was not accepted by the learned Single Judge as the appellant was not in a position to demonstrate that there was any break in the service of the appellant from 1974 and was appointed afresh in the year 1983.

3. It is an admitted case of the appellant that he was appointed as an Inoculator/Vaccinator on daily-wages on 14.08.1974 in the Patna Municipal Corporation. However, according to the appellant, his services were terminated on 09.07.1976 and he remained unemployed till 20.03.1983. He claims to have been again reappointed in the Patna Municipal Corporation on a temporary basis on 21.03.1983. Thereafter, he was taken in regular establishment on 01.05.1985 under regular pay-scale.

4. There is nothing on record to show that the services of the appellant was ever terminated or that he did



not continue in service uninterruptedly since 1974.

5. By way of supplementary affidavit, the appellant has brought on record his appointment letter of the year 1974 and another letter of 1983. In both the letters referred to above (Annexures-A2 and A3), the appointment of the appellant is stated to be on temporary basis. The letter of 1983, therefore, has to be taken as the absorption of the appellant under the regular pay-scale and cannot be treated as fresh appointment. Thus, if the period of service of the appellant is counted from the year 1974, he has served for 42 years and, therefore, he has been superannuated from the service.

6. The learned Single Judge, on not finding any material to substantiate that there was any break in the service of the appellant, dismissed the claim of the appellant.

7. The attempt of the appellant for review of the order impugned also failed.

8. What has further caught our attention is that if the appellant was initially appointed in the year 1974 and with his disclosed date of birth as of now, he would have been only 14 years old at that time. This only establishes that his appointment, in the first instance, was without any justification.

9. In any view of the matter, since we do not find



that there was any break in the service of the appellant from 1974, thereby his having completed 42 years in service, he has justifiably been superannuated.

10. The present Letters Patent Appeal stands dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

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