

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14152 of 2014

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Durga Nand Mishra son of Late Chandra Kant Mishra, Resident of Madhubani Town, Ward No. 7, Mithila Bhawan East of Ganga Sagar Pond, Police Station- Madhubani, District- Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Madhubani
3. The Executive Officer, Madhubani Nagar Parishad, Madhubani, Police Station- Madhubani, District- Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhas Ranjan
For the State	:	Mr. P.M. Sharan, AC to AAG 15
For Nagar Parishad, Madhubani		Mr.Purshottam Jha
		Mr. Vikash Kr. Jha

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date 13-08-2019

Heard counsel for the petitioner and counsel for the respondents-State as well as counsel for Nagar Parishad, Madhubani.

Petitioner is aggrieved by order dated 05.08.2014 issued by Executive officer, Madhubani whereby petitioner was compulsorily retired from service with effect from 31.08.2017.

Submission advanced on behalf of the petitioner is that without affording him an opportunity of hearing and without complying with the procedure as prescribed under Model Rules and in violation of principles of natural justice, order of removal based on certain allegations, and carrying



stigma has been issued in the garb of an order of compulsory retirement dated 05.08.2014.

Counsel for the Nagar Parishad places paras 20 and 21 of the counter affidavit. He submits that conduct of petitioner was such that it was in the interest of institution to compulsory retire him. He submits that order has been passed on the basis of the recommendation by the competent authority which is annexure 5 i.e. order of the Board dated 19.07.2014. Order of the Executive Officer is a mere communication. In support of his submission, he has also placed decision of the Apex Court in the case of Union of India & others vs. Dulal Dutt reported in 1993(2) SCC 179.

Records of the case make it clear that order of compulsory retirement is based on allegation/charge and casts stigma inasmuch as findings have been recorded that petitioner had neglected his duty and obstructed in implementation of certain policies. Order of compulsory retirement dated 05.08.2014 is based on allegation and carrying stigma. The order of the Apex Court relied by counsel for Nagar Parishad is not applicable in the facts and circumstances of the case.

The order of compulsory retirement is carrying stigma and without affording any opportunity to the petitioner. Law is



well settled that any order having civil/penal consequences cannot be issued by the authority without complying with the principle of natural justice. Order of compulsory retirement dated 05.08.2014 in the facts and circumstances of the case appears to be unsustainable.

Submission of counsel for respondents that the decision of the Parishad does not carry any such stigma and it has merely been recorded as a communication, is not sustainable in law.

In view of specific finding of misconduct carrying stigma against the petitioner, order dated 05.08.2014 without complying with the principles of natural justice, in the garb of compulsory retirement is not sustainable in law and is hereby quashed.

Writ petition is allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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