

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22196 of 2011

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Bhupendra Choudhary Son Of Late Mishri Choudhary R/O Village & P.O. Akhtiarpur, P.S. Sarairanjan, Dist . Samastipur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Urban Development , Bihar, Patna
3. Board Of Directors, Samastipur Municipality, Samastipur
4. Smt. Anita Ram, Adhyaksh, Samastipur Municipality, Samastipur
5. Sri Jamal Asgar Khan, Vice Chairman, Samastipur Municipality, Samastipur
6. Sri Shaket Bihari Sharma, The Executive Officer, Samastipur Municipality, Samastipur
7. Ram Binod Singh Son Of Sri Raj Kumar Singh R/O Village Sultanpur P.O. & P.S. Mohiuddin Nagar, District Samastipur A/P Working As Clerk , Samastipur Municipality, Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad, Adv
For the Municipality : Mr. Durga Nand Jha, Adv
For the State of Bihar : Mr. Ram Shankar Prasad, AC to GP-VII

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 22-06-2015 Heard learned counsel for the parties.

2. This writ application has been filed by the

petitioner for the following relief:-

“for quashing the order contained in Memo No. 10 dated 10.1.2011 issued from the office of Executive Officer, Samastipur Municipality by which petitioner has been informed that his claim for promotion has been rejected in the Meeting of the Board on 29.12.10, copy of which has not been supplied till date though repeated requests have been made from the respondent, Sa dated issuance of writ/order/direction tot eh respondents to give him promotion with effect from

2.10.89 including monetary benefit and difference of pay and promote him on the post of clerk maintaining his seniority to that of his junior Sri Ram Binod Singh and Ashok Kumar Gupta so that he may not suffer any loss and injury and feel humiliation amongst his cadre men.”

3. Learned counsel for the petitioner in support of the aforementioned prayer has basically concentrated on the following two aspects:-

(i) The petitioner was senior to respondent nos. 7 to 8 and as such, when they were promoted on the post of clerk, the petitioner could not have been denied such promotion.

(ii) The impugned order which has been passed by the authorities of the Samastipur Municipality pursuant to the direction of this Court does not contain any reason.

4. Explaining the aforementioned aspects, learned counsel for the petitioner has referred to a number of documents, firstly, to show that the claim of the municipality in the counter affidavit that respondent no. 8 was appointed on the post of clerk, is contrary to the



materials on record, as initially, he was actually engaged as a Coolie. He has also highlighted the aspect that after the petitioner had passed his madhyama examination, an opinion was taken from the Government Pleader, Samastipur, who had recommended that the petitioner should be given promotion on the post of Tax Collector, the work that he was doing for long.

5. Mr. Durganand Jha, learned counsel appearing on behalf of Municipality, on the other hand, having filed the counter affidavit, explains that first of all what is being now said against respondent nos. 7 and 8, was already said by the petitioner in his earlier writ application being C.W.J.C No. 903 of 1993, which was dismissed as withdrawn by order dated 29.10.1998. He then explains that the claim of promotion can invariably be in a cadre. The petitioner claims that he was appointed on the post of Peon and he is comparing his case with other class-IV post. He submits that the Executive Officer of Samastipur Municipality, having



gone through the entire records has found that the petitioner was barely in a position to write his name or scribble something and therefore, his madhyama certificate and its original copy whereof, has never been produced before the authorities, would inspire no confidence, much less, strengthen his case, for promotion.

6. In the considered opinion of this court the concept of promotion under service jurisprudence presupposed existence of a cadre with a lower feeder post and availability of higher promotional post. The petitioner claims in the writ petition, that he was appointed as a Peon, in the year 1960. Learned counsel, however, in course of submission says that the petitioner was appointed as a Coolie and not as a Peon. Therefore, when the petitioner is himself not sure of his initial appointment, whether on the post of Coolie or on the post of Peon, he cannot be allowed to agitate any claim of promotion specially when there is no Rule under

Samastipur Municipality laying down any promotion from the post of Peon or Coolie to the post of clerk.

7. Let it be noted that under the Bihar & Orissa Municipal Act, 1922 there was a model Rule of appointment and promotion under which the posts were classified in two categories, namely, inferior posts and superior posts. The post of Coolie was part of inferior post and the post of Tax Collector or Clerk was part of superior post. There was, however, no modality given as with regard to promotion and thus only concept was of direct appointment.

8. It is in this background that this Court has to believe the story given by the respondents in the counter affidavit that both respondent nos. 7 and 8, on the basis of their qualification of Post Graduation or Graduation, were given the post of Clerk. The petitioner in fact had challenged those appointment/promotion way back in the year 1993, but that writ petition was dismissed as withdrawn by giving liberty to the petitioner to raise



those issues before the authorities concerned. The petitioner took more than 12 years in reaching this Court again with the grievance that his case was not considered after retirement, inasmuch as, the petitioner had retired on 30.06.2010, and a writ petition being C.W.J.C No. 7088 of 2010 was filed at the verge of retirement which was disposed of on 26.04.2010. If that order is perused, the case of the petitioner was that he was appointed as a Peon and later on he was appointed as Tax Collector.

9. As noted above, the petitioner was never appointed on the post of Tax Collector and only was given the work of Tax Collector. Therefore, the authorities having found that the petitioner was barely in a position to scribble his name, had all the reason, not to disturb the earlier event which has taken place in the year 1985 or 1988/89 when the respondent nos. 7 and 8 were assigned the higher post of Clerk.

10. The petitioner cannot get any relief in the



matter of promotion specially when the post of Peon does not fall in the line of the post of Clerk nor the petitioner could have ever staked the post of Clerk, when he had not even produced his original certificate of madhyama examination before the authorities of Municipality. As a matter of fact, the opinion of the Government pleader on the basis of School Leaving Certificate of the petitioner was itself totally irrelevant and was rightly ignored by the authorities of the Samastipur Municipality.

11. In any event, this Court itself has examined the scribbling of the handwriting of the petitioner in Annexure-8 a tax receipt issued by the petitioner produced by him in his reply to counter affidavit, he cannot even correctly write in words the figure of 246 in Hindi, inasmuch as, there are at least three apparent mistakes even in writing one sentence. Such a person claiming to have passed madhyama examination and therefore, being equivalent to matriculation could not



have been allowed to work, much less, promoted on the post of Clerk where one has to write at least in Hindi while submitting his note. This Court, therefore, does not find any error in the consideration and rejection of the case of the petitioner for his promotion on the post of clerk.

12. The petitioner at best make out case for payment of allowance as the petitioner was allowed to work against the higher post of Tax Collector. The municipality will be therefore under an obligation to consider his case for grant of additional pay and/or allowance in terms of Rule-103 of the Bihar Service Code, which lays down, that in case, a person, holding substantive lower post is assigned duty of the higher post, he would be entitled for 20 per cent of the basic salary or Rs. 250 per month whichever is less.

13. Thus while this Court cannot grant relief sought for in this writ application, the same is disposed of with a direction to the competent authority of

Samastipur Municipality to consider the case of the petitioner for payment of additional amount in terms of Rule 103 of Bihar Service Code, and also pay the amount, which may be found admissible and payable, on the basis of verification of the records for the actual work done by the petitioner on the post of Tax Collector.

14. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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