

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9447 of 2014

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Sanjay Kumar Sharma Son of Sri Surendra Prasad Sharma resident of Professor Colony, Jehanabad, Police Station - Jehanabad in the district of Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Patna
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna
3. The District Magistrate - cum - Collector, Jehanabad
4. The Nagar Parishad, Jehanabad through its Executive Officer
5. The Chairman, Nagar Parishad, Jehanabad
6. The Executive Officer, Nagar Parishad, Jehanabad
7. Mr. Kuber Chandra Singh son of Late Rajeshwar Singh resident of Village - Sondhila, P.S. Buxar (M) in the district of Buxar, the then Executive officer, Nagar Parishad, Jehanabad, Presently posted as O.S.D., Panchayati Raj Department, Government of Bihar, Patna
8. Md. Abid Hussain Ansari Son of Late Arif Hussain resident of Raja Bazar, Jehanabad, Police Station - Jehanabad in the district of Jehanabad
9. Satya Vijay Son of Sri Hari Singh resident of Raja Bazae, Jehanabad, P.S. + District - Jehanabad
10. Randhir Kumar Verma Son of Late Satya Narayan Prasad Verma resident of Main Road (in front of Bishwanath Market), Jehanabad, P.S. + District - Jehanabad
11. Surendra Kumar Son of Sri Tarkeshwar Pandit resident of Mohalla - Shyamnagar, Jehanabad, P.S. + District - Jehanabad
12. Ajay Kumar Son of Sri Arjun Prasad resident of Mohalla - Shastrinagar, Jehanabad, P.S. + District - Jehanabad
13. Vijay Kumar Son of Sri Arjun Prasad resident of Mohalla - Shastrinagar, Jehanabad, P.S. + District - Jehanabad
14. Md. Zafar Iqbal Son of Bashimul Haque resident of Mohalla - Makhdumabad, Jehanabad, P.S. + District - Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Sharma, Adv
For the State : Mr. Sc14-Dr.Anshuman
For respondent nos. 4 to 18: Mr. Yogendra Mishra, Adv
For respondent no. 6 : Mr. Sanjay Prakash Verma, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 06-04-2015

Heard learned counsel for the parties.



Pursuant to the earlier order of this Court dated 18.03.2015, Mr. Amrit Lal Meena, Principal Secretary, Urban Development Department, Mr. Aditya Kumar Das, District Magistrate, Jehanabad, Deokali Devi, Chairman, Nagar Parishad, Jehanabad and Mr. Narendra Nath, Executive Officer, Nagar Parishad, Jehanabad have appeared in person.

In this writ application the petitioner has prayed for the following reliefs-

“To issue writ of certiorari for quashing the order of appointment of Respondent no. 8 to 14 contained in Memo No. 133 dated 08.02.2014 issued under the signature of Executive Officer, Nagar Parishad, Jehanabad by which the Respondent no. 8 to 14 have been appointed to the post of Tax Collector (Tehsildar) on the monthly remuneration of Rs. 6,000/- each for a period of 11 months.

Also to issue writ of mandamus directing the respondents specially Respondent no. 6, the Executive Officer, Nagar Parishad, Jehanabad to not make payment of monthly remuneration to the Respondent no. 8 to 14 who have been illegally appointed to the post of Tehsildar by the then Executive Officer, Nagar Parishad, Jehanabad (Respondent no. 7) by adopting malpractice method.

Also to direct the respondents specially Respondent No. 2 and 3 to take legal action against the erring respondents who have appointed the Respondent no. 8 to 14 in most illegal and arbitrary manner without following the procedure of appointment i.e., Advertisement, Roster clearance, Interview etc. and also against the sanctioned strength.”



Learned counsel for the petitioner has submitted that the appointment of the respondent nos. 8 to 14 being rank illegal, they should not be allowed to continue in service and their payment of salary should also not be made from the funds of the Nagar Parishad, Jehanabad.

Amazed with the nature of appointment of respondent nos. 8 to 14, this Court on an earlier occasion had passed an interim order relevant portion whereof reads as follows:-

“Learned counsel for the petitioner submits that the engagement of respondent nos. 8 to 14 on the post of Tax Collector is out and out an act of personal favour because these posts were never advertised nor any selection process was undergone by the Jehanabad Nagar Parishad. In this case, no counter affidavit has been filed on behalf of Jehanabad Nagar Parishad and whatever counter affidavit has been filed by the respondent-State of Bihar is wholly unsatisfactory. As a matter of fact though respondent nos. 8 to 14 have appeared through their counsel but they too have not filed their counter affidavit.

Having regard to the fact that there is apparent illegality in the selection and appointment of private respondent nos. 8 to 14, inasmuch as, they were engaged on the post of Tax Collector by Jehanabad Nagar Parishad without advertising the post and undergoing the process of selection, this Court would direct for personal appearance of respondent nos. 2, 3, 5 and 6 to explain as to why all of them have collectively

remained mute spectators to this gross illegality of swindling of public exchequer by way of appointment of respondent nos. 8 to 14.

*Put up this case on **6th of April, 2015** when the aforementioned respondents shall remain present in person.*

Pending final disposal of this writ application if the respondent nos. 8 to 14 have been still continuing after completion of their period of 11 months, they may continue to be in service, but their payment of emoluments shall not be made for the time being till further order of this Court.”

Today, not only show cause on behalf of Principal Secretary of Urban Development Department, District Magistrate, Jehanabad and Executive Officer, Nagar Parishad, Jehanabad have been filed but a counter affidavit has also been filed by the Executive Officer, Nagar Parishad, Jehanabad, respondent no. 4, explaining the entire matter. According to all of them appointment of respondent nos. 8 to 14 was illegal and was not made after following the mandate of Article 14 and 16 of the Constitution of India. The Principal Secretary in fact has also submitted that he has already set up an inquiry in the matter of such appointment of respondent nos. 8 to 14 and an action would be taken as

per the findings in the inquiry report against the erring officials/persons.

The Executive Officer of Jehanabad Nagar Parishad present in the Court has also submitted that such appointment of respondent nos. 8 to 14 was only for a period of 11 months and therefore, on 5th of January, 2015, all of them were asked to hand over the receipt book in their charge because their extension of service was not made beyond the period of 11 months.

As this stage, Mr. Yogendra Mishra, learned counsel appearing on behalf of respondent nos. 8 to 14 seeks to clarify his stand. According to him, respondent nos. 8 to 14 were engaged initially on commission basis and were asked to work in the Nagar Parishad after following the mandate of Article 14 and 16 of the Constitution of India but when their commission, as agreed in their order of engagement, was not paid they have filed C.W.J.C NO. 6716 of 2011, which is still pending before this Court. Mr. Mishra, also submits that



as a matter of fact when the Nagar Parishad, Jehanabad did not pay the wages as agreed in the order of engagement of respondent nos. 8 to 14, the petitioners were offered the appointment for 11 months on contract basis and therefore, there was nothing wrong in their appointment. Though, he also wanted to contend that respondent nos. 8 to 14 are still continuing in service in absence of termination letter issued to them but then this Court having been produced with authentic documents by the Executive Officer of Jehanabad Nagar Parishad informing that there was no extension of service given to respondent nos. 8 to 14, beyond the period of 11 months, this Court will have no other option but to hold that respondent nos. 8 to 14 are no longer continuing in service on completion of their 11 months tenure as contained in Annexure-1 series to this writ application.

Now, there are two facets to the whole issue. Firstly, the payment of respondent nos. 8 to 14 in terms



of the contractual appointment which were made on 08.02.2014. And secondly, this appointment was definitely made in violation of the mandate of Article 14 and 16 of the Constitution of India. Admittedly, no advertisement was published in the newspaper and no selection process was undergone. Such rank illegal appointment will never confer any benefit of salary as was held by a Full Bench of this Court in the case of **Rita Mishra Vs. State of Bihar & Ors.** reported in **1987 BBCJ 701** which has been also approved by the Apex Court in the case of **R. Vishwanatha Pillai Vs. State of Kerala & Ors.** reported in **2004(2) SCC 105** wherein it was held that:-

“15. ----- Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment



was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In Ishwar Dayal Sah v. State of Bihar the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or

the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case



where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud." (underlining for emphasis)

True, it is that these respondent nos. 8 to 14 claim to be engaged by the Nagar Parishad, Jehanabad initially on commission basis and therefore, the writ petition being C.W.J.C No. 6716 of 2011 is pending. They also claim that their such appointment was made pursuant to complete observance of the mandate of Article 14 and 16 of the Constitution of India. This Court, therefore, would not like to say a word as with regard to claim of payment of commission for the

period they have continued as commission agents and that the matter is to be decided by this Court in C.W.J.C No. 6716 of 2011.

The payment of salary to respondent nos. 8 to 14 having been denied by this Court for the contractual period, it would however, be open for them to claim such emoluments from the persons who had made such appointment and for that purpose they would be definitely entitled to raise the issue before the competent Civil Court as Jehanabad Nagar Parishad is not bound to make such payment on account of those contractual appointment being wholly illegal.

If, however, payment has already been made to respondent nos. 8 to 14 for the contractual period, the responsibility shall be fixed as to who were those persons who had made such illegal appointments and also become party in making payment of salary to respondent nos. 8 to 14. Thereafter recovery as permissible in law shall be made from the erring



officials/persons. This Court in fact has already been informed that the Executive Officer of Jehanabad Nagar Parishad who was party to such illegal appointment and had made payment of salary has already retired from service.

Learned counsel for the petitioner informs this Court that the Executive Officer of Jehanabad Nagar Parishad, who had made such illegal appointments actually has not made payment of salary to respondent nos. 8 to 14 but in fact it is the present Executive Officer, who has made payment of salary to respondent nos. 8 to 14 to the tune of Rs. 3,41,000/- approximately. If that be so, then the competent authority will be under liberty to initiate the proceeding for recovery which was paid under the orders of the present Executive officer.

The personal appearance of Mr. Amrit Lal Meena, Principal Secretary, Urban Development Department, Mr. Aditya Kumar Das, District Magistrate, Jehanabad, Deokali Devi, Chairman , Nagar

Parishad, Jehanabad and Mr. Narendra Nath, Executive Officer, Nagar Parishad, Jehanabad are dispensed with.

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

(Mihir Kumar Jha, J)

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