

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1901 of 2014

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Birendra Rai, Son of Bhikhari Rai, Resident of Village-Chintamanpur, P.O.-Kataha,
P.S.-Mehsi, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Town Development and Building Department, Bihar,
Patna.
3. The Deputy Secretary, Town Development and Building Department, Bihar,
Patna.
4. The District Collector, Motihari, East Champaran.
5. The Chairman, Municipal Panchayat Mehsi, East Champaran.
6. The Municipal Executive Officer, Nagar Panchayat Mehsi, East Champaran.
7. The Special Executive Officer, District Confidential Section, East Champaran.
Motihari
8. The Sub Divisional Officer, Chakia, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Shankar Shrivastava.
For the Nagar Panchayat	:	Mr. Sanjay Kumar, Advocate.
For the State	:	Mr. Sunil Kumar, A.C. to G.P.-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-07-2016

Heard Mr. Vijay Shankar Shrivastava, learned counsel
appearing for the petitioner, learned counsel for the Municipality
and learned counsel for the State.

The petitioner is aggrieved by the order dated 8.10.2013
passed by the Executive Officer, Nagar Panchayat, Mehsi in the
district of East Champaran impugned at Annexure-10 whereby the
services of the petitioner from the post of Peon has been
terminated.

The case in hand is a classic example of inter-meddling by



the District Magistrate into the affairs of Municipality. Even when an enquiry into the appointment of the petitioner was put to rest yet it is on the extra-jurisdictional power exercised by the District Magistrate, East Champaran that the Executive Officer of the Municipality considering himself to be a subordinate of the District Magistrate has mechanically proceeded to obey his order.

Facts briefly stated is that a number of posts were created for the Urban bodies under the directions of the Urban Development and Housing Department, Government of Bihar present at Annexure-1. An advertisement was issued on 28.5.2012 by the Executive Officer, Nagar Panchayat, Mehshi (East Champaran) placed at Annexure-2. The petitioner responded to the advertisement vide Annexure-3 series. The select list was prepared vide Annexure-4 in which the name of the petitioner appears at serial no.3 against the post of Peon which is dated 17.9.2012. Perhaps the petitioner was already engaged on an honorarium hence his casual engagement was dispensed, consequent upon his regular appointment vide Annexure-5. A disgruntled competitor filed a complaint questioning the appointment of the petitioner on his educational qualification. The Executive Officer, Nagar Panchayat got the complaint verified from the Head Master, High School, Ramgarh, Mahuawa vide Annexure-6. The Head Master



confirmed the qualification and which has been communicated by the Executive Officer, Nagar Panchayat to the Sub-Divisional Officer vide Annexure-8 yet on directives issued by the District Magistrate, East Champaran as communicated by the Special Works Officer, District Confidential Cell charging the appointment of the petitioner as engulfed with illegalities that mechanically the Executive Officer terminates the services of the petitioner vide order dated 8.10.2013 impugned at Annexure-10.

While Mr. Shrivastava, learned counsel for the petitioner has questioned the order as being contrary to the materials on record as well as on grounds that it was passed behind the back of the petitioner and without any opportunity of hearing, the action is defended by the learned counsel for the Municipality by shifting the burden on the directives of the District Magistrate who conveniently does not chose to file any counter affidavit although the matter is pending for more than two and a half years.

Having heard learned counsel for the parties and considering the matter in contest, in my opinion the order of termination is fit to be quashed for more than one reason and the foremost of which is that no opportunity was afforded to the petitioner to defend himself. The order is also not sustainable for it is a mechanical execution of directive issued by the District

Magistrate, East Champaran, who has no business to meddle with the affairs of a Municipality.

Even on merits the appointment of the petitioner was not required to be interfered. The only allegation apparently is the educational certificate of the petitioner, which also was put on rest by the conformation by the Head Master of the school vide Annexure-7 as accepted by the Executive Officer, vide Annexure-8. The impugned order dated 8.10.2013 thus is not sustainable either on merits nor on the procedure followed and is accordingly set aside. The petitioner stands restored and since his services have been terminated on nonest ground and *de hors* the prescribed procedure, hence, balancing the equity, he is held entitled to 50% of the arrears of salary.

The writ petition is allowed.

(Jyoti Saran, J)

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