

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2766 of 2013

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1. Kausik Kumar Chandra S/O Late Sheonandan Singh R/O Village-Sareya, P.O. & P.S.- Makhdumpur, Distt.- Jehanabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Town Development And Housing Department, Bihar, Patna
3. The Joint Secretary Town Development And Housing Department, Bihar Patna.
4. The Deputy Secretary Cum Director Town Development And Housing Department, Bihar, Patna
5. The Nagar Panchayat Makhdumpur, P.O. & P.S.- Makhdumpur, Distt.- Jehanabad, Through - The Chairman, Nagar Panchayat, Makhdumpur, P.O. & P.S.- Makhdumpur, Distt.- Jehanabad
6. The Executive Officer Nagar Panchayat, Makhdumpur, P.O. & P.S.- Makhdumpur, Distt.- Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Singh

For the Respondent/s : Mr. Madhuresh Prasad

For the Nagar Panchayat : Mr. Binay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

8 28-03-2016 Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the Nagar Panchayat, Makhdumpur.

In the present writ petition, petitioner is challenging the letter no. 257 dated 25.03.2010 passed by the Executive Officer, Nagar Panchayat, Makhdumpur by which his salary has been stopped and further directed that he is free to discharge the duty without pay.

As per claim of the petitioner, he was employed on temporary basis in the service of Nagar Panchayat, Makhdumpur

and for regularization of his service he approached this court vide CWJC No. 16067 of 2001 and this Court has given direction to consider the case of the petitioner for regularized.

In pursuance thereof the Nagar Panchayat in its meeting dated 08.07.2005 in agenda no. 08 considered the case of the petitioner in the light of the order passed by this Court, took positive decision. The petitioner and other daily wage employees have been regularized in service and payment would be made from own resources of Nagar Panchayat. Claim has been made by the petitioner that he was getting salary regularly but on the basis of letter of the State Government vide letter no. 208 dated 16.04.2006 the payment of the petitioner has been stopped and has also mentioned in the order that if so they desire they are free to discharge the duty.

Counsel for the petitioner submits that the said notification is applicable to those only who are employed on temporary basis but does not apply to those persons who have been regularized in service, he submits that he has been attending his office regularly but the Nagar Panchayat is neither allowing him to mark the attendance and not allowing him to discharge his duties.

Counsel for the Nagar Panchayat submits that he is not attending the duty and so he is not entitled to any salary.

Be that as it may, from the record it shows that the

petitioner has been regularized in service in view of the direction passed by this court vide order dated 25.03.2010, the Nagar Panchayat has stopped to pay the salary, giving liberty, if so advised, to work without salary, which violates of Article 23 of the Constitution as no one can be forced to do the work without payment of salary. As the petitioner was regularized in service, later on he can not be treated as a temporary employee without taking any steps for withdrawing the earlier decision of the Nagar Panchayat.

In such view of the matter, this court directs the Executive Officer Nagar Panchayat, Makhdumpur to examine the case of the petitioner allow him to discharge his duty and ensure payment from its own resources.

For convenience the petitioner is directed to file a fresh representation along with this order and Executive Officer will take decision within a period of three weeks from the date of filing of representation.

With aforesaid observation/direction of this petition accordingly, disposed of.

(Shivaji Pandey, J)

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