

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1214 of 2014
IN
Civil Writ Jurisdiction Case No. 7778 of 1997**

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Executive Officer Municipality Bagaha, Vipin Kumar Yadav Son of late Bala Yadav Resident of Village- Navtolia P.S.- Bihpur District- Bhagalpur

.... Respondent no. 6 - Appellant

Versus

1. The State of Bihar
 2. The Secretary, Department of Urban Development, Govt. of Bihar, Patna
 3. The Deputy Secretary, Department of Urban Development, Govt. of Bihar, Patna
 4. The Collector, West Champaran at Bettiah
 5. The Sub Divisional Officer, Bagaha West Champaran
 6. The Special Officer, Municipality, Bagaha
 7. The Chairman, Municipality, Bagaha Respondents - Respondents
 8. Devta Nand Dwivedi Son of late Sita Ram Dwivedi Resident of Mohalla- Devipur Bazar, P.S.- Dharrha, District- West Champaran, Bettiah, at present residing at Bagaha, P.S.- Bagaha, District- East Champaran
- Petitioner - Respondent
- =====

Appearance:

For the Appellant/s : Ms. Sushmita Mishra, Advocate.

For the Respondents-State: Mr. Anshuman Singh, AC to AG.

For the Respondent no.8: Mr. Rakesh Narayan Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 07-11-2017

Heard learned counsel for the parties.

2. This appeal is disposed of with only two observations –

- (i) that the engagement of Devta Nand Dwivedi is not a matter of dispute, however, the same is not in terms of the requirement of the rules as well as the permission of the competent department and is, in fact, contrary to the directions and (ii) that the District Magistrate's



report fairly submits that since he was engaged on daily wage basis, the period for which he has worked payment must be made.

3. There does not seem to be any ambiguity with regard to the work from 02.09.1987 till September, 1997. This is an undisputed period. However, learned counsel for the private respondents submits that he has continued to work and there are evidences to show about his engagement. These are matters which can be placed before the municipal authorities when they shall start working out the liability for payment to the private respondent, on the basis of the daily wage.

4. So far as regularization or treating the appointment of the private respondent on a substantive post is concerned, since no process and procedure has been followed, the recommendation of the enquiry report of the District Magistrate is that the same cannot be ordered.

5. We are also satisfied on that aspect of the matter that the the engagement was done in a proper procedure. May be because of the exigency of work and duty the modality was adopted, but that cannot become a ground for not following the law and process.

6. In view of the above, the impugned order is set aside.

7. Payment must be made to the private respondent no. 8 by the Bagaha Municipality within a period of three months from the date of receipt / production of a copy of this order.



6. The Appeal stands disposed of with the observations as above.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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