IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2388 of 2002

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MAHESHWAR SINGH AGED ABOUT 45 YEARS, SON OF LATE PANCHU SINGH, RESIDENT OF OLD JAKKANPUR, NEAR OLD DEVI ASTHAN, POLICE STATION JAKKANPUR, DISTRICT PATNA.

... ... Petitioner/s

Versus

1.THE ADMINISTRTATOR, PATNA MUNICIPAL CORPORATION HAVING HIS OFFICE IN BUDHA MARG, POLICE STATION-KOTWALI, DISTRICT PATNA.

2.THE DEPUTY ADMINISTRATOR, PATNA MUNICIPAL CORPORATION HAVING HIS OFFICE IN BUDHA MARG, POLICE STATION-KOTWALI, DISTRICT PATNA.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv

For the Respondent/s : Mr. Ramanuj Pd.Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 19-04-2018

Heard learned counsel for the parties

2. This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ of mandamus to consider the case of petitioner for promotion on the post of Tax Collector in the pay scale of Rs. 1200-1800/- on the sanctioned post on which petitioner was working since 14.08.1987 as well as payment of salary for the period he discharged duty of Tax Collector.

3. Briefly stated, the facts of the case is that petitioner was appointed as daily wager vide memo dated 24.11.1976 in the Patna Municipal Corporation. Petitioner was appointed on the post of Rakshak (Guard) against sanctioned vacant post in the pay scale of Rs. 350-425/- vide office order dated 23.08.1985 (Annexure-1).

4. Petitioner was asked to perform duty of Tax Collector vide office order dated 14.08.1987 and since then he has been continuously working against the said post. Petitioner was asked to deposit Rs. 1000/- with the Chief Executive Officer, Patna Municipal Corporation, with his posting as Tax Collector vide office order dated 23.08.1987 (Annexure-3). Petitioner was posted as Tax Collector at different places within Patna Municipal Corporation.

5. It has been submitted that some employees working as Sanitary Supervisors and Peon were promoted to the post of Tax Collector vide office order dated 26.11.1976 (Annexure-6). One Sita Ram Choudhary similarly placed as petitioner filed C.W.J.C No. 9992 of 2000 and the same was allowed on 27.09.2000 (Annexure-7). Similarly, Baidyanath Sharma, Kameshwar Prasad, Chidanand Yadav and Niranjan Kumar Sinha filed C.W.J.C Nos. 10466 of 2000, 10492 of

2000, 10522 of 2000 and 2853 of 2001 and same was disposed in similar terms.

6. It has been further submitted that there are 41 sanctioned vacant post in Patna Municipal Corporation and petitioner has been working against the sanctioned post of Tax Collector and has unblemished record.

7. Petitioner filed several representations before the Administrator, Patna Municipal Corporation for grant of regular promotion on the post of Tax Collector as well as salary for the post of Tax Collector but no action has been taken pursuant to his representation.

8. A counter affidavit has been filed on behalf of respondent-Patna Municipal Corporation in which it has been stated that petitioner was appointed on the post of Rakshak in the pay scale of Rs. 300-425/- which has been replaced as Rs. 775-1025/-. Petitioner vide office order dated 14.08.1987was asked to perform the duty of Tax Collector with condition that seniority list will be counted in the Rakshak grade and no other monetary benefit would be granted to him and petitioner having accepted said conditions is bound by the terms and conditions of said office order. It was only a local work engagement which does not confer any legal right of

promotion on higher post. Pay scale of Tax Collector is five slabs above Rakshak. Petitioner has been granted the benefit of 1st and 2nd ACP in the year 1999 and 2009. Petitioner has already superannuated on 31.03.2015.

9. It is a settled proposition of law that an employee is entitled for the salary of the higher post if he has been discharging the duties of higher post with higher responsibility, as such petitioner is entitled for the salary of Tax Collector for the period, he performed the duty of Tax Collector.

10. The petitioner cannot claim regular promotion on the said post as same was not next promotional post in his cadre and he was never considered for regular promotion or granted adhoc promotion or officiating promotion on the said post, as such he cannot claim regular promotion on the post of Tax Collector and accordingly, said claim is rejected.

11. Since, petitioner has already retired from service, as such respondent no. 1, Chief Executive Officer, Patna Municipal Corporation, is directed to pay salary of the post of Tax Collector to the petitioner for the period he performed his duty as Tax Collector within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is accordingly disposed of with the aforesaid direction.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.05.2018
Transmission Date	N.A.