

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2320 of 2010

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1. Nageshwar Prasad Sinha S/O Sri Madhu Lal Sinha R/O Mohalla- Jaiprakash Nagar, P.S. Jakkanpur, Distt. And Town- Patna
 2. Surya Vijay Singh S/O Sri Ram Priya Sharan Singh R/O Mohalla- Rajendra Nagar Road No.1, P.S.- Kadam Kuan, Distt. And Town - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Through Secretary Urban Development Department, Government Of Bihar, New Secretariat, Patna
2. The Secretary Urban Development Department, Government Of Bihar, New Secretariat, Patna
3. Chief Executive Officer / Nigam Ayukt Patna Municipal Corporation, Budh Marg, Patna
4. The Chief Engineer Patna Water Board, Patna
5. Executive Officer Patna Water Board, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv. Mr. B.S. Thakur, Adv.
For the PMC	:	Mr. Ranjeet Kumar Pandey, Adv.
For the State	:	Ms. Deepanjali Gupta, AC to GP10

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 23-03-2018

Heard learned counsel for the petitioner and counsel for the State.

It is high time that when the officials of a Department makes a wrong statement in the affidavit and try to mislead this Court and they think that, by making a wrong statement and by misleading the Court, will get an order in their favour and it is one case when this Court is of the view that Sri Rajiv Ranjan, the then Executive Officer, has made a statement contrary to the records maintained by the office of the Municipal Corporation.

In the present case, the petitioners is challenging the order dated 6.11.2009 (Annexure-1) by which the claim of the petitioner no.2 has



been recorded and, in the said letter, an order vide Memo No. 767 dated 15.9.2008 has been mentioned by which the petitioner no.2 was brought down from the post of Lineman Inspector to the post of Tap Inspector and similarly vide order no. 526 dated 3.10.2009 (Annexure-12), identical order has been passed against the petitioner no.1. In both the letters, it has been said that they are not entitled to the salary of Pipeline Inspector as only for time to time when a proper person was not discharging the duty, he was called upon to function as Pipeline Inspector.

The petitioner no.1, Nageshwar Prasad Sinha was appointed as Meter Reader in the year 1975 on daily wages basis. Surya Vijay Singh, petitioner no.2 was appointed initially on daily wages basis on 3.10.1979 as Tap Inspector but, he was holding the qualification of I.Sc. As per the claim of the petitioner no.1 that the petitioner was directed to discharge the duty of Pipe Line Inspector from 10.2.1986 to 31.1.2014 and similarly the petitioner no.2 was also directed to discharge the duty of Pipe Line Inspector from 27.9.1994 to 31.1.2015. The petitioner no.1 was appointed as Tap Inspector on 3.10.1979 whereas he was discharging the duty of Tap Inspector from 23.6.1981. The next promotional post of Tap Inspector is the Pipeline Inspector and the Meter Reader or Tap Inspector could be promoted on the next higher grade i.e. the Pipeline Inspector. The qualification for Pipeline Inspector was Matriculate whereas the petitioner no.1



was a Graduate and petitioner no.2 was Intermediate but, letter dated 10.2.1986 (Annexure-2) shows that he was asked to discharge the duty of Pipeline Inspector and the petitioner no.2 vide letter dated 28.12.1994 (Annexure-13) he was asked to discharge the duty of the said post. For promotion to the next grade, a proceeding was held by the Departmental Promotion Committee on 19.2.1986 and 9.1.1987 in which the case of the petitioner no.1 was considered and he was found fit for substantive promotion to the post of Pipeline Inspector but, he was deprived of promotion on the ground of lack of qualification of I.T.I. which is the essential qualification for promotion to the Pipeline Inspector. As per petitioners, they continued to discharge the duty but, instead of making payment of Pipeline Inspector, they continued to receive the salary of Tap Inspector. In support of the submission of their continuous working, the petitioners have produced the documents i.e. Annexure 15 and 17 series which shows that they continued to discharge the duty of Pipe Line Inspector and further has pointed out that the question of essential qualification of I.T.I. was raised in the case of Deep Narain Singh case which was subject matter of the proceeding before this court in C.W.J.C. No. 6031 of 2000 where also the claim was made by Dip Narayan Singh that he was discharging the duty of Pipeline Inspector for a long period but, he was illegally deprived of the benefit. In that case also, Deep Narain Singh was recommended for



promotion by the D.P.C. but, was not granted the substantive promotion to the post of Pipeline Inspector.

The Court has adjourned the case and directed the Municipal Corporation to produce the Rule which indicates that qualification of I.T.I. for Plumber is essential for promotion to the next grade but, they have utterly failed to produce that rule which prescribes that for promotion to the next higher grade, I.T.I. is an essential qualification. In the present proceeding also, except the verbal argument or recording the statement in the impugned order as well as in the counter affidavit, no material has been brought by the Municipal Corporation to indicate that the qualification of I.T.I. is the essential qualification for granting promotion to the Pipeline Inspector. In the case of Dep Narayan Singh, the Court has recorded that at the relevant time, the Court was not deciding the issue of essential qualification of I.T.I. and it was left open but, there cannot be a plea every time for the Municipal Corporation to take such a plea that I.T.I. is an essential qualification for promotion to the next grade when repeatedly the Municipal Corporation has failed to bring on record to show that the qualification of I.T.I. is essential for promotion to the next grade of Pipeline Inspector and it is also very important that later on the petitioners have already been granted two A.C.P. and Clause 5(5) itself provides that the condition of granting A.C.P. will be as that of granting regular promotion. So the condition



which is meant for promotion will be mutatis mutandis applicable to the grant of A.C.P.

The Municipal Corporation has taken two pleas to deny the claim of the petitioners, firstly, he has submitted that the petitioners are not having I.T.I. qualification for promotion and secondly that they were not regularly discharging the duty of Pipeline Inspector and further stated that the impugned order itself discloses that all the persons including the petitioners were reverted to the original post and, in support of the submission, learned counsel for the Municipal Corporation has stated that the document which has been filed by the petitioners itself discloses that they were posted to discharge the duty of Pipeline Inspector by way of time gap arrangement, against the leave vacancy, when the Pipeline Inspector had gone for leave or otherwise. He has further submitted that the impugned letter itself depicts that they were brought down to the original post of Tap Inspector vide Memo dated 15.9.2008 but, the records which have been produced by the petitioners itself show that even thereafter the petitioners have discharged the duty of Pipeline Inspector. It can easily be verified from Annexure-16 Series and specially contradict the statement made in the impugned order that they have never worked after 15.9.2008 is the letter bearing Memo No. 951 dated 28.11.2008 wherein the petitioner no.1 was asked to discharge the duty of Pipeline Inspector in place of Vimal Kant Jha. Another letter



dated 28.12.2010 also shows that not only the petitioner no.1 but, petitioner no.2 Surya Vijay Singh also have been shown to have been asked to discharge the duty of Pipeline Inspector. Annexure 16/9 is the notes in file dated 15.4.2013 which itself shows that that petitioner no.1 was asked to repair leaking at Samanpura and Magistrate Colony and for that Rs. 50,000/- was granted to him and, similarly, Annexure-17 Series is related to petitioner no.2 which gives an impression to this Court that even after 15.9.2008, they were asked to discharge the duty of Pipeline Inspector. So the plea that has taken by the Executive Officer, it appears that he has completely made a wrong statement before this Court and he has tried to mislead the Court by suppressing the material which were lying in the office of the Municipal Corporation. It is not expected from the Executive Officer to suppress the fact from this Court and try to snatch the order in their favour.

In view of the fact that the petitioners are claiming that the petitioner no.1 has been discharging the duty of Pipeline Inspector for a period from 10.2.1986 to 31.1.2014 and petitioner no.2 discharging the duty from 27.9.1994 to 31.1.2015 and for that the petitioners have placed reliance on the judgment passed in the case of Dip Narayan Singh Vs. The State of Bihar & Ors. (C.W.J.C. No. 6031 of 2000) (Annexure-6) and in the case of Patna Municipal Corporation & Anr. Vs. Ram Ratan Singh & Ors. (L.P.A. No. 1072 of



2007) wherein Ram Ratan Singh was appointed as Sanitary Supervisor but, he was discharging the duty of Sanitary Inspector. Placing reliance on different judgments, the Court directed for grant of salary of Sanitary Inspector. If the petitioners in the present case have also discharged the duty of Pipeline Inspector, they cannot also be deprived of the salary of the Pipeline Inspector, in a situation, when the case of the petitioner no.1 was placed before the D.P.C. and the D.P.C. has recommended his promotion and merely because they were of the view that I.T.I. is an essential qualification, no substantive promotion was granted to the petitioners and, later on, they have been granted A.C.P. Learned counsel for the Corporation has submitted that now the grievance of the petitioner no.1 has been redressed by granting first A.C.P. from 9.8.1999 and second A.C.P. from 1.2.2002. Similarly the petitioner no.2 was granted 1st A.C.P. from 9.8.1989 and 2nd A.C.P. from 1.7.2005. The scale of 2nd ACP is Rs. 4000-6000/- and as per counsel for the Municipal Corporation, it is the scale of Pipeline Inspector. So the grievance of the petitioners now is not sustainable in law.

Learned counsel for the petitioners has submitted that the petitioners were discharging the duty from 1987 onwards up to their retirement as a Pipeline Inspector and the scale of pay has been given in Rs. 4000-6000 at a very later stage, for a long period, they were deprived of the scale which they are entitled to.



As this Court and the Hon'ble Apex Court in long line of judgments in the case of Smt. P. Grover Vs. State of Haryana & Anr.; AIR 1983 SC 1060, Lal Babu @ Lall Babu @ Lallu Babu Vs. The State of Bihar & Ors.; 2006 (2) PLJR 330, Dr. Sachita Kumar Sinha Vs. The State of Bihar & Ors.; 1995 (1) PLJR 1236, Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma & Ors.; 1985 (5) SCC 87, Sudeb Kumar Mookherjee Vs. The State of Bihar & Ors.; 2012 (1) PLJR 408, Prafulla Ranjan Shrivastava Vs. The State of Bihar & Ors.; 2008 (3) PLJR 144 has held that the person who is discharging the duty of higher grade for a long period, he cannot be deprived the scale of the higher post/grade. Admittedly, for quite long period, the petitioners have discharged the duty of Pipeline Inspector which is the higher grade than the Tap Inspector, they cannot be deprived the pay of the Pipeline Inspector. In order to arrive to a concrete finding, the period the petitioners have discharged the duty of Pipeline Inspector, this Court directs the Principal Secretary, Urban Development to hold an enquiry with respect to the period the petitioners have discharged the duty of Pipeline Inspector and give his finding. The petitioners as well as the Municipal Corporation are also directed to cooperate in the proceeding and produce all the records which are directed to be produced by the Principal Secretary for his adjudication. In failure to produce the records by the Municipal Corporation, if any, by the Municipal Corporation, it will



be treated to be clear-cut contempt of Court and then the Court would hold view that the Corporation has adopted the dilatory tactics or an attitude of non-cooperation. If the finding is recorded by the Principal Secretary in favour of the petitioners, they will be paid the salary of Pipeline Inspector as has been paid to Dip Narayan Singh (supra).

The entire process must be completed within a period of three months from the date of receipt/production of a copy of this order.

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

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2018
Transmission Date	NA

