

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15296 of 2013

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Nithuri Rai Son Of Narayan Resident Of Mohalla- Yarpur, Bail Khana, Police
Station- Gardanibagh, District- Patna

.... Petitioner/s

Versus

1. Patna Municipal Corporation, Patna through the Town Commissioner
2. The Town Commissioner, Patna Nagar Nigam, Budh Marg, Patna- 1
3. The Executive Officer, Patna Municipal Corporation, Patna

.... Respondent/s

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For the Petitioner/s : Mr Vindhaya Keshari Kr, Sr Advocate with
Mr Vijay Kumar Singh, Advocate

For the Respondent/s : M/s Bindhyachal Singh, Ranjeet Kr Pandey,
Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 13-08-2018

Heard learned Senior Counsel for the petitioner as well
as the learned counsel for the respondent-Corporation.

2 Writ petition has been filed challenging the order
dated 15.09.2012 whereby the petitioner's services have been found
illegal. The same has been passed pursuant to the directions of this
Court dated 31.01.2006 on the petitioner's earlier writ petition bearing
CWJC No 16075 of 2004.

3 Brief background of the case is that pursuant to some
audit objections raised in respect of the salary paid to the petitioner,
since his appointment was not found to be on the basis of any
appointment letter, the issue was enquired within the Patna Municipal



Corporation (for brevity, *the Corporation*). The petitioner's services along with ten others were found to be without any valid appointment letter. Thereafter, a decision was taken to stop taking work from the petitioner and ten other persons and to complete the enquiry into the legality of their appointment and for taking appropriate action thereafter. This decision is to be found in the order dated 29.04.2010 (Annexure B to the counter affidavit) filed on behalf of respondents No 1 to 3.

4 The enquiry revealed that there was no appointment letter of the petitioner. His services were being availed of by the Corporation without there being any appointment letter issued in his favour.

5 The petitioner has also moved this Court in contempt jurisdiction by filing *MJC No 2642 of 2012* alleging violation of order passed on his earlier writ petition, i e, *CWJC No 16075 of 2004*. During pendency of the contempt proceedings, the Corporation, pursuant to an enquiry, had come out with the order dated 15.09.2012 which is impugned in the instant writ petition. Accordingly, *MJC No 2642 of 2012* was disposed of on 01.10.2012 with liberty to the petitioner to challenge the said order dated 15.09.2012. Pursuant to the said liberty, the instant writ petition has been filed.

6 The findings of fact in the reasoned order dated 15.09.2012 of the Municipal Commissioner is sought to be challenged



in the instant proceedings. The order takes note of the fact that there is no record available in the Corporation showing that the petitioner and other ten persons had ever been appointed. It also records that the petitioner and ten other persons have not even produced their appointment letters in support of their claim that they have been legally appointed in the services of the respondent-Corporation. Even their service books are not available in the office. In spite of these facts, the petitioner and ten others, similarly situated, have been paid wages at the daily wages rate for the period during which they discharged their duties. The claim of the petitioner and ten others that they are regular Class IV *Safai Mazdoor* in the respondent-Corporation working against prescribed scale of pay on the basis of an appointment has been rejected.

7 Learned Senior Counsel appearing for the petitioner submits that the order dated 28.08.1989 bearing Memo No 986 shows that he was transferred and posted in Nutan Rajdhani Circle. He submits that Annexure 1, which is dated 31.08.1985 bearing Office Order No 141 is proof of his appointment in the pay scale of Rs 350-425/- with admissible allowance.

8 On going through Annexure 1, this Court is in agreement with the submission made by learned counsel for the respondent-Corporation that at best, it was granting some status as a part of the Corporation for a limited duration that is from 31.08.1985



till February, 1986. The petitioner's service in the Corporation, under the said Office Order, was for a limited duration. Beyond that, on the basis of Office Order dated 31.08.1985, the petitioner cannot maintain any other claim.

9 From the supplementary affidavit filed by the petitioner, now at a belated stage in the instant proceedings, he has tried to improve his case by filing a new version of the Office Order dated 31.08.1985 wherein he has attached a list of 123 employees. It is now his submission that he was appointed under the Officer Order dated 31.08.1985 along with the other 122 persons enumerated in the list and that all the 122 persons are still working. This submission cannot be accepted. The petitioner, by adding some pages to Office Order dated 31.08.1985 for the first time in the supplementary affidavit, has tried to make out a totally new case.

10 Had there been any bona fide in the said claim, this Court could have considered to allow this development even at this stage of the proceedings. However, this Court would notice that Officer Order dated 31.08.1985, prima facie, has no enclosures, as otherwise the list would have been marked as an enclosure in the Office Order dated 31.08.1985 itself. Clearly, the list, which is now annexed by the petitioner along with Office Order dated 31.08.1985, is not a part of the Office Order.

11 Even in the instant proceedings, the petitioner has not



produced any appointment letter showing that he has regularly/permanently been appointed in the services of the Corporation. Both Office Order dated 31.08.1985 as well as the Transfer Order dated 28.08.1989, relied upon by the petitioner, are without their being any valid appointment in favour of the petitioner.

12 The fact that the petitioner has not produced any appointment letter either before the Authorities or in the instant proceedings makes it abundantly clear that the conclusion regarding their being no records in the office of the Corporation regarding the petitioner's appointment/service, as contained in the impugned order dated 15.09.2012, is valid.

13 In view of the aforesaid consideration, this Court finds that there is no occasion to interfere with the order dated 15.09.2012 issued by the Corporation. The same is a reasoned and speaking order with reference to the records maintained in the office of the Corporation.

14 The writ petition is devoid of any merit. The same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	08.08.2018
Uploading Date	13.08.2018
Transmission Date	NA

