

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5873 of 2009

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Rajeshwar Prasad Son of Sri Prabhu Prasad, resident of Mohallah:- Daulatganj,
P.O.- Chapra, P.S. – Bhagwan Bazar, District – Saran.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Urban Development Department,
Government of Bihar Patna
2. Nagar Parishad, Chapra, through its Executive Officer, At & P.O. & P.S.:-
Chapra, District – Saran.
3. The Chairman, Nagar Parishad, Chapra, At & P.O. & P.S.:- Chapra, District
– Saran.
4. The Executive Officer, Nagar Parishad, Chapra, At & P.O. & P.S. :- Chapra,
District – Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Senior Advocate
Mr. Sanjay Kumar Jha
Mr. Praveen Prabhakar

For the Respondent/s : Mr. (GP15)
no.2,3 & 4 Mr. Arbind Kr.Pandey
For Nagar Nigam : Mr. Indu Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-07-2018

Heard the parties.

In the present case the petitioner has prayed for the following
relief:

*(i) To issue a writ of certiorari for quashing the
office order as contained in memo no.727 dated
15.12.2008 (Annexure-5), passed by the Executive Officer,
Nagar Parishad, Chpra, so far it relates to the petitioner,
through which the posting of petitioner has been done as
assistant / subordinate under one Sheo Charan Prasad
Yadav, a lower division clerk, in illegal and arbitrary*



manner.

(ii) To issue a writ of mandamus, commanding the respondents to promote/regularize the petitioner on the post of lower division clerk of Nagar Parishad, Chapra, in terms of provisions of Rules for Regulating the Appointment & Qualifications for the Officers and Servants of Municipalities and N.A.C.

(iii) To issue a further writ of mandamus, commanding the respondents to allow the petitioner to work on his post of routine clerk of Nagar Parishad, Chapra with independent charges, till his promotion on the post of lower division clerk, on which he is working since 2001 and also to pay his salary of the said post with arrears.

(iv) To any other relief or relief's for which the petitioner may be found entitled to.

The petitioner was appointed on the post of Light Man in the year 1989 vide Annexure 1. The Special Officer, Chapra vide letter number 746 dated 04.10.2001 superseding the earlier letter directed the petitioner to give his joining in head office and directed to perform the duty of Routine Clerk.

A meeting of Municipal Corporation of Chapra was convened, one of the agenda of the meeting was grant of promotion to the petitioner on the post of Lower Division Clerk, in pursuance thereof it was decided to give the promotion to petitioner on Lower Division Clerk and the office order bearing no. 727 dated 15.12.2008 issued by



the Executive Officer, Chapra, Nagar Parishad showing the placement of different persons including the petitioner to the respective department. Letter shows that the petitioner was dealing with the mutation matter and one Sheo Charan Prasad Yadav was attached with him to assist in discharging the mutation matter.

Again meeting of Municipal Corporation was held on 31.12.2009, an agenda with respect to grant of promotion to the petitioner was also under consideration. From the agenda, it appears that one Jai Chand Prakash, Councilor had drawn the attention of the Chair that the petitioner had been working as Incharge Assistant for last twenty years and requested for his substantive promotion and that was unanimously approved by the Chapra Municipality which bears the signature of the Chairman, Nagar Parishad.

Learned counsel for the petitioner has raised a grievance that the Municipal Corporation has approved grant of promotion to the post of Routine Clerk, but the Executive Director has failed to implement order of granting him the substantive promotion on the post of Routine Clerk. The grievance of the petitioner is that when the Municipal Corporation in the meeting has approved the promotion of the petitioner, in such circumstances, the Executive Officer cannot refuse to implement the decision of the Nagar Parishad and requesting for issuance of giving direction to implement the decision, during the



course of argument he has pointed out that one Asgar Ali similarly situated person who was also holding the post of 4th Grade having been promoted to the post of Routine Clerk.

Learned counsel for the petitioner submits that petitioner is holding the qualification of matriculation which is requisite qualification for the promotion to the post of Routine Clerk. He further submits that he has been discharging the duty of Routine Clerk since 2001. He has further submitted that he has requisite qualification as well as experience of Routine Clerk and he has not been granted the promotion, whereas Asgar Ali who was also on inferior post having been granted promotion to the Class III post.

In contra, learned counsel for the Municipal Corporation, Chapra has argued that the Intermediate is minimum qualification for the appointment or promotion to the post of Routine Clerk. Further submitted that as the petitioner was holding the inferior post he could not have been promoted to the superior post, as Routine Clerk is superior post whereas Light Man is inferior post. The direct recruitment is only method to enter into the service of Routine Clerk, and no such provision has been given for promotion from inferior post to the superior post. He has further submitted that though there is no denial that the Commissioner of Municipality Chapra has passed the resolution and it has to be carried out by the Executive Officer, but



subject to the condition that resolution must be a legal in terms of the Rule. Any illegal order or resolution cannot be subject matter of direction for its implementation.

The petitioner can not be promoted from the inferior post to superior post, in such circumstances rightly the Executive Officer refused to honor the resolution of Chapra, Municipal Corporation, inasmuch as he has further submitted that the promotion of Asgar Ali to the Class III post which was pointed out by the petitioner where upon present Executive Officer took action by demoting him from the post of Routine Clerk to the original post, recorded therein that he was wrongly given the benefit of promotion from inferior post to superior post.

This Court has asked Chapra Municipal Corporation to produce the notification showing the qualification for appointment / promotion to the post of Routine Clerk has been enhanced to intermediate, but he has failed to produce any notification showing the qualification for promotion of Class III post is intermediate, rather the earlier provision of the Rule prescribes minimum qualification for appointment of Routine clerk is Matriculation. So the claim of Chapra Municipal Corporation with regard to the qualification for promotion to Class III post has not been substantiated and as such, the qualification for holding the post of Class III is 'Matriculation'. This Court is of the



view that if the Municipal Corporation has to enhance the qualification for promotion or appointment of Routine Clerk taking necessary administrative action in accordance with law. So long the same is not amended, it will be treated that qualification for appointment or promotion to the post of Routine Clerk is matriculation.

The second point for consideration with regard to the promotion from the inferior post to superior post. This Court has to deal with promotion of Asgar Ali as has been claim by the petitioner that Asgar Ali similarly situated employee was appointed in the Class IV post, has been promoted to the post of Class-III, whereas the petitioner has wrongly been treated, having not been promoted to the substantive post of Routine Clerk. An affidavit has been filed by the Chapra, Municipal Corporation where in office order bearing no. 497 dated 12.05.2018 has been attached from which it appears that Asgar Ali who was promoted to the post of Class III has been brought down to the post of Class IV. The grievance of the petitioner comparing himself with Asgar Ali that he has wrongly been deprived from the benefit of Routine Clerk is not sustainable as Asgar Ali has been brought down to the post of Class-IV.

Rule is silent with regard to grant of promotion from inferior post to superior post. But the Rule regulating the appointment in



Chapra Municipal Corporation shows that Clause 3 of the Rule shows that 70 posts have been treated to be inferior post and Light Man has been shown as inferior class of post.

The Rule provides for the promotion to post of Jamadar, or Ward Munsif to be filled up from among sanitary worker like sweepers, meshtars, subject to holding the qualification of Class VII. Rule also provides that Public Line Inspector can be promoted to the post of Head Pipe line Inspector. Rule also provides that Deputy Superintendent, Water Works, can be promoted to the post of Superintendent subject to holding of qualification of graduate in Mechanical subject to experience of 10 years of experience as Deputy Superintendent. But the rule is silent of promotion from light man to the clerical grade.

So, the aforesaid posts have been mentioned for which Rule 2 prescribes the method and manner for direct recruitment and promotion. Rule elaborately speaks that in what manner the selection and recruitment can be done. Rule 3 also prescribes the appointment and promotion, would be decided by the Commissioner, after taking into consideration the opinion of Chairman / Execution Officer. It will be relevant to quote the relevant portion of Rule:

“The post of Jamadar or Ward Munsif should be filled up by promotion from among sanitary workers like sweepers, mehtars, etc., if the candidate has passed Class



VII examination. There will be no age-limit for such promotion.

There shall be no age-limit for the duly qualified Pipe Line Inspector for promotion to the post of Head Pipe Line Inspector. It shall not be necessary for promotion of the Deputy Superintendent, Water Works, to the post of Superintendent to be a Mechanical Graduate, if he has experience of 10 years of work as deputy Superintendent. There shall be no age-limit for such promotion.

2. (i) Recruitments to the posts shall be made after publication of the vacancy in at least two consecutive issues of two local newspapers having the largest circulation and pasting notices in local public offices.

(ii) Selection of candidates shall be made by a Committee consisting of the following:-

(a) Chairman of the Municipality / N.A.C., (b) Executive officer, if any, (c) a Municipal Commissioner elected by the Commissioners at a meeting, (d) Sub-divisional Officer or an officer of the Sub-divisional Headquarters nominated by the S.D.O., and (e) a local officer of the technical department concerned of the State Government in case of appointment of technical post.

(iii) For appointment to any post by promotion the matter shall be decided by Commissioners at a meeting after taking into consideration the opinion of the Chairman/Executive officer.

(iv) Appointments to inferior post shall be made by the Chairman and the Executive Officer, or the Chairman and one Commissioner elected at a meeting if there is no



Executive officer.

(v) Confirmation of any municipal servant shall be made with the approval of the Commissioners at a meeting.

(vi) Every municipal servant shall produce, before joining or within 3 months of his joining the post, a medical certificate of physical fitness from a Civil Assistant Surgeon, certificate of age and certificates regarding qualifications (copies attested by Gazetted Officer) and a list of movable and immovable property as he may be directed by the Chairman / Executive Officer. He may also be required to submit a declaration that he has not accepted any dowry if he is married and shall not accept any dowry if he is married subsequent to his appointment.”

Rule 2 prescribes for direct requirement with respect to the post mentioned in Rule 1 and Rule 3 is silent about the promotion of inferior class of post to superior class of post. When the rule prescribes and provides promotion to certain posts and also provides the manner of the recruitment and the promotion can be made, in such circumstance, silence with regard to granting promotion from inferior to superior post carries weight and as such this Court cannot conceive the idea to give benefit of promotion to the petitioner.

As this Court is of the view that Executive Officer, Municipal Corporation, Chapra cannot be directed to carry out the decision of Commissioner, by issuance of writ of mandamus against the



Executive Officer of Chapra Municipality as because the petitioner has failed to make out any case in his favour.

This Court does not find any merit in this writ petition.

Accordingly this writ petition is dismissed.

(Shivaji Pandey, J)

Vinay/Sunny

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.04.2018
Transmission Date	NA

