

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10948 of 2014

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Anil Kumar son of Sri Daroga Prasad resident of Mohalla : - Gudari Rai Ka Chowk, P.O. : - Chapra, P.S. - Bhagwan Bazar, District - Saran, employed as Driver in Nagar Parishad, Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Govt 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 Empowered Standing Committee, Nagar Parishad, Chapra, through its Chairman, At & P.O. & P.S.: - Chapra, District - Saran.
5. 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 M N Parbat, Sr Advocate with
Mr Sanjay Kumar Jha, Advocate

For the Respondent/s : Mr Anil Kumar, AC to SC XV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 28-08-2018

Heard learned Senior Counsel for the petitioner and the respondent-State.

2 The petitioner has approached this Court seeking a direction for implementing the decision of the Board dated 21.03.2013 to the extent it recommended confirmation of the petitioner's services. The learned Senior Counsel for the petitioner has submitted that in keeping with the requirements of Rule 2 (i) of the Rules for Regulating the Appointments & Qualifications for the Officers and



Servants of Municipalities and NAC (hereinafter referred to as the *1977 Rules*), the petitioners were appointed on an honorarium under orders of the Executive Officer by Office Order dated 04.10.2004 (Annexure 2). The claim of the petitioner on basis of Board's decision dated 21.03.2013 was pending in this Court when the respondents came out with an order rejecting his claim. The order is dated 21.02.2017 bearing Memo No 249 of the Nagar Parishad, Chapra. The order has rejected the petitioner's claim by assigning a reason that the petitioner's appointment was done by the Executive Officer, who was not competent for the said appointment. The petitioner has filed IA No 9190 of 2017 challenging the said order. Learned Senior Counsel for the petitioner has submitted that from perusal of the order of appointment dated 04.10.2004, it is apparent that the Executive Officer has made the appointment in question after obtaining consent of the Chairman. By making such submission, he has tried to substantiate the initial appointment.

3 The respondents have opposed the claim of the petitioner relying upon the requirements contained in the 1977 Rules. Bare perusal of the said Rule shows that the requirement was of having an advertisement issued in two local newspapers and of pasting the notices in local public offices. No such details have been placed by the petitioner. Respondents, on the other hand, have



disputed the assertion of the petitioner. They have specifically stated that no advertisement was ever issued prior to the appointment being made. The other objection raised by the learned counsel for the Nagar Parishad is that respondent No 5 has no power under 1977 Rules to make the appointment. In order to correctly appreciate the submission which revolves in Rule 2 of the 1977 Rules, this Court would consider it appropriate to quote this Rule :

“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/NAC, (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 Subdivisional Headquarters nominated by the SDO and (e) a local officer of the technical department concerned of the State Government in case of appointment to a technical post.

(iii) For appointment to any post by promotion, the matter shall be decided by the 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."*

4 This requirement of advertisement in at least two consecutive issues of two local newspapers having largest circulation and pasting notices in local public offices, as per the said Rule, has not been complied. On this count, the petitioner's appointment is not legally sustainable. Further, Rule 2 (a) (iv) prescribes the appropriate authority for making the appointment which is as follows:

"Chairman and the Executive Officer, or the Chairman and one Commissioner elected at a meeting if there is no Executive officer."

5 The requirement is that appointment is to be done by a Two Members Committee. In the instant case, it is apparent that appointment has been done by the Executive Officer, Respondent No 5. The appointment has not been done by the competent quorum as specified in Rule 2 (a) (iv) of the 1977 Rules. The same is evident



from bare perusal of the appointment letter of the petitioner.

6 Considering the aforesaid circumstances, it is apparent that the appointment was not done under Rule 2 of the 1977 Rules. Neither advertisement has been published as per requirement under the Rules nor is the order of appointment issued by the competent quorum as per requirements of the said Rules. The decision of the respondent-Corporation challenged by way of IA No 9190 of 2017, therefore, does not suffer from any illegality and does not require any consideration in the present case. The appointment without any advertisement cannot be sustained.

7 Learned counsel for the respondent-Nagar Parishad has also relied upon two decisions which have been reported in the case of *Ram Sevak Yadav & Another –Versus- State of Bihar & Others* reported in 2013 (1) PLJR 964 as well as in the case of *Sanjiv Kumar –Versus- State of Bihar & Others* reported in 2018 (3) PLJR 133.

8 Considering the aforesaid submissions, this Court does not find any merit in the writ petition. It is hereby dismissed.

9 Learned counsel for the petitioner prays that he will make his claim for regularization if and when the matter is taken up by the authorities on the basis of his past work performed on daily wages.



10 The petitioner’s claim, if so made, may be considered by the authorities as per its own merit if and when the issue of regularization is taken up.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2018
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