

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22584 of 2012

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1. Bhudev Prasad Yadav, son of Late Hridaya Prasad Yadav, resident of Village-Mohanpur, Post-Shaligram, P.S.-Sahebpur Kamal, District-Begusarai.
 2. Pankaj Kumar Yadav, son of Bhudev Prasad Yadav, resident of Village-Mohanpur, Post-Shaligram, P.S.-Sahebpur Kamal, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Government of Bihar, New Secretariat, Patna.
2. The Deputy Secretary to the Government, Urban Development Department, Government of Bihar, New Secretariat, Patna
3. The District Magistrate, Munger
4. The Executive Officer, Nagar Parishad, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Shukla, Adv
For the Respondent No. 4 : Mr. Shivendra Kumar, Adv
For the State : Mr. Tej Pratap Singh, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 30-11-2018

The petitioners have prayed for issuance of a writ in the nature of mandamus commanding upon the respondents to allow them to join the service of the Municipality, Munger as also for adjudicating that they are entitled to the same relief which was granted to some other persons similarly situated as that of the petitioners.

2. In order to briefly recount the facts for



adjudicating this writ petition, certain facts in short are necessary to be noted down.

3. The petitioners and others were appointed in Class-IV post in Munger Nagar Nigam in the year 1999 pursuant to an advertisement which was issued in the year 1998. Later, it was found that 23 appointments in which the petitioners were also included was made in the year 1999 by a Special Officer, Munger Municipality who was not authorized to appoint and hence the services of all the 23 employees including the petitioners were terminated with immediate effect by order dated 20.06.2006.

4. Some of the persons whose services were terminated approached this Court vide C.W.J.C. No. 8888 of 2006 in which a direction was given by this Court to keep the termination order in abeyance till a fresh order was passed by the Deputy Secretary, Urban Development Department, Patna after examining the issues which were raised by them and the petitioners therein were also directed to produce relevant documents before the said Authority.

5. Pursuant to the aforesaid direction, the cases



of those terminated employees were again considered and the Department refused to reinstate those employees by order dated 31.07.2009. The aforesaid order was challenged by the aggrieved employees vide C.W.J.C. No. 11436 of 2009.

6. During the pendency of the aforesaid writ petition referred to above viz. C.W.J.C. No. 11436 of 2009, the petitioners also approached this Court seeking quashing of the order of termination vide C.W.J.C. No. 17582 of 2009. Since the case of some of the terminated employees was reconsidered by the Department and reinstatement was refused, a Bench of this Court did not deem it appropriate to send the cases of the petitioners to the Department for being reconsidered but only directed that the challenge to the aforesaid refusal of reinstatement in C.W.J.C. No. 11436 of 2009 shall cover the case of the petitioners as well. C.W.J.C. No. 11436 of 2009 was disposed off vide order dated 25.07.2011, again remitting the matter to the Deputy Secretary of the Department to pass a fresh order in accordance with law within eight weeks from the date of



production of a copy of that order and the petitioners therein were also directed to file a fresh representation before the said Authority.

7. The matter was again reconsidered by the Deputy Secretary and findings were the same as before. The only difference was that some reasons were accorded in this re-enquiry. The Department was of the view that though the appointments were made against the vacant and sanctioned post but the category wise quota was not adhered to nor the roster clearance was taken. An additional ground was taken that there was a ban on the appointment of Class-III and Class-IV posts and therefore, the appointment of all those employees was against the directive of the State Government.

8. Naturally, the aforesaid order dated 10.10.2011 was again challenged before this Court vide C.W.J.C. No. 383 of 2012 wherein a Bench of this Court after taking into account all the relevant facts held that the grounds raised by the State were absolutely untenable. This Court found out that the appointments were made against



the vacant sanctioned post and the ban of appointment on Class-III and Class-IV post was made effective from the year 1999 whereas the appointment of the employees including the petitioners was made in the year 1998. It was specifically observed by the Bench that the objection of the State that there was no interview for the appointment was wrong as the petitioners therein had categorically stated and had brought on record proof of their having appeared before the Interview Board. Conversely, the State was not in a position to dispute the aforesaid averments. There was nothing on record for the Bench to hold that while appointing those 23 employees on Class-III and Class-IV posts, quota was not followed and there was no roster clearance.

9. As a result, the last of the orders dated 10.10.2011 referred to above passed by the Deputy Secretary, Rural Development Department, Patna, Bihar was set aside and the respondents were directed to reinstate the terminated employees in service and to treat their services to be continuous from the date of their respective appointments in the year 1999 till their termination. The



order also made it clear that all monetary/consequential benefits shall accrue to the petitioners.

10. This litigation did not end here and the State preferred an appeal vide L.P.A. No. 624 of 2013. The Division Bench of this Court took note of the fact that the arguments advanced on behalf of the State was on the basis of reconstructed file as the original file had gone missing. The Division Bench took exception to the fact that no F.I.R was lodged with respect to the missing official files and was also of the view that even if there were some illegal appointments, the reason and the facilitator of the same was an insider of the Department. A direction was given for lodging of an F.I.R and completing the investigation within a stipulated time frame. However, the Division Bench acknowledged the fact that the appointments and selection process had taken place and the same could not have been done away with on the presumptive assumption and that also on the basis of reconstructed records.

11. Taking into account the aforestated facts, the Division Bench directed as follows:-



"We therefore issue the following directions:-

a) The respondents shall appear with a copy of the present order before the Principal Secretary, Department of General Administration. He shall nominate a senior Class-I officer to hold the enquiry.

b) The appellant shall produce the necessary records as may be demanded by the enquiry officer.

c) The respondents shall be shown with regard to each of them why it is opined that their appointment was against an unadvertised post not included within 57 posts or that the appointment in a particular category was beyond the sanctioned strength of that category.

d) They shall be given a reasonable opportunity to reply by granting them reasonable time after the materials are furnished/shown to them

e) The Class-I officer after holding the enquiry shall then pass a reasoned and speaking order. He shall record a specific and clear finding with regard to each of the respondents.

Such final orders must be passed latest by 20th of March 2014.

Needless to state that if the appointment of any of the respondents is found to be valid



he shall be entitled to reinstatement and continuity service on all its aspects including seniority, back-wages etc.

With that modification of the order under appeal, the Appeal is disposed."

12. It cannot be doubted that the petitioners are also entitled to the same directions.

13. Thus it is directed that the petitioners would appear before the Principal Secretary, Department of General Administration, who shall in turn nominate a senior Class-I Officer to hold an enquiry with respect to the genuineness/correctness of their appointments on the said posts. The concerned Officer of the State shall produce necessary records which would be necessary for the determination of the aforesaid by the nominated Class-I Officer.

14. The petitioners shall be given the reasons why or why not they be reinstated on that post. Needless to state that they shall also be given reasonable opportunity of putting their views and documents in support of their claim.

15. The Enquiry Officer shall pass a reasoned order within a period of three months of passing of this



order.

16. In case, it is found that the appointments of the petitioners are valid, necessary orders shall be passed reinstating the petitioners in service and treating their services to be continuous from the date of their appointment with all back wages.

17. With the aforesaid directions, the writ petition is disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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