

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1505 of 2013**

**In**  
**Civil Writ Jurisdiction Case No.677 of 2012**

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1. The Nagar Panchayat Ma and Anr
  2. The Executive Officer, Nagar Panchayat, District Siwan.

... .. Appellant/s

Versus

Md. Azad and Ors S/O Late Md. Hasim Resident Of Mohalla Purani Bazar,  
Maharajganj, District Siwan.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Tuhin Shankar, Advocate            |
|                      |   | Mr. Siddharth Shankar Pandey, Advocate |
| For the Respondent/s | : | Mr. Anuj Kumar, Advocate               |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 23-01-2019**

Heard Shri Tuhin Shankar, learned counsel appearing for  
the appellant Nagar Panchayat, and the learned counsel for the  
State of Bihar.

The Private Respondent No. 1 had registered his  
appearance through Shri Shyama Kanth Singh, advocate. The  
appeal had been dismissed for non-prosecution on 28.02.2017,  
whereafter it was restored, but, Shri Singh then urged that since the  
file has been taken away by the private respondent, notices should  
be issued for engagement of a lawyer. Accordingly, a Division



Bench of this Court issued notices on 18<sup>th</sup> July, 2018 and after having perused the office report, we had accepted the service of notice to be deemed sufficient vide an order dated 30<sup>th</sup> November, 2018.

No one has appeared on behalf of Respondent No. 1.

The contention raised in this appeal is that the learned Single Judge, while proceeding to allow the writ petition, has taken the nature of the engagement of the Respondent No. 1 to have attained the status of that of a permanent employment which, according to the learned counsel for the appellant, is incorrect, inasmuch as, the appointment that was offered to the Respondent No. 1 on regular basis by the Chairman, was without following the procedure prescribed in law and was a void appointment which was cancelled. The contention is that a cancellation of appointment is distinct from the termination or dismissal of services. It is urged that if the appointment was de hors the rules and was recalled, the same did not require any holding of disciplinary proceedings.

Learned counsel, therefore, submits that the learned Single Judge has erroneously proceeded to take a contrary view and has further not appreciated the earlier order dated 16.05.2010 and 01.08.2011 of the learned Single Judge in correct perspective.



Having heard learned counsel for the appellant, we find that the Respondent No. 1 was claiming appointment in the Nagar Panchayat against the post of a Tax Collector. There was nothing on record that he had been appointed after following the due procedure under law. The appointment was made on 18.03.1991 and was cancelled on 21<sup>st</sup> September, 2011. It is evident that in between, since he was not being paid salary, he filed C.W.J.C. No. 10792 of 2010 which was disposed off with a direction to the Executive Officer, Nagar Panchayat to pass appropriate orders in accordance with law. On failure to do so, a contempt application, M.J.C. No. 4836 of 2010, was filed and the learned Single Judge vide order dated 1<sup>st</sup> August, 2011 after noting the facts relating to the claim of the Respondent No. 1 also observed that it is surprising as to why the authority has not taken any action in spite of the fact that Respondent No. 1 had been appointed beyond the sanctioned strength of the total employees of the Municipality, and further that since there were only 9 posts granted, there could not have been any appointment of the Respondent No. 1, but the authorities, for reasons best known to them, did not proceed to pass any order. An observation was, however, made the said submissions were being noted to enable the authorities to take appropriate steps in the matter.



While appreciating the impact of the aforesaid order and judgement, the learned Single Judge in the impugned judgement dated 4<sup>th</sup> May, 2012, has stated that the impugned order dated 21<sup>st</sup> September, 2011 could not have been passed on the passing observations made by the Court referred to hereinabove. It has also been observed that the termination has been brought about which is not in consonance with the principles of service jurisprudence.

Having considered the submissions raised and having perused the aforesaid orders, we may record that the Respondent No. 1 in spite of service of notice has failed to respond. Apart from this, the ultimate outcome of the entire process adopted by the Nagar Panchayat was to eliminate a person who could not have been appointed and who was beyond the sanctioned strength. The procedure for appointment also had not been followed. This, therefore, ended in the termination of the services of Respondent No. 1, which otherwise also was the only possibility. In view of the fact that there could not be any other second opinion with regard to the continuance or otherwise of Respondent No. 1, we find that the learned Single Judge ought not to have exercised discretion in this matter under Article 226 of the Constitution of India. Since no other view was possible on the facts of the case, no relief was admissible to the respondent-petitioner.



We, therefore, allow the appeal and set aside the  
impugned judgement dated 4<sup>th</sup> of May, 2012.

**(Amreshwar Pratap Sahi, CJ)**

**( Anjana Mishra, J)**

K.C.Jha/Uma/-

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