

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3317 of 2006

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Siya Ram Bhagat, son of Late Yamuna Prasad Bhagat, resident of 187 D.N. Singh Road, Kharman Chak, Bhagalpur, P.S.-Kotwali, District-Bhagalpur at present retired Assistant Engineer, Bhagalpur Municipal Corporation, Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Secretary and Commissioner, Urban Development Department, Government of Bihar, Patna.
3. Commissioner, Bhagalpur Division, Bhagalpur.
4. District Magistrate, Bhagalpur.
5. Bhagalpur Municipal Corporation, through its Chief Executive Officer.
6. Mayer, Bhagalpur Municipal Corporation, Bhagalpur.
7. Chief Executive Officer, Bhagalpur Municipal Corporation, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bishnu Kant Dubey, Advocate
For the State	:	Mr. Ajay Behari Sinha, GA-8
		Mr. Neeraj Raj, AC to GA-8
For the Corporation	:	Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Corporation.

The petitioner is challenging the order as contained in Memo No.108 dated 23.01.2006 (Annexure-8) by which the Chief Executive Officer, Bhagalpur Municipal Corporation has held that the petitioner was holding the post of Junior Engineer not the post of Assistant Engineer as the post of Assistant Engineer was not created, in such a situation, question of payment of salary in the scale of Assistant Engineer does not arise and, in second part, he



has held that his date of birth in terms of record shows as 08.01.1943 and, as such, he was due to retire on 31.01.2001, but he has wrongly been superannuated w.e.f. 31.01.1998.

The short fact of this case is that the petitioner was appointed as Junior Engineer in Bhagalpur Municipality, w.e.f., 19.07.1966, but on 15.04.1984 Bhagalpur Municipality was converted into Bhagalpur Municipal Corporation and since then the same is being known as Bhagalpur Municipal Corporation.

The matter of promotion of the petitioner to the post of Assistant Engineer was considered and he was recommended for promotion to the post of Assistant Engineer on 22.04.1983. The Government considered the recommendation of the Municipal Corporation and vide letter no.1961 dated 28.05.1990 (Annexure-1) granted the approval of promotion to the post of Assistant Engineer with condition that difference of payment to the post of Assistant Engineer will be borne by the Municipal Corporation and the Government will bear the cost of extra burden to the post of Assistant Engineer after the approval of the Finance Department and Bihar Public Service Commission. If the Finance Department and the Bihar Public Service Commission would not approve the promotion of the petitioner, he will be reverted back to the post of Junior Engineer. The Administrator vide letter no.33 dated



14.06.1990 sanctioned the payment of salary in the scale of Rs.1000-1820/- from the date of his joining, but the arrears w.e.f. 17.07.1981 would be made after the concurrence of the Finance Department and Bihar Public Service Commission and vide another letter no.18 dated 8.01.1997 (Annexure-3) issued by the Administrator, Bhagalpur Municipal Corporation, in pursuance of Memo No.33 dated 14.06.1990 by which he was promoted to the post of Assistant Engineer, direction was given to make payment after adjustment of earlier payment from the date of promotion to the post of Assistant Engineer. The petitioner, in his petition, has stated that some vested interest, who were inimical toward the petitioner, on account of promotion to the post of Assistant Engineer. At the instigation of vested interest, roped the petitioner in certain charges of misconduct, which was inquired into by the Administrator, Bhagalpur Municipal Corporation, who vide letter dated 17.01.1994 granted clean chit. The Administrator, on the charge of illegal use of Corporation funds, has held that no money was misappropriated by the petitioner, further recorded that he had not manipulated any record as the payment was made by the then Administrator, so the question of withdrawal of excess amount of money does not arise, further said that the extra payment would be adjusted from his salary. On the charge of



sinking of 360 hand pumps, it has been recorded that the same was done by Sri Mohan Jha, Superintendent as well as Contractor, for that misdeed, the petitioner cannot be made responsible to face the criminal case as well as any departmental proceeding. In such circumstances, suspension and lodging of a criminal case will be against the law, but even after recommendation, the petitioner was put under suspension, during suspension period, vide letter no.3006 dated 27.08.1998, the petitioner was made to superannuate as per the date of birth record maintained in the Department, but the petitioner asserted that he was illegally superannuated as the records shows his date of birth is 8.01.1943 and, as such, he was to superannuate with effect from January, 2001. After the superannuation, the Corporation communicated the action of the Corporation to the Government about the suspension of the petitioner. The Government, in reply, vide Memo No.179 dated 27.08.1998 informed, as per the service book made available, reflects, 8.01.1943 is the date of birth of the petitioner, accordingly he would superannuate the year 2001. Being aggrieved by the action of the Municipal Corporation, the petitioner filed a writ application vide CWJC No.922 of 2000 and the matter was remanded back to the Municipal Corporation to decide two issues, one with regard to the date of superannuation



corresponding to the date of birth as well as the post the petitioner was holding whether the petitioner was holding the post of Junior Engineer or the post of Assistant Engineer. Relevant portion of the order is as follows :

“Having regard to the nature of the grievance and the scope of the writ petition which, as indicated above, is directed against the order of suspension, and for subsistence allowance, I do not want to go into the dispute about the petitioner’s status as Junior Engineer or Assistant Engineer. I am of the view that the dispute relating to petitioner’s date of birth/ due date of superannuation as well as his status as Junior/Assistant Engineer may be decided by the Corporation after giving opportunity of hearing. For the present, considering that he has already retired from service, I would direct the Corporation to determine his retiral dues and pay the same treating him to have superannuated with effect from 31.01.1998, without prejudice to the rights and contentions of the petitioner and subject to decision which the Corporation may take in the matter. In any case, the petitioner would be entitled to subsistence allowance for the suspension period from 29.12.1997 to 31.01.1998, without prejudice to his rights and contentions, and further entitled to full salary for the period of earlier suspension from 6.04.1994. This payment should be made preferably within two months of receipt of a copy of this order. Needless to say that in the event of an adverse on the



point(s) of date of birth/superannuation and/or status as Junior Engineer/Assistant Engineer, it will be open to him to challenge the same in accordance with law”.

As the matter was remanded back to the Corporation for fresh consideration, the petitioner filed detailed representation asserting his claim with regard to the date of birth being 8.01.1943, after due consideration, the Chief Executive Officer, Municipal Corporation, Bhagalpur having held the date of birth of the petitioner being 08.01.1943, hence, he ought to have superannuated from service on 31.01.2001 instead of 31.01.1998 having held that during that period, he would be entitled to subsistence allowance as would be treated to have been under suspension, further held that as the post of Assistant Engineer was not available, hence, question of payment of salary at that post would not arise, in result, it has been held that he was on the post of Junior Engineer, further held that a criminal case was/is pending against him, during argument, it has been informed that the same has not been disposed of.

In respect of his submission that he was holding the post of Assistant Engineer, it has been stated in the writ application that after superannuation from service, he had handed over the charge of Assistant Engineer to Hareram Choudhary, in support, he



has placed reliance on the letter no. 120 dated 23.02.1999 showing that the petitioner was holding the post of Assistant Engineer having been made to superannuate with effect from 31.01.1998 directed Hareram Choudhary, Junior Engineer to take charge from him and by the said letter, recommendation was made to the Government for grant of approval for Hareram Choudhary to the post of Assistant Engineer, further the Deputy Secretary, Government of Bihar vide letter no.985 dated 25.03.2000 sought details of the availability of the post of Assistant Engineer as well as position of roster clearance including the position of Mr. Hareram Choudhary in the cadre of Junior Engineer, further placed reliance on letter no.444 dated 28.04.2000, reflects that after the conversion of Bhgalpur Municipality into Bhagalpur Municipal Corporation, single post of Assistant Engineer was created, was vacant, so the question of roster clearance does not arise.

The Municipal Corporation has filed its counter affidavit and having stated that there was no post of Assistant Engineer and the Municipal Corporation was waiting for the sanction of the said post inasmuch as the letter no. 444 dated 28.04.2000 (Annexure-11) was not found in the record of the Municipal Corporation and specifically stated that the petitioner was not rightly given the scale of Assistant Engineer.



Rejoinder has been filed by the petitioner and by different letters, such as, letter no.83 dated 31.01.1998, it has been asserted that the petitioner was put under suspension as Assistant Engineer.

The State has filed its counter affidavit wherein it has been stated that there was no sanctioned post of Assistant Engineer in the Bhagalpur Municipal Corporation, as the Government had not approved the post nor promotion, directed for reversion of the petitioner to the original post as per stipulation. The Chief Executive Officer of the Corporation has mentioned in his letter dated 23.01.2006 that no post of Assistant Engineer was sanctioned in the Corporation and, as such, the petitioner was wrongly promoted to the post of Assistant Engineer and this fact was noticed by the Auditor and objections were raised during the audit from 1987-88 to 1989-90.

The petitioner again filed a rejoinder to the counter affidavit of respondent no.2 wherein it has been stated that the petitioner had not ever been reverted to the post of Junior Engineer, also drawn the attention of letter dated 28.08.1996, which has been issued by the Government with regard to fixation of salary after the enforcement of 5th Pay Revision on the post of Assistant Engineer subject to the concurrence by the Bihar Public



Service Commission and Finance Department and in the said letter, it has been mentioned that step was being taken for approval from the aforesaid two Departments inasmuch as it has also been drawn the attention of the Audit Report wherein it has been mentioned that the petitioner was promoted to the post of Assistant Engineer and details have been mentioned that the extra liability would be born by the Government after approval made by the Bihar Public Service Commission and the Finance Department.

A counter affidavit has been filed on behalf of respondent nos. 1 to 4 wherein it has been mentioned in paragraph 6 that no post of Assistant Engineer was sanctioned in the Bhagalpur Municipal Corporation as the same was not approved by the Government and, as such, the petitioner was directed to be reverted back to the post of Junior Engineer. The Chief Executive Officer of the Corporation has clearly mentioned in his order dated 23.01.2006 that no post of Assistant Engineer has been sanctioned in the Corporation. The same was also noticed by the Auditors, objections were raised during the audit for the period from 1987-88 to 1989-90 and further in paragraph 14, it has been stated that the Government has not approved the promotion of the petitioner till arrival of sanctioned post, which is apparent from letter no.31 dated 11.02.2013 issued by the Municipal Corporation,



Bhagalpur, wherein it has categorically been mentioned that no post of Assistant Engineer in the Corporation was available.

The Municipal Corporation has again filed a supplementary counter affidavit and brought on record a letter no. 346 dated 19.04.1996 wherein it has been mentioned that as per the order of the Government, he would be entitled to the scale of the Junior Engineer.

This Court vide order dated 27.02.2013 had directed the State to file affidavit about concurrence of the Finance Department as well as Bihar Public Service Commission about the promotion of the petitioner, in the counter affidavit in paragraph 2, it has been replied nothing was available in the office of the deponent to show that there was any concurrence of the State Government or Bihar Public Service Commission about the promotion of the petitioner to the post of Assistant Engineer, while giving reply, with respect to demotion to the post of Junior Engineer, it has been mentioned that the promotion of the petitioner was found to be illegal, for that reason, he was reverted back to the post of Junior Engineer, w.e.f., 19.04.1996.

The respondent no.2 has filed its counter affidavit wherein in paragraph 6, it has been stated that letter no.3305 dated 28.08.1996 is not available in the record and there is no evidence



available in the Department with regard to sending any file for getting opinion/advice either from the Bihar Public Service Commission or from the Finance Department for concurrence of the promotion to the post of Assistant Engineer. It has been stated in paragraphs 8 & 9 that while the petitioner was in service of Municipal Corporation, criminal case and departmental proceeding were pending against him, during that period, in terms of the General Administration Department's directives, no promotion could be granted to such employee.

While giving reply to the claim of the petitioner that his successor Hareram Choudhary was promoted to the post of Assistant Engineer and was receiving the salary, the Municipal Corporation in its third supplementary counter affidavit has stated that after the enforcement of Bihar Municipal Act, 2007, the empowered Standing Committee in its meeting dated 14.12.2010 decided to promote Sri Hareram Choudhary as Assistant Engineer in the pay scale of Assistant Engineer.

In view of the aforesaid discussions, it is very much clear that the petitioner was not a Graduate Engineer, for holding the post of Assistant Engineer, a person must be a Graduate, which is essential qualification which the petitioner was lacking, also apparent, during the relevant time, no post of Assistant Engineer



was available inasmuch the letter no.444 dated 28.04.2000, which reflects that after the conversation of Bhgalpur Municipality into Bhagalpur Municipal Corporation, one post of Assistant Engineer was created, is not available in the record of the Corporation. The question of creation of post and reversion of the petitioner are a very serious disputed question of fact and in the present proceeding, this issue cannot be decided, but one fact is clear that the petitioner was not holding the qualification of B.Tec, which is essential qualification for promotion on the post of Assistant Engineer inasmuch as still the petitioner is facing the criminal case, in such situation, this Court cannot grant any relief to the petitioner for giving direction to declare that the petitioner was holding the post of Assistant Engineer, in result no direction is given to make payment of salary to the post of Assistant Engineer.

In such view of the matter, this Court does not find any merit in this writ application and, accordingly, the same is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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