

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1425 of 2018

In
Civil Writ Jurisdiction Case No.11030 of 2014

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Naresh Kumar Soni S/o Sri Parshuram Prasad Soni Resident of Village Mian Patti Manjhi, P.O. and P.S. Manjhi, District Saran, at present resident of Mohalla Nai Bazar, P.O. Chapra, P.S. Bhagwan Bazar, District Saran, employed as Driver in Nagar Parishad, Chapra.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna
2. Nagar Nigam Chapra through its Municipal Commissioner, At and P.O. and P.S. Chapra, District Saran.
3. The Mayor, Nagar Nigam, Chapra, At and P.O. and P.S. Chapra, District Saran.
4. The Empowered Standing Committee, Nagar Nigam, Chapra through its Chairman, At and P.O. and P.S. Ch
5. The Municipal Commissioner, Nagar Parishad, Chapra, At and P.O. and P.S. Chapra, District Saran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Gyan Prakash, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha, AAG 7 Indu Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-09-2022

Heard learned counsels for the parties.

2. In the instant petition, appellant has assailed the order of
Learned Single judge dated on 28.08.2018 passed in C.W.J.C. No.



11030 of 2014. On 31.10.2007 the appellant was appointed as a driver in the respondent - Nagar Parishad, Chapra which was later on converted into Municipal Corporation. The Municipal Corporation has taken a decision that initial appointment of the appellant was not in accordance with the provision of law. In particular, it was submitted that Executive Officer is stated to have appointed the appellant who is not the competent authority.

3. The appellant in C.W.J.C No.11030 of 2014 has prayed for the following relief/reliefs:

“(a) To issue a writ of mandamus, commanding the respondents to pay the due Honorarium of petitioner since August 2013 till date, after deducting the ad-hoc payments, if any and to ensure regular and punctual payment of the Honorarium of the petitioner in the first week of each succeeding month of English Calendar.

(b) To issue a writ of mandamus, commanding the respondents to discharge their legal obligation to follow their own decision and to regularize the service of petitioner in regular pay scale on the post of Driver of Nagar Parishad, Chapra, on which he is working since 31.10.2007 on the basis of his appointment against vacant sanction post in terms of provisions of Rules for Regulating the Appointment & Qualifications for the Officers and Servants of Municipalities and N.A.C.

(c) To issue further writ of mandamus, commanding the respondents to pay the Honorarium and other dues of the petitioner along with their calculation charts and amount of interest at the rate of



18 % per annum, since the date the amounts have become due, till the date of their respective payments.

(d) To any other relief or relief's of which the petitioner may be found entitled to."

The aforesaid relief/reliefs was not granted by the Learned Single Judge. Hence the present appeal.

4. Learned counsel for the appellant vehemently contended that appellant's appointment is in accordance with the relevant provision of law. In this regard, he has pointed out rule 2 (iv) of Rules for Regulating the Appointments & Qualifications for the Officers and Servants of Municipalities and NAC 1997, Section 38 of Bihar Municipal Act 2007. With reference to Section 38, further he relied on Apex Court decision in the case of ***Amarkant Rai vs. State of Bihar and Others*** reported in **2015 (8) SCC 265, para 8.**

5. *Per contra* Learned Counsel for the respondents resisted the aforesaid contentions and submitted that appointment of the appellant was not in accordance with the relevant provision of law as on the date of his appointment on 31.10.2007. The Learned Single Judge has taken note of Rule 2 (iv) and further it is submitted that in the light of ***Ram Sevak Yadav and Another vs. State of Bihar and Others*** reported in **2013 (1) PLJR 964** and ***Sanjiv Kumar vs. State of Bihar and Others*** reported in **2018 (3)**



PLJR 133 which has been quoted by the Learned Single Judge in paragraph No. 7 of its order supports the version of the respondents' decision.

6. Heard learned counsels for the respective parties.

7. Appointment of the appellant is dated 31.10.2007. Thereafter, it is stated to have been ratified on 21.03.2013. The initial appointment of appellant is not in accordance with Article 14 and 16 of the Constitution. In other words, official respondents have not notified the post so as to give an opportunity to such of those eligible candidates to submit their applications who were residing in various corners of the State. Apex Court in the case of ***Renu and Others vs. District and Sessions Judge, Tis Hazari Courts, Delhi and Another*** reported in **(2014) 14 Supreme Court Cases 50** has analyzed Article 14 and 16 in detail. Therefore, one has to draw inference that appellant's initial appointment is irregular appointment. At the best he is entitled to regularization in the light of Apex Court decision in the case of ***Secy., State of Karnataka and Others vs. Uma Devi*** reported in **(2006) 4 SCC page 1** and ***Amarkant Rai vs. State of Bihar and Others*** (cited *supra*) if otherwise, appellant is entitled to. In other words, if he fulfills the criteria and conditions laid down in the aforesaid decisions, in that event appellant is entitled. Having regard to his



initial appointment as on 31.10.2007, he is required to complete 10 years of service and other conditions. In the light of these facts and circumstances, the appellant is at liberty to submit detailed representation for the purpose of regularization in terms of the policy decision of the State and if the Municipal Corporation have adopted such policy, the same shall be taken note of including judicial pronouncements made in the case of *Secy., State of Karnataka and Others vs. Uma Devi* reported in (2006) 4 SCC page 1 and *Amkant Rai vs. State of Bihar and Others* (cited *supra*) and further *State of Karnataka vs. M.L. Keshari* reported in (2010) 9 SCC 247. All these judicial pronouncements must be taken note of by the competent authority before taking a decision whether appellant is entitled to regularization in terms of the principle laid down. In this regard, the appellant is hereby directed to furnish a detailed representation within a period of eight weeks from the date of receipt of this order. On receipt of appellant's representation the concerned respondent/competent officer is hereby directed to examine service particulars of the appellant read with judicial pronouncements and policy decision of the State and proceed to pass speaking order as to whether the appellant is entitled to regularization or not. Such a decision shall be taken within a period of four months from the date of appellant's



representation to be submitted. In the meanwhile, the official respondents shall not displace the appellant till final decision is taken that whether the appellant is entitled to regularization or not? Accordingly, the order of the Learned Single Judge dated 28.08.2018 passed in C.W.J.C. No. 11030 of 2014 is modified.

8. At this stage, learned counsel for the appellant submitted that similarly situated persons were stated to have been regularized . The appellant cannot take shelter in the event of similarly situated persons' services were regularized for the reasons that illegality cannot be perpetuated.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	14.09.2022
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