

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4085 of 2022

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1. Dhananjay Kumar Jha Son of Sri Janardan Jha Resident of Ulao, Ward No. 03, Begusarai Municipal Corporation, P.S.-Muffasil, District-Begusarai, PIN-851134.
 2. Om Prakash Paswan Son of Late Vishnudeo Paswan, Resident of Vilalge-Garhara, Ward No.10, P.S.-Barauni, District-Begusarai-851126.
 3. Pankaj Kumar Singh Son of Late Anandu Singh Resident of Vilage and P.O.-Bihat, Ward No. 23, P.S.-Barauni, District-Begusarai-851135.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secrerary Urban Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Departemnt, Govt. of Bihar, Patna.
3. Bihar Nagar Parishad through the Chief Counsellor,
4. The Executive Officer, Bihat Nagar Parishad.
5. The Accountant General (A and E) Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mani Kant Mishra, Advocate
		Mr.Ranjeet Kumar, Advocate
For the State	:	Mr.Subhash Pd. Singh (Ga3)
For Accountant General	:	Mr.Arun Kr. Arun, Advocate
For Nagar Parishad Bihar:		Mr.Ashok Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 06-12-2023

1. The present writ petition has been filed for setting aside the order dated 31.01.2022, passed by the Executive Officer, Bihat Nagar Parishad, Begusarai i.e. the respondent no.4, whereby and whereunder the claim of the petitioners for payment of salary, since the year 2018, has been rejected and it has been held that the petitioners have failed to produce any evidence to show that they were absorbed against the post, sanctioned by the



State Government.

2. The brief facts of the case, according to the petitioners, are that the respondent no.4 vide memo dated 15.06.2012 had sent an employment notice bearing no.01 of 2012-13 to the Director, Information and Public Relation Department, Government of Bihar, Patna, requesting therein to ensure publication of the aforesaid employment notice in the daily newspaper for the purposes of inviting applications for making contractual employment under the Bihat Nagar Parishad for Group-C and Group-D posts, whereafter an advertisement was published in the daily Hindi Newspaper Hindustan on 07.07.2012, leading to the petitioner no.1 filing an application for being appointed on the post of Assistant Accountant, while the petitioner no.2 had applied for the post of night guard and the petitioner no.3 had applied for the post of driver. It is the further case of the petitioners that thereafter, they were appointed vide memo dated 31.07.2012 and 03.08.2012, respectively. It appears that subsequently the Accountant General, Government of Bihar, Patna had raised audit objections vide letter dated 26.02.2016 in the following terms:-

“1. Persons were recruited on contract basis but no contract was done. Appointment letter were issued to the selected candidate on above rate. No new appointment-letter were issued or new



recruitment done but pay was revised and they are being paid at rates different from that on which they were recruited on contract basis.

The reason for the same may be pointed out.

2. The Rule under which persons were recruited on unsanctioned post may be pointed out to audit.”

3. To the aforesaid audit objection, the respondent-Bihat Nagar Parishad had responded by stating that payment was being made to the said staff on the direction of the Board and the Empowered Standing Committee. The said audit objection had then led to issuance of an order dated 07.08.2021, by the respondent no.4, wherein it had been observed that on account of the audit objection the salary of the petitioners has been stopped from before and no work is being taken from them since the month of July, 2020. In the meantime, the respondent no.4 had directed the petitioners alongwith others, vide letter dated 03.10.2020 to produce evidence regarding regularization of their contract based appointment against the sanctioned posts, however, it is the case of the respondents that the petitioners could not produce any such proof. Nonetheless, the petitioners had filed a writ petition bearing CWJC No.4564 of 2021 and the case of the petitioners was remanded back to the authorities vide order dated 04.01.2022, passed by a co-ordinate Bench of this



Court, whereafter the petitioners had filed a representation, which has been rejected by the impugned order dated 31.01.2022.

4. The learned counsel for the petitioners has though admitted that the posts on which the petitioners are working on contractual basis, have not been sanctioned but then it is submitted that Section 67 of the Bihar Municipal Act, 2007, empowers the State Government to regularize the unlawful and irregular action of the Municipal Authority, hence the State Government be directed to regularize the services of the petitioners, keeping in view the fact that the respondent-Bihat Nagar Parishad has not only been taking work from the petitioners since past more than eight years but has also paid salary to the petitioners regularly. For ready reference Section 67 of the Bihar Municipal Act, 2007 is reproduced hereinbelow:-

“67. Power of State Government to require Municipal Authorities to take action. - If, after considering the records required under Section 65, or the Report under Section 66, or any information received by Government the State Government is of opinion that-

(a) any action taken by a Municipal Authority is unlawful or irregular or any duty imposed on such authority by or under this Act has not been performed or has been performed



in an imperfect, insufficient or unsuitable manner; or

(b) adequate financial provision has not been made for the performance of any duty under this Act, the State Government may, by order, annul such action, or require such Municipal Authority to regularize such unlawful or irregular action or perform such duty or restrain such authority from taking such unlawful or irregular action or direct such authority to make, to the satisfaction of the State Government or within such period as may be specified in the order, arrangement, or financial provision, as the case may be, for the proper performance of such duty:

Provided that the State Government shall, unless in its opinion the immediate execution of such order is necessary, before making an order under this Section, give such Municipal Authority, in writing, an opportunity of showing cause, within such period as may be specified by the State Government, why such order should not be made.”

5. Per contra, the learned counsel for the respondent-State as also the learned counsel appearing for the Bihat Nagar Parishad have jointly submitted that the posts on which the petitioners were appointed have never ever been



sanctioned by the State Government, hence their appointment as well as the action of making them permanent is irregular and to the said extent the order dated 31.01.2015, issued by the then Executive Officer, Bihat Nagar Parishad, is illegal. Nonetheless, it is not denied that the State Government has the power under Section 67 of the Municipal Act, 2007 to regularise the irregularities committed by the Bihat Nagar Parishad.

6. At this juncture, the learned counsel for the petitioners has submitted that since the petitioners were appointed way back in the year 2012 on the post on which they are working and it is not their mistake that the respondent-Bihat Nagar Parishad had made their appointments on non-sanctioned post and moreover, the fact remains that the petitioners have been made permanent/freshly appointed by the respondent no.4 consciously, in pursuance to the decision of the Empowered Standing Committee and the Board of the Bihat Nagar Parishad vide order dated 31.01.2015, the State Government be directed to exercise its power vested under Section 67 of the Bihar Municipal Act, 2007 and regularise the irregularities committed by the Bihat Nagar Parishad, as aforesaid as also direct for payment of salary to the petitioners, however, during the interregnum period, the respondents be restrained from making recovery qua the salary, already paid to the petitioners. It is



directed accordingly.

7. It is needless to state that upon the petitioners, filing appropriate representation, before the respondent no.4, within a period of three weeks from today, the respondent no.4 shall forward the same, within a period of two weeks, thereafter, to the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna for taking necessary decision by exercising powers vested under Section 67 of the Bihar Municipal Act, 2007, who shall then consider the fact that the petitioners are working with the Bihat Nagar Parishad efficiently, since the year 2012 and pass a reasoned and a speaking order, in accordance with law, within a period of eight weeks, thereafter.

8. Accordingly, the writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2023
Transmission Date	NA

