

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.612 of 2019
In
Civil Writ Jurisdiction Case No.3317 of 2006

Siyaram Bhagat S/o Late jamuna Prasad Bhagat Resident of 187, D.N.Singh Road, Kharmanchak, Bhagalpur, P.s.- Kotwali, Distt.- Bhagalpur, at present Assistant retired Engineer, Bhagalpur Municipal Corporation, Bhagalpur
... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner Urban Development Department, Govt. of Bihar, Patna
3. The Commissioner Bhagalpur Division, Bhagalpur
4. The District Magistrate Bhagalpur
5. The Bhagalpur Municipal Corporation through its Chief Executive Officer, Bhagalpur
6. The Mayor Bhagalpur Municipal Corporation, Bhagalpur
7. The Chief Executive Officer Bhagalpur Municipal Corporation, Bhagalpur
... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhinav Srivastava, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha (Aag-7)
		Mr. Shankar Kumar, AC to AAG-7
For the Bhagalpur Municipal Corp. :		Mr. Manish Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 11-10-2023

Heard the parties.

2. The present letters patent appeal has been preferred against the judgment and order dated 18-04-2019 passed by Hon'ble Single Judge in CWJC No. 3317/2006 by which the writ application preferred by the appellant-petitioner has been dismissed.

3. The short facts of the case is/are that:



4. The appellant-petitioner was initially appointed as Junior Engineer and he joined on 19.7.1966 in the Bhagalpur Municipality. According to him, it was upgraded on 15.4.1984 as the Bhagalpur Municipal Corporation (henceforth, for short, 'the Corporation').

5. Further case is that the appellant-petitioner was considered for promotion on the post of Assistant Engineer and recommendation as such was sent alongwith service records to the Urban Development and Housing Department, Bihar, Patna (henceforth, for short, 'the Department') for its approval.

6. It appears vide an order no. 1961 dated 28.05.1990 issued under the signature of Deputy Secretary of 'the Department', concurrence was granted with conditions that till the approval by the Finance Department and the Bihar Public Service Commission (henceforth for short, 'the Commission'), the additional financial load shall be borne by 'the Corporation'. It was further incorporated therein that if concurrence is not granted, the appellant-petitioner shall be reverted back on his earlier post.

7. The further case is that an order containing memo no.33 dated 14.6.90 was issued by 'the Corporation',



the appellant-petitioner was promoted on the post of Assistant Engineer and it was further ordered that he will get his salary in the pay scale of Assistant Engineer with effect from the date of order of the Government.

8. Thereafter another order containing memo no. 18 dated 8.1.1996 was issued under the signature of the Administrator of 'the Corporation' by which the pay scale of the appellant-petitioner as an Assistant Engineer was fixed.

9. The case is that though some complaints were made against him, it was enquired into by the Administrator of 'the Corporation' whereafter vide letter dated 17.1.1994, he held that lodging of criminal case or initiation of proceeding are not required.

10. It has been contended that still he was later placed under suspension. Thereafter, vide letter bearing no. 3006 dated 27.8.1998, it was informed that date of birth of the petitioner is 8.1.1943 and as such he is to superannuate on 31.01.1998.

11. The appellant-petitioner challenged the order of superannuation dated 29.12.1997 by way of filing writ application bearing C.W.J.C. No. 922 of 2000 which was heard on 21.8.2002 and disposed of with a direction to the



respondents to make payment of subsistence allowance, salary and post retirement benefits as also to decide the issue relating to his date of birth and status as Assistant Engineer.

12. Further case of the appellant-petitioner is that in the departmental proceeding also, the Conducting Officer-cum-Assistant Project Officer-cum-Executive Magistrate, Sadar, Bhagalpur, submitted his report holding that the charges levelled has not been proved and he was forced to superannuate on the basis of wrong date of birth though he was to superannuate in the month of January 2001.

13. As no step was taken thereafter, M.J.C. No. 872 of 2004 was filed in which a show cause was ultimately filed by the opposite parties stating that so far as the matter relating to his date of birth is concerned, he has been wrongly superannuated on 31.1.1998. Regarding the payment of salary and other post retiral benefits of the intervening period, it was stated that the appellant-petitioner will be treated under suspension since the same was not revoked and he will only be entitled for the subsistence allowance for the said period. It was further stated that in the Bhagalpur Municipal Corporation, the post of Assistant Engineer is not sanctioned/created. Thus, the claim of the appellant-petitioner



herein treating him as an Assistant Engineer has been rejected.

14. The State Government later vide letter bearing no. 985 dated 25.3.2000 asked the respondent Corporation to clarify on the point of grant of concurrence to the promotion to one Hareram Choudhary as an Assistant Engineer and further enquired whether there is any sanctioned post of Assistant Engineer in the Corporation or not.

15. In reply to the said query, 'the Corporation' vide letter issued under the signature of Administrator no. 444 dated 28.4.2000 replied that in 'the Corporation', one post of Assistant Engineer has been created.

16. However, the State in its counter affidavit clarified that there was no sanctioned post of Assistant Engineer in 'the Corporation' as the Government never approved the said post.

17. The Chief Executive Officer of 'the Corporation' too mentioned in his letter dated 23.01.2006 that no post of Assistant Engineer was sanctioned in 'the Corporation' and, as such, the appellant-petitioner was wrongly promoted to the post of Assistant Engineer and this fact was noticed by the Auditor and objections were also raised during the audit made between 1987-88 to 1989-90.



18. In the counter affidavit filed on behalf of respondent nos. 1 to 4, 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 appellant-petitioner was directed to be reverted back to the post of Junior Engineer.

19. Further, in paragraph 14, it has been reiterated that the Government has not approved the promotion of the appellant-petitioner is apparent from letter no.31 dated 11.02.2013 issued by 'the Corporation' wherein it has categorically been stated that no post of Assistant Engineer in the Corporation was available.

20. The Municipal Corporation 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.

21. Further, pursuant to the writ Court's order dated 27.02.2013 directing the State to file affidavit about concurrence of the Finance Department as well as 'the BPSC' relating to the promotion of the writ petitioner, it has been



replied that nothing is/was on record to show that the concurrence was ever made.

22. The respondent no.2 in its counter affidavit clearly stated that no such letter no. 3305 dated 28.08.1996 is available in the records of 'the Department' regarding seeking approval of the Finance Department or 'the BPSC' as the criminal case and departmental proceeding were pending against him. Thus, in terms of the General Administration Department's directives, no approval for promotion could have made to an employee.

23. The writ Court considering all the aforesaid facts vide an order dated 18.04.2019 dismissed the writ petition.

24. Aggrieved, the present appeal has been filed.

25. Heard learned counsel for the parties.

26. Learned counsel for the appellant submits that the Hon'ble Single Judge erred in holding that the appellant-petitioner not being a Graduate Engineer, an essential qualification needed for the post of Assistant Engineer, he could not have given promotion to the said post.

27. The further contention is that the Hon'ble Single Judge erred in holding that there are disputed questions



of fact which cannot be decided by the writ Court.

28. It is the case of the appellant-petitioner that only to accommodate Hareram Chaudhary on the post of Assistant Engineer, he was made to superannuate in an illegal manner despite the fact that his tenure was upto 31.01.2001.

29. The learned counsel appearing on behalf of the respondents, on the other hand, took this Court to the order of the State Government vide memo no. 1961 dated 28.05.1990 issued under the signature of the Deputy Secretary, Urban Development, Bihar, Patna and submitted that it was made clear that the approval for promotion of the appellant-petitioner from Junior Engineer to Assistant Engineer was conditional inasmuch as it was clearly stated that:

(i) unless approved by the Finance Department and ‘the B.P.S.C.’, the additional financial benefits shall be borne by the Corporation itself;

(ii) in case of non-approval by the Finance Department/‘the B.P.S.C.’; he will be reverted to his original post (Annexure-1 to the writ petition).

30. He further submits that contrary to the stand taken by the appellant-petitioner, the post of Assistant Engineer has not been sanctioned by the State Government



and the letter no. 444 dated 28.04.2000 allegedly claimed to be issued by the Bhagalpur Municipal Corporation (Annexure-11 to the writ petition) could not be traced in the records of 'the Corporation' nor the authority under whose signature it has been issued, could be ascertained.

31. He thus submits that it is simply a brain child of the appellant-petitioner that 'the Corporation' is still requesting for sanction of the post. The further stand by the respondents is/are that so far as the date of birth/superannuation part is concerned, the same has already been corrected vide an order dated 23.01.2006 by which his superannuation date has been made as 31.01.2001.

32. The respondents further submit that the appellant-petitioner being a diploma holder and having superannuated on 31.01.2001, cannot have parity with Hareram Chaudhary who is having a Civil Engineering degree.

33. Having heard the parties and perusing the records, the fact that emerges is/are :

(i) the appellant-petitioner was serving as Junior Engineer with the Bhagalpur Municipality which later came to be upgraded as Bhagalpur Municipal Corporation;



(ii) 'the Corporation' later made a recommendation for promoting the appellant-petitioner to the post of Assistant Engineer;

(iii) subsequently, vide letter no. 1961 dated 28.05.1990, conditional approval was given by 'the Department' incorporating therein that till the same is approved by the Finance Department/the BPSC, the extra payment shall be made by 'the Corporation'. Further, in case of non-approval, he will be reverted to his original post.

34. It is the case of the respondents that as there was no sanctioned post of Assistant Engineer in the Bhagalpur Municipal Corporation and no such approval ever came from the Finance Department/BPSC, the natural corollary would be his reversion to the original post i.e. the post of Junior Engineer.

35. The uncontroverted stand of the respondents in the counter affidavit is that the post of Assistant Engineer has still not been sanctioned and in that background, the appellant-petitioner cannot be allowed to demand financial benefits of an Assistant Engineer. Further, treating the appellant-petitioner as Junior Engineer, 'the Corporation' has already issued the necessary orders.



36. We have gone through the contents of the letter no. 1961 dated 28.05.1990 which talks about his reversion to the post of Junior Engineer in case of non-approval. We have also taken note of the averments made in the counter affidavit (not refuted by the appellant) that the post of Assistant Engineer was not sanctioned in 'the Corporation'. Thus, in terms with the letter no. 1961 dated 28.05.1990, he will be deemed to have been reverted to the post of Junior Engineer.

37. In the aforesaid background, the Hon'ble Single Judge was fully justified in passing the reasoned order on 18.04.2019 declining the prayer of the appellant-petitioner and dismissing the writ petition.

38. We are convinced that the order of the Hon'ble Single Judge need no interference.

39. The L.P.A. No. 612 of 2019 stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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