

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4449 of 2020

Prasidhnath Tiwari Son of Late Kantinath Tiwari, resident of Vilage- Sonkar,
P.S. Ramnagar, Distt.- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Government of Bihar, Patna.
2. The District Magistrate, West Champaran.
3. The Executive Officer, Nagar Panchayat Ramnagar, West Champaran.
4. The Chairman, The Board of Commissioners, Nagar Panchayat Ramnagar, West Champaran.
5. The Chairman, Permanent Standing Committee, Nagar Panchayat, Ramnagar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Satyendra Rai, Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar (SC-9) Mr. Ashutosh Kumar Upadhyay, AC to SC-9
For Respondent Nos.3 to 5:	:	Mr. Sudhanshu Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 28-03-2024

Heard learned counsel for the petitioner, learned
counsel for the Executive Officer, Nagar Panchayat Ramnagar,
West Champaran, and learned counsel for the State.

2. The present writ petition has been filed for quashing the decision communicated to the petitioner through letter contained in Memo No.1028 dated 18.10.2019 issued by Executive Officer, Nagar Panchayat, Ramnagar, West Champaran, whereby the dismissal of the petitioner took place in the year 2012 has been confirmed. Counsel for the petitioner



made further prayer to quash the entire departmental proceeding resulting into the issuance of aforesaid impugned order communicated vide letter dated 18.10.2019 and memo of charge appended to letter No.390 dated 16.06.2012 issued by the Executive Officer, Nagar Panchayat, Ramnagar, West Champaran. He has made further prayer directing the respondent authorities to release the entire salary of the petitioner with effect from April, 2012 till date along with interest and other payable benefits in the facts and circumstances of this case. Further prayer for a direction to the respondent authorities to adequately compensate the petitioner for unnecessary harassment caused to him.

3. Learned counsel for the petitioner submits that petitioner has earlier moved before this Hon'ble Court in CWJC No.15701 of 2012 in which vide order dated 16.05.2017 the said writ petition was allowed in his favour with the following observations:-

“Having considered the rival contentions of the parties, it appears that the enquiry has neither been done in a proper manner nor charge-sheet has been served properly upon the petitioner but, merely on the basis of presumption and assumption, the entire



action has been taken against the petitioner. Malafide and maliciousness would not play role in the event the charges are proved against the delinquent. This Court, under the judicial review, will only examine the decision making process not the decision and, on that touchstone, this Court finds the enquiry proceeding has not been done in a proper manner and wrongly the petitioner has been terminated from service.

In that view of the matter, the termination of the petitioner is set aside and the entire proceeding will be treated to have been wiped out, a fresh proceeding should be conducted by the Nagar Panchayat, Ramnagar but, it is made clear that the Prapatra 'Ka' which is attached with Annexure-B' as per Ram Nagar Gram Panchayat is the Memo of Charge, will be treated to have been served upon the petitioner. If the petitioner wants to give reply or explanation, whatever he likes in any form, he may file the same, within a period of three weeks from today and he will remain present before the Executive Officer of Nagar Panchayat, Ramnagar on 12th June, 2019 at 10.30 AM, the



Executive Officer, if so like, may give additional charge-sheet to the petitioner. In that event, the petitioner will be at liberty to file explanation within a period of 15 days thereafter. If the petitioner requires any document, he will file an application with the relevancy of the document and only the relevant document will be supplied to him and the Disciplinary Authority would appoint the Enquiry Officer as well as the Presenting Officer, on the date fixed, he will remain present and cooperate in the proceeding, in failure to participate, the Enquiry Officer will be at liberty to proceed ex-parte and will submit a report to the Disciplinary Authority cum Appointing Authority and, accordingly, the proper authority will act in accordance with law.

The Enquiry Officer will not grant any unnecessary indulgence unless it is so required.

The entire proceeding will be completed within a period of five months from the date of first appearance of the petitioner before the Executive Officer.

Any amount will depend on the final outcome of the enquiry proceeding.



With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.”

4. Learned counsel for the petitioner submits that in compliance of the said order no action has been taken from the part of the respondent whereas the petitioner in due respect of the said order has pursued before the authorities. In this regard he has made specific pleading in his writ petition at paragraph-15 on wards, but the Executive Officer, Nagar Punchayat, Ramnagar, West Champaran, has not done any action in compliance of the order passed by this Hon’ble Court and passed final order on 18.10.2019, which is contained in Memo No.1028, by which his earlier dismissal order of 2012 has been approved and directed to continue.

5. Learned counsel for the Executive Officer, Nagar Punchayat, submits that the petitioner has filed earlier MJC for non-compliance of the order dated 16.05.2019 passed in CWJC No.15701 of 2012, which was withdrawn on the joint request of the parties vide order dated 04.08.2022. Counsel submits that the decision has been taken with regard to the petitioner by the Empowered Committee of the Municipality and communicated to the petitioner. According to him, the said order is in accordance with law.



6. Learned counsel for the State submits that the matter is relating to Nagar Panchayat and State has nothing to do in this matter. As such, he submits that he restrain himself in submitting anything on merit of the case.

7. Upon perusal of the order impugned, it transpires that the Executive Officer, Nagar Panchayat Ramnagar, West Champaran, has absolutely no knowledge of Bihar Municipal Officers and Servants (Appointment Duties, Discipline & Appeal) Rules and Bihar Municipal Act and he is basically an incompetent officer to understand the order passed by this Hon'ble Court where there was specific direction given by the Court and has already set aside the earlier order of punishment dated 07.04.2012 of the Standing Committee, Nagar Panchayat Ramnagar and instead thereof he was permitted to continue the departmental proceeding in accordance with Bihar Municipal Officers and Servants (Appointment Duties, Discipline & Appeal) Rules and Bihar Municipal Act. It transpires to this Court that the Executive Officer, Nagar Panchayat Ramnagar, has failed to exercise the provision made in Bihar Municipal Officers and Servants (Appointment Duties, Discipline & Appeal) Rules and Bihar Municipal Act as it transpires from the impugned order dated 18.10.2019 and,



hence, this Court is of the firm view that the order dated 18.10.2019 is not sustainable in the eye of law and it has been passed in teeth of order dated 16.05.2019 in CWJC No.15701 of 2012 where the reason has already been assigned on the basis of which order dated 07.04.2012 has been quashed. This Court is of the view that order dated 18.10.2019 is not sustainable and is absolutely illegal, perverse and, hence, it is set aside. The respondent Executive Officer, Nagar Panchayat Ramnagar, is directed to make the payment of the petitioner with effect from April, 2012 till date within a period of three months from the date of communication of the order to them.

8. It is directed that State shall arrange proper training to the then Executive Officer, Nagar Panchayat Ramnagar, West Champaran, in the Bihar Institute of Public Administration and Rural Development at least for a period of two months.

9. With the aforesaid observation and direction, this writ application is allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.04.2024
Transmission Date	NA

