

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7495 of 2020

1. Bideshi Mallick Son of Late Bihari Mallick, resident of Dak Bangla Road, Ward No. 20, P.O. and P.S. and District-Madhepura.
2. Dinesh Mallick, Son of Late Yugal Mallick, resident of Dak Bangla Road, Ward No. 20, P.O. and P.S. and District-Madhepura.
3. Arun Mallick, Son of Late Asharfi Mallick, resident of Dak Bangla Road, P.O. and P.S. and District-Madhepura.
4. Ashok Mallick, Son of Late Jugal Mallick, resident of Vidyapuri, P.O. and P.S. and District-Madhepura.
5. Rajesh Mallick, Son of Late Kamal Mallick, resident of Vidyapuri, Ward No. 18, P.O. and P.S. and District-Madhepura.
6. Ram Prasad Mallick, Son of Fuddi Mallick, Resident of Village-Gauripur, Ward 02, P.S.-Singheshwar, District-Madhepura.
7. Nilam Devi, Wife of Umesh Mallick, resident of ward No. 2, P.O. and P.S. and District-Madhepura.
8. Anita Devi alias Anita Mehtarni, Wife of Vinod Mallick, resident of ward No. 18, P.S. and District-Madhepura.
9. Pavia Devi alias Pinki Mehtarni, W/o Bishundeo Mallick, resident of Ward No. 2, P.S. and District-Madhepura.
10. Pinki Devi alias Pinki Mehtarni, Wife of Arun Mallick, resident of Mohalla-Gulzarbagh, Ward No. 20, P.S. and District-Madhepura.
11. Anita Devi alias Anita Mehtarni, Wife of Arun Mallick, resident of Ward No. 2, P.S. and District-Madhepura.
12. Punam Devi alias Punam Mehtarni, Wife of Dinesh Mallick, resident of Ward No. 18, P.S. and District-Madhepura.
13. Shobha Devi, Wife of Late Suresh Mallick, resident of Ward No. 18, P.S. and District-Madhepura.
14. Pappu Mallick, Son of Late Sukdeo Mallick, resident of Ward No. 16, P.S. and District-Madhepura.
15. Devendra Mallick, Son of Late Baldeo Mallick, resident of Mohalla-Gulzarbagh, Ward No. 20, P.S. and District-Madhepura.
16. Bablu Mallick, Son of Late Asharfi Mallick alias Sone Lal Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
17. Upendra Mallick, Son of Late Bhumi Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
18. Jitendra Mallick, Son of Nageshwar Mallick alias Nago Mallick, resident of Ward No. 18, P.S. and District-Madhepura.
19. Anil Mallick, Son of Ravidra Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
20. Sanjay Mallick, Son of Late Basant Mallick, resident of Nav Toliya, PS and District-Madhepura.



- 21. Sunil Mallick, Son of Late Bhuwan Mallick, Ward No. 20, P.S. and District-Madhepura.
- 22. Mahendra Mallick, Son of Chalitar Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
- 23. Suresh Mallick, Son of Late Basant Mallick, resident of Ward No. 2, P.S. and District-Madhepura.
- 24. Deepak Mallick, Son of Ramji Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
- 25. Ranjan Devi alias Ranjan Mehtarni, Wife of Late Binod Mallick, resident of Ward No. 2, P.S. and District-Madhepura.
- 26. Suresh Mallick, Son of Late Sahdeo Mallick alias Sahadat Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
- 27. Deepak Mallick, Son of Late Jagdish Mallick, resident of Ward No. 20, P.S. and District-Madhepura.
- 28. Vikash Mallick, Son of Late Suresh Mallick, resident of Ward No. 18, P.S. and District-Madhepura.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
- 2. The Deputy Secretary-cum-Director, Department of Urban Development and Housing, Government of Bihar, Patna.
- 3. The Joint Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
- 4. The Chairman, Nagar Parishad, Madhepura, District-Madhepura.
- 5. The District Magistrate, Madhepura.
- 6. The Executive Officer, Nagar Parishad, Madhepura, District-Madhepura.
- 7. The Nagar Parishad, Madhepura, through its Secretary, District-Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Subhash Prasad Singh, GA-3
For Respondent No.6 : Mr. Abhay Shankar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 16-02-2024

Heard learned counsel for the petitioners and
learned counsel for the Nagar Parishad, Madhepura. Learned



counsel for the State of Bihar is kept mum neither made any argument nor has filed any counter affidavit.

2. The present writ petition has been filed by the petitioners directing the respondent No.6, Executive Officer, Nagar Parishad, Madhepura, to make the payment of their salary from February, 2018 till date along with statutory interest to the petitioners, who were working on the post of sweeper, Grade-IV, under Madhepura Nagar Parishad.

3. Learned counsel for the petitioner submits that they were appointed on Class-IV post by the order of the Executive Officer, Nagar Parishad, Madhepura, by different appointment letters issued on 21.02.2018. Counsel submits that in the municipal matter, Empowered Committee is competent to take decision so far as the appointment is concerned and the said appointment letters were issued by the Executive Officer, Nagar Parishad, Madhepura, in the light of decision of Empowered Committee dated 25.03.2017. Counsel further submits that the representation has also been filed by the petitioners to the Executive Officer for regular payment and denial has been made that they shall not accept the daily-wage payment and thereafter they have filed the present writ petition before this Court in the year 2020.



4. Learned counsel for the Nagar Parishad, Madhepura, on the other hand, submits that prior to this writ petition the petitioners have earlier moved before this Hon'ble Court in CWJC No.11034 of 2014 which was disposed off vide order dated 22.04.2019. In the said order, this Hon'ble Court has pleased to observe:

“..... the claim of the petitioners for regularization/appointment has to be considered having regard to their past works and in order of seniority subject to final decision/approval by the Urban Development Department as similar decision has been referred to in the case of Sanjay Mallik and others similarly situated.

Before parting with this case, this Court would record submissions of the counsel for the petitioners that they do not wish to press averments made in para 2 of the supplementary affidavit lastly filed in the instant proceeding.

The writ petition stands disposed of.”

5. Learned counsel for the Nagar Parishad submits that from the decision of this Hon'ble Court in the



earlier writ, it becomes crystal clear that regularization of the petitioners was subject to the final decision/approval by the Department of Urban Development and Housing, Government of Bihar, and on the point of their regularization the Department of Urban Development and Housing, Government of Bihar, has taken final decision vide letter No. 3547 dated 05.10.2020 and refused the claim of regularization of the petitioners. In this regard a communication vide letter No.3574 dated 09.10.2020 was made to the Executive Officer, Nagar Parishad, Madhepura, from the office of Urban Development and Housing Department. Counsel submits that for the grant of relief to the petitioners the decision of the Department of Urban Development and Housing, Government of Bihar, is basically the barrier and until and unless this letter shall stand, relief cannot be granted to the petitioners.

6. Learned counsel for the Nagar Parishad, Madhepura, further submits that the petitioners are well aware about the said letters dated 05.10.2020 and 09.10.2020, but they have never opted to challenge the said letters at any level. Counsel for the Nagar Parishad submits that basically petitioners have made suppression of the letter and when argument has been advanced before this Court then only the



petitioners have come forward challenging those letters by way of filing I.A. No.1 of 2023 in which they have taken defence that petitioners have no knowledge about this letter, i.e., Memo No.3547 dated 05.10.2020 and they have got knowledge of this letter for the first time through counter affidavit filed by the Nagar Parishad, Madhepura.

7. Learned counsel for the State has kept mum neither filed any counter affidavit nor has any point to argue.

8. Learned counsel for the Nagar Parishad submits that the State of Bihar has taken a policy decision in which it has been decided that there shall be no Class-IV post under the Municipal Law and all works of Class-IV post shall be taken only through outsourcing agency and this policy decision has been taken vide Annexure R-6/A by resolution No.2503 dated 03.05.2018.

9. In response, learned counsel for the petitioners submits that policy decision has come on 03.05.2018, whereas the appointment of the petitioners have already been taken place on 21.02.2018 and, therefore, they are not guided by the said policy and they become entitled for salary in the light of the appointment.

10. In the light of the submissions and the



documents available on record, it transpires to this Court that petitioners have full knowledge of the decision of the Government and it also appears to this Court that their regularization was subject to approval by the Urban Development Department as mentioned in the order dated 22.04.2019 passed in CWJC No.11034 of 2014. From the representation filed by the petitioners before the Municipal Authority, which is annexed as Annexure-R-6/G, it is clear that the petitioners were well aware about the decision of the Government, but they have not opted to challenge the same, reasons best known to them only, on any early occasion except in the present case by way of filing I.A. No.1 of 2023.

11. This Court is of the view that the present case is simply for demand of salary and the said relief cannot be granted till the decision of Urban Development and Housing Department dated 05.10.2020 and 09.10.2020 shall stand in existence. In this background that this case is of the year 2020, this Court is not inclined to delay this litigation for endless and, therefore, not ready to allow the interlocutory application filed by the petitioner and disposed off this writ petition that at this juncture petitioner is not entitled for the relief, but liberty is hereby granted that petitioners may challenge the decisions of



the Government dated 05.10.2020 and 09.10.2020 only by way of filing the fresh writ petition.

12. It is made clear that the petitioners shall be at liberty to demand stay on the recovery part by way of filing fresh writ petition, till date the respondents are directed not to recover the said money.

13. With this direction, the writ petition is disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2024
Transmission Date	NA

