

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.192 of 2024

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Pramod Kumar, Son of Suresh Rajak, resident of Village/Town/City-Diwari,
Parwaniya, P.S.-Saharsa, District-Saharsa (Bihar), Pin-852201

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Urban Development and Housing, Patna, Bihar
2. The Principal Secretary, Department of Urban Development and Housing, State of Bihar, Patna
3. The Director, Municipal Administration-cum-Joint Secretary. Urban Development Department and Housing, State of Bihar. Patna.
4. The Project Officer-cum-Deputy Director, Urban Development and Housing, State of Bihar, Patna
5. The Supaul Nagar Parishad, through the Municipal Executive Officer, Supaul Nagar Parishad, Supaul.
6. The Municipal Executive Officer, Supaul Nagar Parishad, Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. N. Shahi, Sr. Advocate

Mr. Amit Anand, Advocate

Mr. Gopal Kumar, Advocate

Mr. Deep Shekher, Advocate

Mr. Ankur Govind, Advocate

For the State : Mr. Sarvesh Kumar Singh, AAG-13

Mr. Abhinav Alok, AC to AAG-13

For the Nagar Parishad, Supaul : Mr. Sidharth Shankar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 12-09-2024

1. Termination order of the petitioner from the service
as an Accountant at the Nagar Parishad, Supaul is challenged



with a prayer to issuance of a writ in the nature of Certiorari, quashing Letter No. 8264, dated 5th of December, 2023, by virtue of which his service was terminated. The ground for termination was that the order of appointment of the petitioner was illegal. The petitioner also prays for issuance of a writ in the nature of mandamus, directing Respondent No. 6, not to act upon the said termination order and to allow him to continue performing his duties as an Accountant for the remaining duration of his service. The petitioner also prays for an additional relief to initiate a regular appointment process for the sanctioned and vacant posts and to restrain the Respondent authorities from interfering with the independent functioning of Nagar Parishad, Supaul, as Nagar Parishad is having independent entity in view of 74th Constitutional Amendment Act, 1992.

2. The petitioner was initially appointed as an Accountant at Nagar Parishad, Supaul in December, 2014 through M/s G. A. Digital Web World Private Limited, a manpower supply agency. His duties were performed without any reported issues until December, 2016, when his services were terminated following the Parishad's decision to discontinue manpower supplied by the said agency.



3. Reorganizing the operational difficulties, arising from the absence of a dedicated Accountant, the Board of Nagar Parishad, Supaul convened a General Meeting on 13th of April, 2016. During this meeting, the Board through proposal No. 4/iii, unanimously approved the reinstatement of the petitioner for 11 months on a fixed pay rate, specifically appointing him against a sanctioned and vacant post of Accountant. However, despite his approval, the resolution was not immediately implemented, leaving a gap in the accounting function of the Parishad.

4 On 28th of November, 2017, the Board of the Nagar Parishad, Supaul reaffirmed the need for the petitioner's services. In the General Meeting, through Proposal No. 11, it was resolved to appoint the petitioner for a period of another 11 months at fixed salary of Rs. 11,000/- per month, which was to be paid from the internal resources of the Nagar Parishad, Supaul. Following this resolution, Respondent No. 6 issued Memo No. 1194, dated 30th of December, 2017, directing the petitioner to commence his duties from 1st of January, 2018. The petitioner submitted his joining report, which was duly accepted by the concerned authorities of the Parishad.

5. As the petitioner continued to perform his duties, the Respondent No. 6 sought for an approval for his regular



appointment from the Director, Municipal Administration Directorate on 2nd of September, 2021. In the meeting of the Empowered Standing Committee of the Nagar Parishad, Supaul, held on 10th of December, 2021, the petitioner's service was extended until further orders, recognizing the necessity of his role within the organization. Further on 5th of June, 2023, the Committee resolved to extend petitioner's services till 31st of October, 2023, keeping in view the shortage of staff and proven efficiency of the petitioner. The final extension was granted for additional 11 months, with the petitioner's role being adjusted to that of a Lower Division Clerk.

6. However, on 5th of December, 2023, Respondent No. 4 issued a letter, directing immediate termination of the petitioner's service, declaring his appointment illegal due to non-compliance of the prescribed procedures including advertisement and reservation roster policy.

7. It is submitted by the learned Sr. Advocate appearing on behalf of the petitioner that petitioner's appointment as Accountant was made in accordance with the mandatory provisions of the Bihar Municipal Act, 2007. The Nagar Parishad, Supaul has the authority to appoint any person as an employee by themselves and for the purpose of



employment of a person, a Municipality or Municipal Corporation do not require the authority of Urban and Housing Department, Government of Bihar.

8. It is further contented on behalf of the petitioner that under Part-IX-A of the Constitution of India, the Municipalities have been declared as local self-government and in order to discharge their functions, they can appoint on temporary or permanent basis any person. The Respondent No. 4 does not have any authority to terminate the service of the petitioner as he is not an Appointing Authority of the petitioner.

9. It is also submitted by the learned Sr. Advocate for the petitioner that enquiry conducted by the District Magistrate, Supaul into the petitioner's appointment was also not lawful and within his jurisdictional authority. Petitioner's service was terminated in violation of the Principles of Natural Justice. The Urban Development and Housing Department cannot make any unlawful interference in the autonomous functioning of the Nagar Parishad, Supaul as protected under the 74th Constitutional Amendment.

10. The learned Sr. Advocate for the petitioner submits that the appointment of the petitioner, Pramod Kumar, as an Accountant was made out of necessity and due to acute



shortage of staff within the Nagar Parishad, Supaul. It is contended that although appointment may not have followed the rigorous procedures, mandated under the Bihar Municipal Act, 2007, it was ratified by the Empowered Standing Committee, which is vested with the authority to manage the internal affairs of the Nagar Parishad, Supaul.

11. The learned Sr. Advocate for the petitioner further argues that the appointment of the petitioner, even if, irregular, cannot be deemed to be illegal as it was based on a legitimate need and was essential for the continued functioning of the Parishad.

12. The learned Sr. Advocate appearing on behalf of the petitioner challenges the legality of the enquiry conducted by the District Magistrate, Supaul, urging that the enquiry was unauthorized and conducted without jurisdiction. It is asserted by him that the District Magistrate has no authority under the Bihar Municipal Act, 2007 to interfere with the internal appointments of the Nagar Parishad, which is an autonomous body. Furthermore, the termination order by the Respondent No. 4 is stated to be arbitrary and in violation of the Principles of Natural Justice, as it was issued without giving the petitioner an opportunity to defend his appointment or explain the



circumstances surrounding his engagement.

13. The learned Advocate for the Respondents, on the other hand, argues that the appointment of the petitioner was patently illegal as it was made without following the mandatory procedure prescribed under the Bihar Municipal Act, 2007. The Respondents contend that the appointment was made in contravention of statutory requirements, including the failure to issue a public advertisement and to comply with the reservation roster, which are essential for ensuring transparency and fairness in appointments. The Respondents further contend that the Empowered Standing Committee had no authority to ratify an appointment that was fundamentally illegal and contrary to law.

14. The learned Advocate appearing on behalf of the Respondents further defend the enquiry conducted by the District Magistrate, Supaul, submitting that it was a necessary and lawful exercise, aimed at rectifying the irregularities in the appointment process. The enquiry, according to the Respondents, was initiated in response to legitimate concerns about the legality of the petitioner's appointment and was conducted within the scope of the District Magistrate's supervisory jurisdiction. The Respondents assert that the finding of the enquiry which revealed serious procedural lapses,



justified the termination of the petitioner's service as directed by the Urban Development and Housing Department.

15. It is argued on behalf of Respondents that the petitioner cannot claim any right to continue in a position that was obtained through an illegal process.

16. Having heard the learned Advocates for the parties and on careful perusal of the entire materials on record as well as the relevant legal provisions, this Court, at the outset, records Rule 10 of Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010. The Rule states: -

“10. The Executive Powers of the Municipality shall vest in the Empowered Standing Committee. Executive Powers shall be used collectively:

Provided that administrative control on the Staffs of Municipality shall vest in Chief Executive Officer/ Executive Officer. Resolution shall be passed in the light of orders/directions issued time to time by the State Government.

Officially brought agenda shall contain the following-

(a) Items relating to the establishment as per provisions of the Act, which includes appointments, promotions, benefits, transfers, disciplinary actions etc of the employees of the Municipality.



(b) Items relating to the collection of taxes and fees.

(c) Items relating to the financial position of the Municipality.

(d) Development activities undertaken and to be undertaken by the Municipal body.

(e) Items necessary for effective implementation of the provision of the Act:

Provided that all items are to be placed before the Committee by the Chief Municipal Officer and shall be in the form of memorandum which will include the subjects, the status and the proposal to be approved by the Committee. A separate sheet is to be attached under the signature of the Chief Municipal Officer specifying the period by which the proposal approved by the Committee shall be implemented.

(4) The Empowered Standing Committee shall not discuss and pass a resolution in

(a) any matter/issue which is against the Rules, laws and directives of the State Government;

(b) any issue which is sub-judice in any court of law and which may affect the interest of Municipality adversely.

(5) All issues passed by the Committee shall be placed before the



Municipality in its next meeting.”

17. Thus, Rule 10 of the Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010 gives power to Empowered Standing Committee to make appointment, promotion, benefits, transfers, disciplinary actions etc. of the employees of the Municipality. It is needless to say that the petitioner was initially appointed in the Nagar Parishad, Supaul by an outsourcing agency as an Accountant. Subsequently, petitioner's appointment was made on temporary basis by the Empowered Standing Committee. From the documents annexed with the writ petition, it is also found that the Empowered Standing Committee recommended the petitioner for regularization. However, this has not done.

18. The petitioner was terminated without any proceeding by the Respondent No. 4. When Respondent No. 4 is not the Appointing Authority of the petitioner, he cannot issue termination order without the concurrence of the Standing Committee of the Nagar Parishad, Supaul.

19. The removal of the petitioner, without a fair hearing and consideration of the extenuating circumstances, is a violation of fundamental rights, enshrined in the Constitution of India under Article 21, which guarantees the right to life and liberty. Right to life encompasses right to livelihood as held by



the Hon'ble Supreme Court in the case of *Olga Tellis & Ors. v. Bombay Municipal Corpn., & Ors.*, reported in (1985) 3 SCC 545.

20. The petitioner contends that in the absence of an alternative employment opportunity, his removal is a direct assault on his right to life with dignity.

21. The Hon'ble Supreme Court in *State of Haryana & Ors. v. Piara Singh & Ors.*, reported in (1992) 4 SCC 118, emphasized that while adherence to the recruitment process is crucial, humanitarian consideration should not be ignored, especially in cases where the employee has been serving for a considerable period without any complaint. The petitioner submits that he had been serving diligently and removal based on non-issuance of any show-cause is an extreme measure that disregards the person's service and his life and liberty.

22. However, in *M.P. State Coop. Bank Ltd. v. Nanuram Yadav & Ors.*, reported in (2007) 8 SCC 264, the Hon'ble Supreme Court recognized that the removal of an employee without providing the fair opportunity to be heard or considering socio-economic impact of such a decision, is unjust and ought to be set aside.

23. I have already found that the Empowered Standing



Committee of the Nagar Parishad, Supaul can pass any order with regard to appointment of an employee of the Municipality. If such employment violates the basic rule of appointment, like, non-adherence of reservation policy, absence of advertisement etc., any aggrieved person, having stake of the said employment, can challenge the said recruitment procedure.

24. In the instant case, the Urban Development and Housing Department, on its own, terminated the service of the petitioner, ignoring Rule 10 of the above-mentioned Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010. Therefore, I have no other alternative but to hold that the impugned order of termination is illegal, unfair, unjust and arbitrary.

25. Accordingly, the instant writ petition is allowed.

26. The order of termination issued by the Respondent No. 4, *vide* Letter No. 8264, dated 5th of December, 2023, is quashed and set aside.

27. The Empowered Standing Committee of Nagar Parishad, Supaul is at liberty to direct the petitioner to continue with his job as Accountant till the date which may be fixed by the Committee.

28. With the aforesaid direction, the instant petition



stands disposed of, on contest, however, without costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	09.08.2024
Uploading Date	12.09.2024
Transmission Date	N/A

