# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.5790 of 2023**

**CNR No. BRHC010329492023**

==========

1. Ram Sundar Paswan S/o Late Jugeshwar Paswan R/o Village- Laukahi, Bihra, Ward No.- 12, P.S.- Pangachhiya, District- Saharsa.
2. Md. Hasnain, S/o Late Md. Salamat Miya R/o Village- Gamhariya, Ward No.- 09, P.S.- Sor Bazar, District- Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Bihar, Patna.
3. The Assistant Director, Urban Development and Housing Department, Bihar, Patna.
4. The Board of Nagar Parishad, Saharsa, through its Executive Officer, Saharsa.
5. The Chairman, Nagar Parishad, Saharsa.
6. The Executive Officer, Nagar Parishad, Saharsa.

... ... Respondent/s

==========

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mrs. Nivedita Nirvikar, Sr. Adv. |
| | | Mr. Amarshakti, Adv. |
| For the State | : | None |
| For the Nagar Parishad, Saharsa | : | Mr. Pravashankar Mishra, Adv. |

==========

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**CAV JUDGMENT**

**Date : 20-11-2026**

Heard learned Senior Counsel Mrs. Nivedita

WEB COPY

Nirvikar, assisted by Mr. Amarshakti, Advocate for the petitioners and learned counsel Mr. Pravashankar Mishra for the Nagar Parishad, Saharsa (Respondent Nos. 4 to 6). None appears on behalf of the State.

2. The present writ petition has been filed for issuance of appropriate writ/writs, order/orders, direction/directions for the following relief/s:-

> *"A. For quashing the Order bearing Letter No. 6331, dated 15.09.2016 issued under the Signature of the Respondent No.3 from The Office of Urban Development & Housing Department, Patna, Govt. of Bihar, whereby and where under the Petitioners has been Denied of being a Regular Employee/ Permanent Employee.*
>
> *B. For issuance of a writ/s, an order/s, a direction/s in the nature of mandamus commanding upon the respondents to reinstate the petitioners with back wages and with arrears of service as per Regular/Permanent employee scale since April 2013 and all other service benefits which are consequential to reinstatement in service and for other incidental and ancillary relief.*
>
> *C. For issuance of any other appropriate writ/writs, order/orders, direction/directions*

WEB COPY

*for which the writ petitioner would be found entitled under the facts and circumstances of the case."*

3. Learned Senior counsel for the petitioners submits that here in the present case, petitioner no. 1 joined Nagar Parishad, Saharsa in the year 1992 on the post of Night Guard and petitioner no. 2 joined in the year 2005 as Paachak (Orderly). Both worked on daily wage/casual employee basis. Senior counsel submits that the petitioners were working on daily wage/honorarium since long and thus, the Nagar Parishad, Saharsa in it's meeting, dated 11.02.2011 regularized both the petitioners. The petitioner no. 1 was regularized *vide* Letter No. 609, dated 23.07.2011 against permanent and sanctioned post of Night Guard in the pay scale of Rs. 2550-3200/- and petitioner no. 2 was regularized *vide* Letter No. 603 dated 21.07.2011 against permanent and sanctioned post of Paachak (Orderly) in the pay scale of Rs. 2550-3200 (annexed as Annexure-1 & 1/A). Senior counsel further submits that both the petitioners were doing their duties with all sincerity and were getting salaries without any hindrance, but suddenly, their salaries were stopped and show cause notice was issued to the petitioners *vide* Letter No. 1116 dated 17.09.2013, seeking explanation regarding the

WEB COPY

issue related with the regularization of their employment. Thereafter, both the petitioners submitted their reply on 07.10.2013 before the Executive Officer, Nagar Parishad, Saharsa. Senior counsel further submits that in a similar matter vide Letter No. 1377, dated 10.04.2012, the Urban Development & Housing Department, Govt. of Bihar had approved the appointments of some Class-III and IV daily wages employees accepting the fact that Municipal Corporation is the competent authority to appoint the Class-III & IV employees. Senior counsel submits that after receiving the show cause notice and submitting the reply to the same, the petitioners moved before this Hon'ble Court in C.W.J.C. No. 24560 of 2013 in which, *vide* order dated 10.12.2013, the Executive Officer, Nagar Parishad, Saharsa was directed to take a final decision in the matter, considering the reply to the show cause notices filed by the petitioners, by passing a reasoned order within a reasonable period of three months from the date of receipt/production of a certified copy of the order and the decision with regard to payment of their salary should be taken expeditiously within a period of three weeks. But, the directions were not complied with by the Executive Officer, Nagar Parishad, Saharsa.

4. Learned Senior Counsel for the petitioners

WEB COPY

further submits that office of the Urban Development & Housing Department, Govt. of Bihar issued a letter bearing Letter No. 6331 dated 15.09.2016, declaring the petitioners Irregular Employee/Daily Wager, which is against the law and it shows the *mala fide* intention of the Respondents. Senior counsel submits that the petitioners got their salary as per rules applicable for Regular Employee for 19 months from the date of their Regularization *viz*, 21.07.2011 & 23.07.2011. But suddenly after that, the salaries to the petitioners were stopped from April 2013 to July 2014. It is further stated that after the petitioners filed contempt application *vide* M.J.C No. 2273 of 2014 dated 14.05.2014, the respondents paid the entire remaining salaries to the petitioners, but as per Daily Wage/Casual worker rules, not as per regular employee scale. Petitioners further got salaries as per Daily/Casual worker rule till January 2019, when they got dismissed from the service. Senior counsel further submits that Board of Nagar Parishad is a competent authority to make an appointment of Class III & IV and in the case of the petitioners, there is no adverse order/objection passed by the Urban Development & Housing Department at any point of time regarding the resolution passed by the Nagar Parishad, Saharsa for the regularization of the petitioners. Senior counsel submits

WEB COPY

that according to Section 38 of the Bihar Municipal Act, 2007 (Act No. 11 of 2007), the Board of Nagar Parishad is a competent authority to make an appointment for Class-III & IV Employees and the notification regarding the regularization of the daily wage workers is to be submitted to Respondent Nos. 2 and 3. Hence as per the said Rule, Board of Nagar Parishad, Saharsa passed the resolution in favour of the petitioners and it was notified and sent to the office of Urban Development & Housing Department, Bihar, Patna. The Urban Development and Housing Department had not raised any adverse order/objection to the resolution passed by the Board of the Nagar Parishad. It is further submitted that in similar matter in C.W.J.C No. 791 of 2005 (Raj Kumar Vs. The State of Bihar & Ors.), this Hon'ble Court, vide order dated 26.11.2007 has clearly stated that in process of selection, the respondents shall consider the age relaxation with regard to the petitioner and shall consider his experience also as he has worked with them for 10 years. Here in the present case, petitioner No. 1 has also worked for more than 10 years and petitioner No. 2 has also worked for 7 years. Both worked with sincerity and had an unblemished carrier, that is why they were recommended for regularization *vide* resolution passed by the Board of Nagar Parishad which has

WEB COPY

been approved by the Executive Officer, Nagar Parishad, Saharsa *vide* Letter No. 603 dated 21.07.2011 and Letter No. 609 dated 23.07.2011. Senior counsel, therefore, submits that the petitioners cannot be denied of being a permanent employee of Nagar Parishad, Saharsa and this writ petition be allowed.

5. Learned Senior Counsel for the petitioners further submits that the Three Member Committee's findings are ex-facie perverse and pedantic, due to the reason that against petitioner no. 2, the sole ground cited is 'no proof of honorarium/remuneration'. It is trite law that maintenance of muster rolls, wage registers and payment vouchers are the statutory custodian obligation of the employer (the Nagar Parishad) and not the impoverished Group-D daily wager. An employee who served for over a decade cannot be penalized because the administrative authority failed to produce its own financial ledgers. Senior counsel further submits that against petitioner no. 1, the committee alleges that 'the regularization process was flawed and reservation roster was not followed'. A roster clearance defect is a classic procedural defect which at highest renders an appointment 'irregular', not a fraudulent or void 'backdoor entry'. Learned Senior counsel for the petitioners relied on series of judgments *viz*, ***State of Karnataka***

WEB COPY

***& Ors. Vs. M.L. Kesari & Ors.,*** reported in ***(2010) 9 SCC 247; Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.,*** reported in ***(2006) 4 SCC 1; Dharam Singh & Ors. Vs. State of U.P. & Anr.,*** reported in ***2025 SCC Online SC 1735; Jaggo Vs. Union of India & Ors.,*** reported in ***2024 SCC Online SC 3826*** and ***Pawan Kumar Tiwary & Anr. Vs. Jharkhand State Electricity Board (Now Jharkhand Urja Vikas Nigam Ltd.) in Civil Appeal No. 10893-10896 of 2025 (2025 INSC 1000).***

6. Learned counsel appearing for the Nagar Parishad, Saharsa, on the other hand, submits that some persons including the petitioners, were engaged on daily wages/contractual basis in Nagar Parishad, Saharsa and subsequently they were regularized. However, when the Executive Officer, Nagar Parishad, Saharsa did not receive any approval from the department with respect to the petitioners then he issued show cause notice to the petitioners *vide* Letter No. 1116 dated 17.09.2013 and subsequently retrenched the persons who were engaged illegally and also other persons working on contractual or daily wages were removed. As the appointment of the petitioners was done without following the guidelines of the government and also without following the reservation roster, the same was held to be illegal. Further, it is

WEB COPY

also stated that the alleged appointment of the petitioners was also found to be illegal by the Three Member Departmental Committee which has been mentioned in para 29 of the report. (Annexure-6 of the writ petition). He submits that one Sanjay Kumar Singh filed a writ petition bearing C.W.J.C. No. 384 of 2016 against the State authorities and others in light of which, the department constituted a Three Member Committee for looking into the irregularities related to appointment and pay revision at Nagar Parishad, Saharsa. The Three Member Committee inquired and subsequently submitted its report on 19.08.2016. Thereafter the Assistant Director, Department of Urban Development and Housing, Bihar sent a letter bearing Letter No. 6331 dated 15.09.2016 directing the Executive Officer, Nagar Parishad, Saharsa to take action against the petitioners and others.

7. Learned counsel for the Nagar Parishad, Saharsa further submits that due to changed circumstances, the Govt. of Bihar took a policy decision regarding taking different type of services under municipal bodies including Nagar Parishad, Saharsa through outsourcing only and accordingly, the Urban Development and Housing Department, Bihar, Patna had issued a resolution *vide* Memo No. 2503 dated 03.05.2018 regarding

WEB COPY

restructuring and creation of posts existing under municipal bodies including Nagar Parishad and by the same, the State Govt. took a policy decision to abolish all the vacant existing Group-D posts. As such, after May 2018, there is no Group-D post existing under Nagar Parishad, Saharsa against whom anyone could be appointed. Counsel submits that thereafter, the Urban Development and Housing Department took a policy decision regarding determination of core position for taking different types of services under municipal bodies including Nagar Parishad through outsourcing. The said decision was issued to Municipal Commissioner of all the Municipal Corporations, all Executive Officers of Nagar Parishad *vide* Letter no. 3453 dated 29.06.2018. Counsel, therefore, submits that the Executive Officer, Nagar Parishad, Saharsa retrenched the persons including the petitioners in compliance of the judgment of the Hon'ble Division Bench of this Court dated 27.09.2016 passed in C.W.J.C. No. 384 of 2016 (Sanjay Kumar Singh Vs. The State of Bihar & Ors.) and on the basis of Three Member Departmental Committee report. Counsel submits that the Three Member Committee has found most of the appointments under enquiry in Nagar Parishad, Saharsa as irregular and without following the prescribed procedure like

WEB COPY

publication of advertisement, non-adherence to the reservation rules etc. Counsel therefore submits that the appointment of the petitioners were *ab-initio* illegal and accordingly, the impugned order dated 15.09.2016 contained in Letter No. 6331 was passed. Hence, there is no need of any interference in this matter and this writ petition is fit to be dismissed.

8. After hearing the parties and upon perusal of the documents, it transpires to this Court that the petitioners have earlier moved before this Hon'ble Court in C.W.J.C. No. 24560 of 2013 in which *vide* order dated 10.12.2013, the Executive Officer, Nagar Parishad, Saharsa was directed to take a final decision in the matter. The operative part of the order dated 10.12.2013 passed in CWJC No. 24560 of 2013 is reproduced here-in-below:-

> *".....In the aforesaid facts and circumstances, this writ application is being disposed of, without going into the merit of the case, with a direction to the respondent no. 5, the Executive Officer, Nagar Parishad, Saharsa, to take a final decision in the matter, considering the reply to the show cause notices filed by the petitioners, by passing a reasoned order and communicating the same to the petitioners immediately, if the same has already not*

WEB COPY

*been done. Such decision should be taken within a reasonable period but not later than three months from the date of receipt/production of a certified copy of this order by the petitioners.*

*However, the decision with regard to payment of their salary should be taken expeditiously preferably within a period of three weeks from the date of receipt/production of a certified copy of this order by the petitioners on its own merit and in accordance with law as the petitioners are claiming that they are working but not getting their salary."*

9. It further transpires to this Court that the learned Senior counsel for the petitioners has relied on various judgments *viz*, *State of Karnataka & Ors. Vs. M.L. Kesari & Ors.,* ***(supra),*** *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.,* ***(supra),*** *Dharam Singh & Ors. Vs. State of U.P. & Anr.,* ***(supra),*** *Jaggo Vs. Union of India & Ors.,* ***(supra)*** and *Pawan Kumar Tiwary & Anr. Vs. Jharkhand State Electricity Board (Now Jharkhand Urja Vikas Nigam Ltd.)* ***(supra),*** and demanded the relief that petitioners were engaged on daily wage/casual employee in the Nagar Parishad, Saharsa and their services were regularized, but the Executive Officer, Nagar

WEB COPY

Parishad, Saharsa did not receive any approval from the department with respect to the petitioners and then, a show cause notice was issued to the petitioners and subsequently, petitioners were retrenched.

10. It also transpires to this Court that in the light of decision made by this Hon'ble Court in similarly situated case of Sanjay Kumar Singh Vs. The State of Bihar and Ors. in C.W.J.C. No. 384 of 2016, a Three Member Departmental Committee has been constituted for looking into the irregularities relating to appointment and pay revision at Nagar Parishad, Saharsa in which the Three Member Departmental Committee has found that those appointments in Nagar Parishad, Saharsa was irregular and without following the prescribed procedure like publication of advertisement, non-adherence to the reservation rules etc. and therefore, appointment of the petitioners were *ab-initio* illegal.

11. It is made clear that in the State of Bihar, a new law namely, Bihar Municipal Act, 2007 (Act No. 11 of 2007) (hereinafter referred to as 'Act of 2007') has been enacted and published in the Bihar Gazette (Extraordinary) dated 05.04.2007. The relevant provisions relating to appointment according to the said law has been embedded in Sections 37, 38,

WEB COPY

40A, 488(1) and 488(4)(b) of the Act of 2007 and are very much relevant for complete adjudication of the present case which are quoted here-in-below:-

> *"…..37- **Establishment of Municipality and schedule of posts:-***
>
> *(1) The posts of officers and other employees of the Municipality, other than those referred to in sub-section (1) of Section 36, shall constitute the municipal establishment.*
>
> *(2) The Municipality shall, by Regulation, classify the posts of officers and other employees constituting the establishment of the Municipality into four categories, namely, category 'A' post, category 'B' post, category 'C' post, and category post, on the basis of the scales of pay of such posts.*
>
> *(3) The Municipality shall prepare, and maintain, a schedule of posts of officers and other employees constituting the establishment of the Municipality, to be called Establishment Schedule, and such Establishment Schedule shall include the designation, and the number of posts under each designation, and shall be in three parts of which Part I shall include category, A' posts, Part II shall include category 'B1 posts, and Part III shall include category 'C' posts and category 'D' posts.*

WEB COPY

*(4) Every year the Chief Municipal Officer shall place before the Empowered Standing Committee for its consideration the Establishment Schedule along with the proposals for such changes therein as he may consider necessary:*

*Provided that no upward revision of the size of the establishment of the Municipality shall be made without the prior sanction of the State Government.*

*(5) The Empowered Standing Committee shall, after consideration of the Establishment Schedule along with the proposals, if any, for changes therein, place the same along with its recommendations, if any, before the Municipality for approval prior to the presentation of the budget estimates to the municipality by the Chief Councillor.*

*(6) The Chief Municipal Officer shall revise the Establishment Schedule as approved by the Municipality.*

*(7) The Empowered Standing Committee may sanction any category 'C' post or category 'D' posts for a period not exceeding six months:*

*Provided that no such post shall be sanctioned unless there is a provision in this behalf in the budget estimates of the Municipality.*

WEB COPY

*(8) Subject to such norms regulating the size of a municipal establishment as may be fixed by the State Government from time to time, no post of an officer or other employee of the municipality shall be created by the Municipality without the prior sanction of the State Government, if the number of posts to be so created in a year for a Municipality is more than one per cent of the total number of sanctioned posts of officers and other employees in existence in the year immediately preceding:*

*Provided that the number of posts as may be admissible for creation in a year without the prior sanction of the State Government after the commencement of this Act, if not created in that year, may be carried forward to the next year, subject to a maximum of ten.*

*(9) The recruitment to the posts of officers and other employees of the Municipality not required to be made through the Public Service Commission shall be made through the local Employment Exchange or through such other method as the State Government may determine from time to time.*

*(10) Notwithstanding anything contained in the foregoing provisions of this Section or elsewhere in this Act, the Empowered Standing Committee may decide to engage on contract basis, officers and other*

WEB COPY

*employees of the Municipality against such posts of officers and other employees referred to in sub-section (1) of Section 37.*

***…..38- Appointing Authorities*** *- Subject to the other provisions of this Act, the appointing authority in respect of the posts of officers and other employees constituting the establishment of the Municipality shall be,-*

*(a) in the case of category, 'A' posts, the Chief Municipal Officer,*

*(b) in the case of category 'B' posts,-*

*(i) an Additional Municipal Commissioner or a Joint Municipal Commissioner, in the case of a Municipal Corporation, or*

*(ii) the Municipal Executive Officer, in the case of a Municipal Council or a Nagar Panchayat, and*

*(c) in the case of category 'C' posts and category 'D' posts, such officer or officers of the Municipality as the Chief Municipal Officer may, with the prior approval of the Empowered Standing Committee, designate in this behalf.*

***…..40A-*** *The State Government may make provisions by framing Service Rules for different categories of officers and other employees of the Municipality for recruitment, service conditions, posting, transfer, promotion, disciplinary action and*

WEB COPY

*other related aspects of municipal service and municipal personnel management.*

***…...488:- Repeal and Savings:-***

***(1) With effect from the date of coming into force of this Act, the Bihar Municipal Act, 1922, Patna Municipal Corporation Act, 1951, Bihar Municipal Corporation Act, 1978, Bihar Regional Development Authority Act, 1981, Bihar Town Planning & Improvement Trust Act, 1951, Bihar Restrictions of Uses of Land Act, 1948, Bihar Municipal Ordinance, 2007 shall stand repealed.***

***…...488(4)(b)*** *- Anything done or any action taken (including any appointment, Rule, bye-laws, Regulation made, granted or issued under various Acts listed in sub-section (1) and (3) of this Section shall, continue to be in force and be deemed to have been done or taken under the provisions of this Act unless it is superceeded modified/altered by any thing done or any action taken under this Act."*

12. It transpires to the Court from the arguments advanced and the pleadings made by all the parties that none of them has brought to the notice of this Court the applicable statutory provisions governing the case of the petitioners under

WEB COPY

the Bihar Municipal Act, 2007 (Act No. 11 of 2007), as amended from time to time. In view of the enactment of the aforesaid Act in the year 2007 and its subsequent amendments, the respondent No.2, namely, the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna, is hereby directed to take an appropriate decision in respect of the petitioners, after affording an opportunity of hearing to the Executive Officer, Nagar Parishad, Saharsa (Respondent No. 6), as well as to the petitioners, in the light of the relevant provisions of the Bihar Municipal Act, 2007, within a period of 90 days. The aforesaid period of 90 days shall commence from the date on which all the concerned parties appear before Respondent No. 2.

13. It is made clear that this Court has not granted any substantive relief to the petitioners at this stage. In view of the statutory provisions in force, the State Government is empowered under Section 40A of the Bihar Municipal Act, 2007, to take an appropriate decision in the matter. Accordingly, Respondent No. 2 is directed to take a decision after duly considering the relevant legal provisions, particularly Sections 37, 38, 40A, 488(1) and 488(4)(b) of the Bihar Municipal Act, 2007, which have a bearing on the adjudication of the claims of

WEB COPY

the petitioners. The matter shall accordingly be considered and decided at the level of the State Government.

14. Accordingly, this writ petition stands disposed of with the aforesaid observations and directions.

**(Dr. Anshuman, J)**

Divyansh/-

| | |
|---|---|
| **AFR/NAFR** | |
| **CAV DATE** | 29/09/2026 |
| **Uploading Date** | 20/11/2026 |
| **Transmission Date** | NA |

WEB COPY