
(2017) 03 PAT CK 0053

In the Patna High Court

Case No : 631 of 2014

Kamal Kishore Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-03-2017

Acts Referred:

[Bihar and Orissa Municipal Act, 1922](#), Section 42(1)

Citation : (2017) 03 PAT CK 0053

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : DIVISION BENCH

Advocate : Hamendra Pd. Singh, ?Arbind Kumar, ?Ashok Kumar, ?Samir Kumar, ?
Gyan Prakash Ojha

Final Decision : Dismissed

Judgement

1. Letters Patent Appeal has been filed by the appellant since he failed to get any relief against the order of his dismissal/removal by the respondent Bihar Sharif Municipal Corporation. The appellant had challenged the order dated 5.4.2007 in CWJC No.6453 of 2007 since his services were terminated with effect from 5.4.2007. The learned Single Judge heard the parties and dismissed the writ application on 3.3.2014 and therefore, the appeal.
2. From the narration of events, which is available on record, as well as the order impugned, it is evident that the order dated 5.4.2007, issued by the Administrator of Municipal Corporation, Bihar Sharif was a fall out of a judicial order passed in CWJC No.2052 of 2004. Appointment or continuance of the present appellant as a Tax

Collector was commented upon by the learned Single Judge of CWJC No.2052 of 2004 and because of those adverse observations and findings, the present appellant came to be removed.

3. There was a strike by the employees of the erstwhile Bihar Sharif Municipality, now what is known as Municipal Corporation, in the year 1991. It is said that to meet the emergent situation and keeping the interest of collection of municipal tax, the present appellant was engaged as daily wage. Within months i.e. 29.10.1992, he came to be appointed as a Tax Collector on a regular pay scale on the orders of the Special Officer, Bihar Sharif Municipality on the so-called recommendation of the selection committee. Such a decision became a matter of challenge in CWJC No.2687 of 1999 wherein an embargo was imposed upon the respondents not to make any backdoor appointments. Then CWJC No.2052 of 2004 was filed where continuance of the present appellant also became a subject matter of dispute and challenge. The learned Single Judge of the said writ application considered the matter in entirety and opined in following terms :

"Though in the counter affidavit statement has been made that the appointment of Kamal Kishore Prasad as Tax Collector is illegal, he has not been removed as yet. This is mockery of judicial proceeding and also contemptuous."

4. Then the order dated 5.4.2007 followed.

5. The various submissions, which have been made before the learned Single Judge, were considered in detail. The finding of the learned Single Judge emerges from paragraph 11 onwards of the impugned order. The Court is tempted to reproduce the relevant paragraphs because not only it crystallizes the submission but also the findings which led to dismissal of the writ application and refusal to interfere with the order of removal. The relevant paragraphs read as under:

"11. As per the pleadings of the writ application itself, the petitioner was

appointed on daily wage basis vide an order dated 02.01.1992. It is not the petitioner's case that he was engaged as such after following any procedure. Within ten months from his engagement on daily wage basis, by an order dated 29.10.1992 passed by the Special Officer, Bihar Sharif Municipal Corporation, he is said to have been appointed on regular basis, after complying with the provisions of Rule 956 of "Nagar Parishad Adhiniyam" as Tax Collector. This is to be noted that there is no Rule 956 under "Nagar Parishad Adhiniyam".

12. Learned Senior counsel appearing on behalf of the petitioner submits that Rule 956 has been inadvertently mentioned in the order dated 29.10.1992 appointing the petitioner on regular basis. He contends that it should have been "S.O. 956, dated 25.06.1977", a Circular issued by the State Government of Bihar in exercise of

power under Clause a, Sub-Section (1) of Section 42 of Bihar and Orissa Municipal Act, 1922.

13. A copy of the said Circular / Notification / Regulation / Guideline, regulating the appointment and qualifications for the Officers and Servants of the Municipalities and Notifying Area Committee has been produced before me. The said Rules prescribe qualifications for different posts in Municipalities as well as the procedure for making selection to such posts.

14. I find that, though it had been mentioned in the appointment letter dated 29.10.1992 that the petitioner was being appointed in accordance with "Rules 956 of Nagar Parishad Adhiniyam" which according to learned senior counsel for the petitioner, are Rules framed under the provisions of the Bihar and Orissa Municipal Act, 1922, as a matter of fact the petitioner's appointment is just in contravention of the statutory rules framed by the State Government vide "S.O. No. 956 dated 25.06.1977" as referred to above. Rule 2 of the said Rules provides the manner in which the selection / recruitment to a post is to be made which is being quoted hereinbelow for ready reference:-

"2. (i) Recruitments to the posts shall be made after publication of the vacancy in at least two consecutive issues of two local newspapers having the largest circulation and pasting notices in local public offices. (ii) Selection of candidates shall be made by a Committee consisting of the following :- (a) Chairman of the Municipality / N.A.C., (b) Executive Officer, if any, (c) a Municipal Commissioner elected by the Commissioners at a meeting, (d) Sub-divisional Officer or an officer of the Sub-divisional Headquarters nominated by the S.D.O., and (c) a local officer of the technical department concerned of the State Government in case of appointment to a technical post.

(iii) For appointment to any post by promotion the matter shall be decided by commissioners at a meeting after taking into consideration the opinion of the Chairman / Executive Officer. (iv) Appointments to inferior post shall be made by the Chairman and the Executive Officer, or the Chairman and one Commissioner elected at a meeting if there is no Executive Officer. (v)

Confirmation of any municipal servant shall be made with the approval of the Commissioners at a meeting.

(vi) Every municipal servant shall produce, before joining or within 3 months of his joining the post, a medical certificate of physical fitness from a Civil Assistant Surgeon, certificate of age and certificates regarding qualifications (copies attested by Gazetted Officer) and a list of movable and immovable property as he may be directed by the Chairman / Executive Officer. He may also be required to submit a declaration that he has not accepted any dowry if he is married and shall not accept any dowry if he is married subsequent to his appointment."

15. As per the said Rules, recruitment to a post is to be made after publication of vacancy in at least two consecutive issues of two local newspapers having the largest selling and pasting notices in local public offices. It is not the petitioner's case that any advertisement was issued inviting applications.

16. I, therefore, find the petitioner's appointment by order dated 29.10.1992 as contained in Annexure-5 to the writ application to be wholly illegal in teeth of Article 14 and 16 of the Constitution of India and made in contravention of the statutory provisions framed by the State Government of Bihar issued vide Notification No. S.O. 956 dated 25.06.1977.

17. The impugned order terminating the petitioner from service, therefore, does not require any interference."

6. If these are the factual and legal position under which the appellant came to be appointed, if at all, and the illegality of the said decision and process, which is evident from the observations made by the learned Single Judge in the above quoted paragraphs, any interference with the order of removal would amount to giving sanction to an illegal decision and continuance of such illegality.

7. Learned senior counsel for the appellant as a desperate measure submits that since the appellant had worked for almost 15 years before his removal in the year 2007, therefore, his case should have been considered sympathetically and in terms of the Constitution Bench decision rendered in the case of Secretary, State of Karnataka v. Uma Devi, reported in (2006) 1 SCC 1, his services should have been regularized. Such a submission of the learned senior counsel is misplaced because it was not a case of regularization or of

regularization. It was a case of appointment on which there were judicial comments made earlier also and now the learned Single Judge has adjudicated and held the decision to remove the appellant to be a valid exercise in view of the illegality committed by the Special Officer by not following any procedure or parameters or the rules, which have been quoted extensively in the order of the learned Single Judge, which is under challenge. The appeal has no merit. It is dismissed.