
(2014) 03 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 6453 of 2007

Kamal Kishore Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 4 PLJR 12

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Hemendra Pd. Singh, Ashok Kumar and Anil Kumar, Advocate for the Appellant

Judgement

Chakradhari Sharan Singh, J.—Heard learned senior counsel for the petitioner, learned counsel appearing on behalf of the Municipal Corporation as well as learned counsel for the State. The petitioner is aggrieved by an order dated 5.4.2007 issued by the Administrator, Municipal Corporation, Bihar Sharif, whereby his services have been terminated with effect from 5.4.2007. The impugned order is said to have been issued in pursuance of the orders dated 14.2.2000 and 11.10.2004 passed in C.W.J.C. No. 2687 of 1999 and C.W.J.C. No. 2052 of 2004 respectively.

2. The petitioner's case is that there was strike called by the employees of erstwhile Bihar Sharif Municipality (now Municipal Corporation) in the year 1991 and to meet the emergent situation the petitioner was engaged on daily wage basis for the purpose of collection of municipal tax.

3. It is his further case that seeing the petitioner's performance, on the recommendation of Selection Committee, the petitioner was appointed as Tax Collector in the pay-scale of Rs. 775-1015/- by Memo No. 1074 dated 29.10.1992 issued under the signature of Special Officer, Bihar Sharif Municipality (erstwhile). It is his case that he thereafter continued as such without any interruption.

4. The records go to show that a writ petition was filed before this Court vide C.W.J.C. No. 2687 of 1999 by one Kripa Sindhu Prasad making a grievance that the officials of Biharsharif Municipal Corporation were making illegal appointments without following the procedure and advertising the posts. The said writ application was disposed of by an order dated 14.2.2000 with specific direction not to make any back-door appointment unless the posts were advertised. It further appears that another writ petition came to be filed being C.W.J.C. No. 2052 of 2004 by the same person seeking a direction to the Respondents to act according to law and as per the direction contained in the order dated 14.2.2000 passed in C.W.J.C. No. 2687 of 1999. In that writ application, it was mentioned that the petitioner was also appointed illegally, without any advertisement and without following the process of selection.

5. In a counter affidavit filed in that case, the Respondent Corporation admitted that petitioner was appointed illegally without any advertisement and without following the process of selection.

6. It appears that this Court while directing the Respondents to file counter affidavit in C.W.J.C. No. 2052 of 2004 vide order dated 11.10.2004 made certain observations against such appointments. Thereafter, the Respondent Corporation passed the impugned order dated 5.4.2007 removing the petitioner from service on the ground of illegality found in his appointment, after giving him an opportunity of hearing. In view of the action of the Respondents, the writ application, being C.W.J.C. No. 2052 of 2004, was disposed of with an observation that it would be open to the petitioner to challenge the said order of termination dated 5.4.2007 in a separate writ application. This is the circumstance in which the present writ application has been filed challenging the order of termination dated 5.4.2007.

7. A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the Respondents justifying the impugned action.

8. Learned senior counsel appearing on behalf of the petitioner has submitted that the impugned order is wholly illegal and beyond jurisdiction and contends that the petitioner was duly appointed by the said order dated 29.10.1992 after due recommendation by the Selection Committee constituted by the Corporation and in such circumstance his services could not have been terminated.

9. Learned counsel appearing on behalf of the Corporation on the other hand has submitted that the petitioner was appointed in breach of Constitutional requirements contemplated under Articles 14 and 16 of the Constitution of India inasmuch as no advertisement was issued inviting the applications. He has also submitted that the Special Officer of the Corporation did not have any authority to appoint the petitioner in the manner in which he was appointed.

10. As per the pleadings of the writ application itself, the petitioner "was appointed on daily wage basis vide an order dated 2.1.1992. 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, Biharsharif 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".

11. 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 25.6.1977", 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.

12. 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.

13. 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 "Rule 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 25.6.1977" 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."

14. 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.

15. 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 Articles 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 25.6.1977.

16. The impugned order terminating the petitioner from service, therefore, does not require any interference. This application is accordingly dismissed.