

(2015) 01 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2844 of 2012

Ram Yatan Prasad

APPELLANT

Vs

The Patna Municipal Corporation

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 01 PAT CK 0047

Hon'ble Judges : Shivaji Pandey, J.

Bench : Single Bench

Advocate : Rupak Lumar, for the Appellant; H.S. Himker, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Shivaji Pandey, J.—Heard the parties.

2. In the present writ petition petitioner is challenging the order dated 8.3.2011 passed by the Municipal Commissioner, Patna Municipal Corporation whereby he has rejected his claim for absorption in Class III posts from 1.4.1985.

3. From the record it appears that petitioner was appointed on 24.11.1976 on the post of Rakshak (Guard) in pursuance of advertisement issued by the Patna Municipal Corporation. While performing the duty of guard the petitioner vide Memo No. 123 dated 27.1.1981 was directed to work as a Tax Collector in his own pay scale which is apparent from the Office Order No. 466 Memo No. 2123 dated 31.10.1983 (Annexure-4). The name of the petitioner is at sl. No. 45 in Office Order No. 662 dated 26.6.1984 (Annexure-5) shows that the petitioner was asked to discharge the duty of Tax Collector General. The Standing Committee of the Municipal Corporation in its meeting dated 5.7.1985 (Annexure-6) has taken a decision to adjust/appoint and promote the daily wages employee from different classes of post of Class IV to Class III. Bhagya Narayan Roy and others who were performing the duty of Class IV post as guard were absorbed in Class III post. When the case of the petitioner was not

considered, he filed a representation to the Executive Officer, Patna Municipal Corporation dated 23.2.1985 (Annexure-7) drawing his attention that he was appointed as guard but directed to perform the duty of the Tax Collector, requested to allow him to discharge the duty of Tax Collector and make payment for the post of Tax Collector. Similar representation was filed on 4.4.1985 and there also similar claim was made. Again the petitioner filed another representation dated 14.11.1994 (Annexure-8) and requested for his absorption at a proper place as juniors to him have been given the benefit of absorption in the Class III post though he was performing the duty of the Tax Collector which is Class III post.

4. When nothing moved he approached this Court vide C.W.J.C. No. 10655 of 1994. This Court vide order dated 21.8.1995 (Annexure-9) disposed of the writ petition taking into consideration the claim of the petitioner that juniors to him have been given benefit of promotion with effect from 1.4.1985 ignoring his claim though he was discharging the duty of Miscellaneous Licence Inspector. Direction was given to file representation, which the petitioner filed on 4.11.1996 (Annexure-10).

5. During the course of argument it emerged that the petitioner was regularised in the service of guard with effect from 1.4.1985.

6. After disposal of the writ petition vide letter dated 15.6.1995 petitioner was absorbed on the post of Miscellaneous Licence Inspector with immediate effect. Petitioner was not satisfied in the manner he was treated, in pursuance of the order passed in C.W.J.C. No. 10655 of 1994 he filed representation before the Administrator, Patna Municipal Corporation where he has claimed that though he was given the promotion with effect from 15.6.1995 but he ought to have been given with effect from 1.4.1985 in view of facts that others, namely, Baghya Narain Rai, Uma Shanker Singh, Md. Salim Ahmad, Om Prakash, Prabhu Dayal Rai, Chand Kumar Singh, Rajendra Prasad Yadav, Bishwa Mohan Prasad and Arbind Kumar were given promotion from 1.4.1985 and claimed that promotion with effect from 15.6.1995 will effect his seniority and requested for reconsideration of his case.

7. When Municipal Corporation did not take cognizance of his representation, the petitioner filed C.W.J.C. No. 2075 of 1997 and this Court vide order dated 15.4.1998 (Annexure-11) disposed of the writ petition giving direction that Administrator, Patna Municipal Corporation would dispose of the aforesaid representation filed by the petitioner within the period of three months from the date of service of copy of this order upon the respondents and when nothing moved the petitioner filed Contempt Application vide M.J.C. No. 3801 of 1988 and during the pendency of that contempt application the petitioner was given promotion vide letter dated 14th September, 2000 (Annexure-12) shifted his date of promotion from 15.6.1995 to 1.4.1985 and in compliance of the aforesaid letter another office order was issued vide memo No. 12 dated 4.1.2001 (Annexure-13) accordingly the date of promotion was shifted to 1.4.1985 from

15.6.1995, directed to make arrear payment for the aforesaid period. Letter was issued by the then Administrator, Patna Municipal Corporation who was transferred to Madhepura as District Magistrate but was equally discharging the duty of Administrator though he had tendered his resignation on 12th September, 2000.

8. One Vishwa Mohan Prasad employee of the Municipal Corporation, Patna filed a writ petition vide C.W.J.C. No. 6424 of 2001 where he has challenged the appointment-cum-promotion of the petitioner with effect from 1.4.1985 as Miscellaneous licence Inspector taking a plea that the then A.K. Srivastava who had passed the order in favour of the petitioner was transferred as District Magistrate, Madhepura, was relieved on 4.9.2000 and joined at the new place of posting on 5.9.2000 whereas he passed the order of absorption on 14th September, 2000 i.e. after he was transferred and relieved from the post of Administrator, Patna Municipal Corporation. The plea that was raised by Vishwa Mohan Prasad was accepted and accordingly the Court set aside the order dated 14th September, 2000 and the consequential order dated 4th January, 2001, direction was given to consider his representation in accordance with law giving an observation that shifting the date of promotion may affect the future of other employees of the Corporation and before passing order, shall hear such persons also. Direction was given to dispose of the representation within three months.

9. Petitioner filed review application vide Civil Review No. 44 of 2003 where Municipal Corporation has filed its reply where in paragraph no 4, the Corporation has taken a plea that the Corporation could not file the counter affidavit and as such the material fact could not be brought for proper consideration. In paragraph 6 it has been stated that in anticipation of relinquishing the post, the then Administrator of Patna Municipal Corporation assumed the charge of Collector, Madhepura on 5.9.2000. Even after taking over the charge as Collector, Madhepura Sri A.K. Srivastava the then Administrator of Patna Municipal Corporation continued to perform the duty as he had passed several orders during that period, finally relinquished the post of Administrator vide Memo No. 411 dated 12.9.2000 and claimed that office order by which the petitioner was regularised cannot be faulted but review application was rejected.

10. The Patna Municipal Corporation in pursuance of the order passed in C.W.J.C. No. 6424 of 2001 arrived to a conclusion that absorption of the petitioner as Miscellaneous Licence Inspector while discharging the duty of guard declared to be illegal and vide letter dated 16.11.2006 (Annexure-17) cancelled the absorption of petitioner as Miscellaneous Licence Inspector and brought him back to the post of guard.

11. When the petitioner was brought back to the post of guard he filed fresh writ petition vide C.W.J.C. No. 4777 of 2007 raising the claim that he has wrongly been treated and illegally has been brought down to the post of guard. The Court considered the claim of the petitioner about his case that his juniors were adjusted against Class III post but he has wrongly been treated and illegally

brought back to the original post of guard. The Court disposed of the writ petition and accordingly quashed the order vide order dated 13.3.2008 (Annexure-21) whereby he was deprived of the benefit of Class III post and gave a direction to the Commissioner-cum-Chief Executive Officer, Patna Municipal Corporation for passing a fresh order in accordance with law, so much so that liberty was given to the petitioner to file a fresh representation or any document before the authority within four weeks. Accordingly the petitioner filed a representation on 19.6.2008 (part of Annexure-1) where he has given the details of fact and requested for passing the order in his favour. The Municipal Commissioner vide Memo No. 908 dated 8.1.2011 (Annexure-1) rejected the claim of the petitioner and tried to justify the action of Corporation, bringing him back to the post of guard and held that Sri Bhagya Narain Rai who was given promotion to Class III was wrong and held that such benefit could have been given only in a case on extra ordinary merit. In the order impugned he has held that the post of Miscellaneous Licence Inspector does not fall in the line of promotion and deviated the line of promotion by giving him promotion to the post of Miscellaneous License Inspector is not sustainable that too without issuance of advertisement/roster clearance and order has been declared to be erroneous.

12. In the writ petition in paragraph No. 7 petitioner has given the names of persons who were appointed as Class IV and all of them adjusted/absorbed in different post of Class III post who are still working in the Corporation. Their names are as follows: Ram Kishore Singh, Hari Shankar Pandey, Sudheshwar Sharma, Prabhu Dayal Roy, Om Prakash, Ramashish Paswan, Phuleshwar Singh, Krishna Dubey, Ram Pravesh Sharma, Md. Salim Ahmad, Indradeo Chaudhary, Chand Kumar, Rajendra Prasad Yadav, Kashi Prasad, Shiv Kumar Pandey and Arbvind Kumar. So much so in the writ petition Office Order dated 18.1.1986 (Annexure-18) and Office Order No. 15 dated 3.9.1993 (Annexure-18/1) show that two persons, namely, Kashi Prakash and Shiv Kumar Pandey though were earlier appointed as guards but were promoted as assistant. Similarly Office Order No. 627 dated 14.10.1982 (Annexure-20) was issued by which one Ram Kishore Singh, Md. Harun Prasu, Prabhu Dayal Rai and Ramshish Paswan were adjusted against Class III post.

13. Learned counsel for the petitioner submits that petitioner has wrongly been treated by the Corporation as juniors to him are still working as Class III posts. He has further submitted that identical matter came before this Court in the case of Surya Kant Jha Vs. The Administrator, Patna Municipal Corporation and Others, and another case Sita Ram Choudhary Vs. Patna Municipal Corporation and Others, and has claimed that granting the promotion/absorption from Class IV to Class III is prevalent to the Corporation. This practice is going on since long and petitioner cannot be made to be an exception if all have been given the benefit even juniors he cannot be deprived to be given the same promotion as has been given to others. He has further submitted that Administrator has considered the case of Bhagya Narain Rai and held that as he is dead nothing can be done but his promotion was also wrong. He further submits that not only

Bhagya Narain Rai but there are large number of persons who have been promoted from Class IV to Class III are still working there. He has further submitted that he has made categorical statement in paragraph 7 of the writ petition in this regard.

14. This Court in the foresaid judgments has taken cognizance of the fact that in Patna Municipal Corporation persistently and continuously allowed Class IV employees to be shifted to Class III post and approved the mechanism of this nature of promotion/adjustment.

15. Learned counsel for the respondent has vehemently opposed the submissions of learned counsel for the petitioner and claimed that this writ petition suffers from res-judicata as earlier petitioner had moved this Court on different occasions but he was never given benefit and as such the present writ petition is liable to be dismissed on this ground alone. So much so petitioner was working as guard and Miscellaneous Licence Inspector does not fall in the line of promotion, his absorption/promotion as Miscellaneous License Inspector is completely bad and is not sustainable in law. He has further drawn the attention of this Court to the Office Order dated 24.11.2006 where Commissioner-cum-Chief Executive Officer, Patna Municipal Corporation has, directed to withdraw the benefit of promotion who were given illegal promotion but liberty was given who ever intends to work in higher post they may work but without any extra pay and in pursuance thereof the Patna Municipal Corporation has issued the letter dated 11th September, 2008 and 15.9.2008 thereby notified that who ever promoted illegally be brought down to their respective original post of Class IV and further claimed that there is none in the Corporation who are working illegally. He has further submitted that the petitioner is a powerful person, always threatened the higher officials prohibiting to take adverse decision against him and in support of his submission he has submitted that the decision to withdraw the promotion was taken in 2003 but under his pressure the same could not be issued and ultimately the order was issued vide letter dated 16.11.2006.

16. Having considered the rival contentions of the parties the issue of res-judicata that has been taken by the respondent is misconceived and misdirected argument as the petitioner has come before this Court from time to time and every time the Court has passed a positive order for consideration of his case either giving direction to the petitioner to file representation and remanding the matter. The impugned order that has been passed in pursuance of the direction given by this Court in C.W.J.C. No. 4777 of 2007 (Annexure-21) there this Court has quashed the order and remanded back the matter for fresh consideration by the authority concerned and thereafter impugned order has been passed is a fresh caused of action.

17. So far the plea that has been taken by the Corporation that the petitioner was appointed as a guard in Class IV post the promotion to the post of Miscellaneous Licence Inspector does not fall in the line of promotion with respect this issue, it is apparent from the record of the case that large number of

persons mentioned in paragraph 7 of the writ petition initially appointed in Class IV but subsequently promoted in Class III as like petitioner which has not been denied anywhere in the counter affidavit by the Corporation. Annexure 18, 18/1 and Annexure 20 are documents of the Corporation which itself show that certain persons who were working as a guard have been promoted/absorbed in Class III post. In the case of Surya Kant Jha (supra) and Sita Ram Choudhary (supra) the Court has taken the cognizance of the fact that in the Corporation large number of persons from anterior period were being promoted/absorbed from Class IV to Class III post and discrimination cannot be allowed. In the present case the petitioner was appointed as a guard and in the year 1995 he was made Miscellaneous Licence Inspector but on the writ petition filed by Vishwa Mohan Prasad the benefit of promotion as Miscellaneous Licence Inspector from 1.4.1985 was quashed and remanded back. Bhagya Narain Rai is not only the sole example of promotion from Class IV to Class III. This Court asked the respondent to file an affidavit specifically mentioning therein that no persons who were promoted from Class IV to Class III deviating the line of promotion persons is/are still continuing the service but counsel for the Corporation did not file the affidavit but has relied on paragraph 3 of the supplementary affidavit which does not answer the query raised by this Court. Paragraph 3 of the supplementary affidavit mentions about the issuance of letter whereby direction has been issued by the Commissioner to bring back those persons who were illegally promoted but there is no material to show, the letter issued by the Municipal Commissioner has actually been implemented. In such view of the matter if this practice is going on since long and certain persons are still working in Class III post deviating in the line of promotion and they have not been brought down to the original post this Court directs the Commissioner-cum-Chief Executive Officer to consider the case of the petitioner, examine the material fact and pass a reasoned order. In such view of the matter the impugned order vide Memo No. 908 dated 8.3.2011 (Annexure-1) is hereby quashed.

18. Accordingly this writ petition is allowed to the aforesaid extent.