

(2011) 06 PAT CK 0047

In the Patna High Court

Case No : LPA No's. 494, 614 and 615 of 2007

Raziul Haque

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Patna Municipal Corporation Rules — Rule 42

Citation : (2012) 2 PLJR 24

Hon'ble Judges : T. Meena Kumari, J;Akhilesh Chandra, J

Bench : Division Bench

Advocate : Harendra Nath Ojha, Arbind Kr. Tripathi in 494 and M/s Rupesh Kumar, Bishwa Bibhuti in 614, 615, for the Appellant; Bishwa Bibhuti Kr. Singh (in 494), Mr. Devendra Pd. Singh with Arun Kumar (for Resp. 6 in 494) and Md. Hassamuddin Azad (for Resp. 6, 7 in 614, 615), Mr. Rupesh Kumar (for Resp. 7 in 494) and Mr. Rupak Kr. (for Resp. 1 in 614, 615), for the Respondent

Judgement

1. These three L.P.As. have been filed against the common order dated 5.4.2007 passed in C.W.J.C. No. 1943 of 2002 and C.W.J.C. No. 1975 of 2002. The grievance of the respondents-appellants herein is with regard to promotion to the post of Sanitary Inspector from the present post i.e. Sanitary Supervisor.

2. The litigation between the parties is with regard to preparation of the gradation list. The entire dispute is with regard to seniority among those Sanitary Supervisor who have acquired certificate of requisite qualification for Sanitary Inspector from the recognized institutions of Government of Bihar were entitled to get promotion on the post of Sanitary Inspector under the Patna Municipal Corporation Act.

3. The respondents have filed these L.P.As. for a direction to review the appellants candidature with respect to objections on the ground that they were appointed on the consolidated pay of Rs. 180/- vide Order No. 36, dated 20.10.1976 (Annexure-5 of the writ application). The appellants were appointed on the daily wages as Sanitary Inspectors, whereas the appellants were

completed training of Sanitary Inspector from the Health Institute, Patna. But however that Corporation has granted regular pay scale on 18.1.1984 for the post of Sanitary Supervisor and after training he had posted as In-charge, Sanitary Inspector. Thereafter, the joint gradation/seniority list was finalized by the respondent-Corporation and unofficial respondent was granted the regular pay scale with effect from 1.5.1984.

4. We had an occasion to go through the proceeding of the Corporation dated 2.1.2002 (Annexure-4 to the writ petition), from which it appears that the final gradation list was issued by the Corporation on 15.12.2001 defending the objections which was the subject matter of the writ petition.

5. The learned Single Judge after having heard the matter and relying upon the rules of Patna Municipal Corporation has held that the services of the Supervisors who worked on daily wages should be counted for the purpose of fixing the seniority. The rules have also been provided such consideration to be extended to the daily wager. The learned counsel has conceded the seniority of the unofficial respondent in all the writ petition. It was also the case of the Corporation that for promotion amongst the respondents- appellants a gradation list was prepared for promotion to the post of Sanitary Inspectors and the above list is subjected to appeal before this Court.

6. The counsel who appear on behalf of unofficial respondents submitted before this Court that his date of appointment was earlier on consolidated pay scale whereas the appellants herein were appointed on a daily wages basis and his service was not regular.

7. From perusal of the rules of promotion of the employees of the Patna Municipal Corporation, it appears that the present rule of the Corporation decides whether an employee is entitled for full pension in respect of period of service on daily wages. A contention sought to be raised by respondents before the Single Judge with regard to Rule 42 of the Patna Municipal Corporation Act in which provision has been made for not counting the services of the daily wagers for promotion to the post of Sanitary Inspectors has been described.

The said fact has not been disputed, learned Single Judge has allowed the writ petitioners (sic-petition?) holding that the petitioners are also entitled for promotion to the post of Sanitary Inspector and directed the Corporation to issue fresh gradation list which shall be worked out within the parameters as indicated by the learned Single Judge.

Temporary service shall also be counted for pension. The temporary service or officiating service in the Corporation will be counted for any other post for granting the full pension except with respect to the period of service on daily wages.

8. The factum of seniority has been disputed. The learned Single Judge has quashed the Annexure-4 which is the fixation of final gradation list, but however

a question has arisen as to whether in the said gradation list the respondent has been made as party or not and behind their back list should not have been quashed. Further contentions of the appellants and the unofficial respondents is that without disturbing the gradation list of the other persons who were not the parties to the writ petition, whether the seniority will be decided.

9. Rule 42 of the Patna Municipal Corporation Act was also brought to the notice of this Court by which services of the employees are governed, which indicates that temporary services or officiating services in the Corporation will be counted for full pension except the services of daily wages. A contention has been raised that the services rendered as daily wages, working on the post of Supervisor Officer and their fixation of regular pay scale was on 18.1.1984 was allowed in the writ petition i.e. C.W.J.C. No. 1942 of 2002 and an objection being filed by the unofficial respondents the salary was fixed and the date of fixing the regular pay scale was shown as 1.5.1984.

10. The question remains as to whether the learned Single Judge was correct in applying the provisions as laid down under Rule 42 of the Patna Municipal Corporation Rules. From a perusal of the Patna Municipal Corporation Officers and servants Pension Rule it appears that the period of daily wages will also for be taken under consideration for fixation of pension here is no provision brought before this court by any of the parties as can regard to the substantiate service rendered by the daily wager who were granted. Regular pay scale.

11. In absence of such rule, we are of the opinion, that the Corporation shall also take consideration the date of appointments of the appellants while fixing the regular pay scale by fixing date 12.1.1984 and also the respondents as on 1.5.1984 in the provisional gradation list.

12. Under the above circumstances, we do not find any illegality in the fixation and preparation of gradation list by the Patna Municipal Corporation. But however as the unofficial respondents were promoted on the earlier occasion as such in view of the earlier litigation of the respondent, the Corporation should promote other persons as per the gradation list.

13. In absence of such rules, we are of the opinion, unofficial respondents cannot claim over and above of the appellants herein with regard to seniority, but counsel have brought to the notice of this Court the fact that unofficial respondent is retired and the other respondent, namely Nesar Alam is going to retire within six months and the appellant within a short period of one years or two years and there is no further promotional avenue.

14. Considering the aforesaid facts, we are of the opinion, that the order of the learned Single Judge is modified to that extent that the Corporation has to arrive the date of promotion of the appellants herein taking into consideration the fact that the unofficial respondents have earlier been promotion within two years. The Corporation should also assess the dates of the vacancies and the unofficial appellants shall be treated to be promoted from the dates of vacancies arose in

such cadre. We also make it clear that the no recovery shall be made for salary of the appellant. We are also of the opinion, that the entire gradation list would not be disturbed except as with regard to both the appellants and the unofficial respondents.

15. It is submitted that there is apparent error in the judgment of the learned Single Judge with regard to mentioning of pay scale of Rs. 940/- .

16. We are of the view that the pay scale of the appellants in the Corporation should be recorded as Rs. 975/- with regard to fixing of pay scale which has been made part of the records in the Patna Municipal Corporation and also to fix the pay scale of the respondent no. 7, Kishori Mahto.

17. The learned counsel appearing on behalf of respondent no. 7 Kishori Mahto submits that there is wrong mentioning in the pay scale in the judgment of the learned Single Judge. Considering the same, we direct the Patna Municipal Corporation to verify the record and fix up the pay scale accordingly. With the above modification in the order of the learned Single Judge this appeal stands disposed of.