

(2003) 05 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 10944 of 2001

Shankar Prasad @ Shankar Prasad Goswami and Others	APPELLANT
Vs	
Katihar Municipality	RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 42, 42(1)
Constitution of India, 1950 — Article 14, 16
Municipal Officers and Servants (Appointments, Duties, Discipline and Appeal) Rules — Rule 4

Citation : (2003) 3 PLJR 329

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Arvind Kumar Singh, in C.W.J.C. No. 10944 and 2833 and Jay Shankar Jha, C.W.J.C. No. in 781, for the Appellant; Naresh Kumar Sinha, for Katihar Municipality, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In all these writ applications, common questions of fact and law arise and as such, they are being disposed of by this common judgment.

2. Prayer of the Petitioners in these writ applications are to quash the order dated 31.5.2001 passed by the Special Officer, Katihar Municipality whereby the services of 64 daily wages employees including the Petitioners have been terminated.

3. Short facts giving rise to the present applications are that the Petitioners were engaged on daily wages to work as Sweeper, Peon, Choukidar etc. for different period and were paid remunerations on daily wages. These persons were engaged on daily wages without following any procedure known to law. Petitioners were paid salary from the funds of the Municipality. Municipality by its letter dated 4.7.2000 sought for guidance for appointment of the Petitioners in

the Municipality. The State Government, in its Urban Development Department, by letter dated 13th of November, 2000 addressed to the Special Officer of the Municipality, directed the latter that such of the persons who have been appointed on daily wages after 1.8.1985, their services be terminated. The aforesaid direction of the State Government was not given effect to and again the State Government, in Urban Development Department, by letter dated 24.1.2001 wrote to the Special Officer, Katihar Municipality that the appointment of 64 persons on daily wages made by the Special Officer, Shri Arun Kumar Thakur on the basis of the meeting held on 1.8.1998, is in the teeth of the resolution of the personnel and Administrative Department dated 18.6.1993 as all those persons have been appointed after the cut off date i.e. 1.8.1985 without following the requirements as provided in the rule framed u/s 42(1) (a) of the Bihar and Orissa Municipal Act, 1992 and as such, their services be terminated.

4. Some of the employees of the Municipality, aggrieved by the order dated 13.11.2000 and 24.1.2001 referred to above, filed C.W.J.C. No. 4295 of 2001 (Anandmohan Roy and Ors. v. The State of Bihar and Ors.) before this Court. This Court by order dated 4.4.2001 observed that for cancelling the appointment already made, the authorities are required to act in accordance with law and principle of natural justice and give opportunity to the concerned employees to show cause before | termination of services. This Court found that no order of termination having been passed by the Municipality, disposed of the writ application with a direction to the Municipality to afford opportunity of hearing before taking a final decision. In the light of the observation of this Court, Petitioners were given show cause notices and on consideration of the same, by impugned order dated 31.5.2001, services of | all 64 employees have been terminated. While passing the said order, it has been Observed that the appointments have been made without following the procedure provided in the rule made u/s 42 of the Bihar and Orissa Municipal Act, 1992.

5. Mr. Rajendra Prasad Singh, Senior Advocate, appearing on behalf of the Petitioners submits that the order of removal has been passed on the basis of direction of the State Government and this itself renders the impugned order illegal in the eye of law. He points out that from the perusal of the impugned order itself, it is evident that the impugned order has been passed in view of the direction of the State Government as contained in its letter dated 4.4.2001. In suport of his submission, learned Counsel has placed reliance on a judgment of this Court in the case of Sanjay Singh and Others Vs. State of Bihar and Others, and my attention has been drawn to paragraph Nos. 4 and 5 of the said judgment which reads as follows.

4. Mr. Abhay Shankar Singh, learned Counsel appearing on behalf of the Petitioners in all the writ applications, raises a very short point. He sub-mits that according to the counter affidavit filed on behalf of the Corporation, it is evident that the services of the Petitioners have been terminated on account of the direction of the State Government, which has no authority and on this ground

alone the orders impugned are vitiated in the eye of law. In support of his submission, he has placed reliance on an order dated 30th of March, 200 passed in C.W.J.C. No. 5044 of 1999 (Manoj Kumar Singh v. The State of Bihar and Ors.) and my attention has been drawn to the following passage from the said order.

Following the aforesaid principle, this Court quashes the impugned order dated 5.5.1999 as contained in Annexure-1. But this Court gives liberty to the Respondent Corporation to examine whether valid procedure was followed or not and if on examination of the same the Respondent authority finds that it is not so, then he can issue show cause notice to the Petitioners and then pass an order in accordance with law. As a result of quashing of the impugned order, the Petitioners should be reinstated in service within seven days from the date of receipt/service of a copy of this order but he should not be paid any thing by way of back wages between the period he was terminated from service and the date of reinstatement. Of course, this Court makes it clear that on account of reinstatement of service of the Petitioners, his continuity and seniority in service should be maintained.

5. It is relevant here to state that the aforesaid direction was rendered by this Court in respect of the employees of the corporation itself whose services were terminated in view of the direction of the State Government. The cases of the Petitioners are covered by the decision of this Court in the case of Manoj Kumar Singh (supra) and in that view of the matter, I have no option than to quash the impugned orders and direction for their reinstatement in service within seven days from the date of receipt/service of a copy of this order.

6. Mr. Madhura Nand Jha, J.C. to G.R IX appears on behalf of the State whereas Mr. Naresh Kumar Sinha appears on behalf of Katihar Municipality. They contend that during the relevant time the Katihar Municipality was under supersession and in that view of the matter, the State Government did not lack jurisdiction to issue direction. In any view of the matter, they contend that when the illegality was brought to the notice of the Municipality, it gave notice to the Petitioners and after considering the show cause filed by the employees, the impugned order has been passed. They point out that the impugned order has not been passed only on the basis of the direction of the State Government.

7. Having appreciated the rival submissions, I do not find any substance in the submission of Shri Singh and the decision relied on is clearly distinguishable. Petitioners were appointed on daily wages without following any procedure known to law. A large number of employees have been appointed without any advertisement. Rule 4(a) of the Municipal Officers and Servants (Appointments, Duties, Discipline and Appeal) Rules, hereinafter referred to as the Rules inter alia, contemplates issuance of advertisement and consideration of the case of eligible candidates. Rule 4 (a) of the Rules which is relevant for the purpose reads as follows.

4. (a) All vacancies, whether permanent or temporary the duration of which

exceeds a month and which are not filled by promotion from among the officers or servants of the Commissioners or by the appointment of a probationer already in the pay and service of the municipal Commissioners shall be duly advertised in at least two consecutive issues of one newspapers having the largest circulation within the limits of the Municipality. The advertisement in the newspapers shall be in the following form namely.

- (1) Name of the Municipality.
- (2) Post vacant and scale of pay.
- (3) Qualifications required.
- (4) Officer to whom application shall be made.
- (5) Date by which application shall be made.

(This date must not be less than 14 days from the date on which the advertisement is first published in newspapers).

8. What to talk of advertisement even a semblance of procedure known to law satisfying the requirement of Articles 14 and 16 of the Constitution of India, has not been followed. When the Municipality made correspondence in regard to the appointment of these Petitioners, it came to the notice of the State Government about the appointment of a large number of persons in illegal manner. The State Government brought to the notice of the Municipality the said fact and the circular of the State Government governing the appointment on daily wages and termination of such persons employed on daily wages. Thereafter, a show cause notice was given to the employees and then, the impugned order has been passed. Thus, in my opinion, the services of the Petitioners have not been terminated only on the directive of the State Government. In the case of Sanjay Singh and Ors. (supra), relied on by the Petitioners, the order of termination was solely passed on the directive of the State Government and in that context, the order passed by the Corporation was found to be illegal which is not a situation here.

9. I am further of the opinion that nothing prevents the State Government to bring to the notice of the Municipality about the illegal act done by it. In case, such an illegal act is brought to the notice of the Municipality and it takes cognizance of the same and proceeds in the matter in accordance with law, its action cannot be held to be illegal only on the ground that the impugned order which has ultimately been passed was at the instance of the State Government. Distinction has to be made between an order passed at the instance of the State Government and the direction of the State Government mechanically. As observed earlier after the communication of the State Government the Municipality has given notice and on consideration of the same, engagement of the employees on daily wages being found illegal, their services have been terminated. I do not find any error in the same.

10. Mr Singh then contends that some of the employees whose services have been terminated, were not given opportunity. Even if I assume in favour of the Petitioners that they were not given opportunity of hearing, that itself shall not vitiate the order. Services of a large number of employees have been terminated by the Impugned order excepting few, all of them have been given opportunity to show cause and on consideration of the same, the impugned order has been passed. Hence, even if few employees were not given opportunity to show cause, the impugned order cannot be held to be illegal.

11. Mr. Singh lastly submits that no treason has been assigned in the impugned - order and this itself renders the same legal. I do not find any force in this submission of Shri Singh. Respondents have given various reasons in the counter affidavit to show how these Petitioners were appointed in illegal manner. The order impugned is not a judicial order and as such, When challenge to the same is made in a court of law, Respondents can assign reasons to defend the order. They have pre-iously done so.

12. I do not find any merit in these writ application and they are dismissed accordingly. No costs.