(2007) 03 PAT CK 0073

In the Patna High Court

Case No : CWJC No. 3441 of 2002

Uday Kumar Singh APPELLANT

Vs

The Administrator, P.M.C. and Others RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Citation : (2007) 4 PLJR 500

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rupak Kumar and Nishant Kumar, for the Appellant; Chandrakhar and B.B. Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Peculiar are the ways of working of a public body like Patna Municipal Corporation. This Court at the very outset would like to record that the creation of situation is the Corporation''s own doing and there is no contribution to the same from any quarter. The ad hocism in the decision making, may be, due to the whims and fancies of the officials posted in the Corporation on deputation but the same has become a rule rather than exception. There are two petitioners before me. Petitioner, namely Uday Kumar Singh of C.W.J.C. No. 3441 of 2000 was appointed as Chainman on daily wages on 17.10.1975. Thereafter he was confirmed against the vacant sanctioned post on 28.8.1984 on a pay scale of Rs. 350 to 425. Even though the petitioner was confirmed to the post of Chainman, by virtue of an order issued by Chief Executive Officer of the Corporation the petitioner was asked to perform the work of Tax Collector. According to the petitioner this was on 5.6.1980 which is borne out from annexure-3 of the writ application. The petitioner continued to perform his duties as Tax Collector and he has brought on record enough evidence to prove that he continued to do so for years together thereafter.

2. He approached this Court because in his wisdom he felt that the organisation was discriminating while taking decision to regularise some of its employees

working on all kinds of post, as Tax Collectors, because of the number of years they had put in on the same said post. He has given instances where Sanitary Supervisors, Peons and even Guards have been finally given the post of Tax Collector alongwith the consequential benefits of pay and perks working in the same said post.

3. The petitioner of the second case i.e. Baliram Prasad Singh of C.W.J.C. No. 3461 of 2002 was appointed as a Guard on daily wages in the year 1976. He came to be confirmed on the same said post on 23.8.1985. His case is that since January, 96 he has been performing the duties of a Tax Collector on the direction and order of the authority concerned in the Corporation and in view of the decision taken by the Corporation to confirm similarly situated employees on the post of Tax Collector he too is before this Court for similar relief.

4. The contention of the petitioners in these two cases does not seem to be misplaced, even though on the face of it does look incongruous that a security guard or even a sanitary supervisors can be confirmed and appointed as Tax Collector. The factual position however is that the Corporation has done such acts which has given cause to the petitioners of the present cases also. In fact, some other persons had occasion to move this Court for a direction upon the respondents Corporation that they be regularised on the post of Tax Collector keeping in view that they have worked as such for many a decades. At least two instances have been cited before me; one is the order passed in the case of Surya Kant Jha Vs. The Administrator, Patna Municipal Corporation and Others, . Based on this order a second order came to be passed with similar direction and relief in the case of Sitaram Choudhary vs. Patna Municipal Corporation & Ors. reported in 2004(4) PLJR 840. In both these cases the Court gave a categorical direction to the respondents Corporation that since the petitioners have continuously worked on the said post, therefore, denial of regularisation against the post would be wholly unfair, unjust and unreasonable. The Court, therefore, directed the respondents to regularise the petitioners on the post of Tax Collector and gave them pay admissible to the same said post. The Court takes note of the fact that the petitioners were initially appointed on the post of Sanitary Supervisors, Peons and even Guard, the category to which the present petitioners belong.

5. The contention of the petitioners is that in view of the earlier two orders of this Court in normal course they are entitled for a direction in their favour too. It is difficult for this Court to make any distinction with regard to the facts as well as the law which has been raised in the present writ applications vis-a-vis the earlier two orders of this Court.

6. Learned Senior Counsel for the Corporation argues that this Court ought to take into consideration the latest Constitution Bench order passed in the case of Secretary, State of Karnataka & Ors vs. Uma Devi (3) & others Ed.-Reported in 2006(2) PLJR (SC) 363. He contends that the Court has categorically laid down parameters under which regularisation can be made by any competent person.

Since in the present cases the two petitioners did not satisfy the test which has been laid down by the Constitution Bench therefore, keeping that in mind this Court ought to ignore prayers or directions issued by this Court in two orders indicated above. He contends that the Court should turn down the prayer of the petitioners in the present cases. The counsel for the respondents further states that it is because for such reckless decisions and orders having been passed by the earlier officials that mismanagement in the Corporation has been created. By giving undue benefit to such employee contrary to law and rules employees have got benefits of post which are not within the chain of promotion in the normal course. He further contends that these employees by virture of the earlier decisions and directions of this Court have stolen a march over others.

7. There could be some force in the argument of the respondents but as already taken note of above this situation is the creation of the Corporation and with due respect no one else has contributed to the same in any manner. If the fact that these petitioners even then though they were not appointed on the post of Tax Collector but some of them have worked as such for 15 to 22 years, this Court had no option but to give a direction to regularise them as such. In view of the fact that it was on the directions of the respondent authorities that these petitioners shouldered the responsibility on regular basis of Tax Collector, they ought to be given the benefit as well as advantage of the post on a permanent basis This Court cannot be faulted with this reasoning.

8. In view of the consistent view which this Court has taken in similar matters, this Bench has no option but to hold that the prayer the petitioners have made in the writ applications deserve to be acceded too. The Court accordingly directs the respondent authorities to regularise the petitioner on the post of Tax Collector and also make available such benefits which they may be acquire by virtue of such confirmation on the post. Both these writ applications are accordingly allowed.

