

Devta Nand Dwivedi and Others Vs. the State of Bihar and Others

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Court : Patna

Decided On : May-11-2012

Judge : S.N. Hussain

Appeal No. : CIVIL WRIT JURISDICTION CASE NO. 7778 OF 1997

Appellant : Devta Nand Dwivedi and Others

Respondent : The State of Bihar and Others

Judgement :

S.N. Hussain. J.

1. Although this is a fifteen years old writ case of 1997 but learned counsel for the respondent-Bagaha Municipality is trying to create hide and seek as on 30.3.2012, learned counsel for the petitioner was heard in part and the case was adjourned for 27.4.2012 but no one appeared on behalf of the respondents although names of their learned counsel were appearing on daily cause list. Hence, the case was again adjourned for 4.5.2012 with a note that if on the next date also, none appeared on behalf of the respondents, this court shall be constrained to decide the matter on the basis of materials on record. When the matter was taken up on 4.5.2012, learned counsel for the respondents-Bagaha Municipality appeared and prayed for some time as his clients had not even supplied the copy of the writ petition to him and hence, the case was directed to be listed today. Today itself, when the case is called out, learned counsel for the

petitioner is present but no one appeared on behalf of the respondent-Bagaha Municipality or its authorities. It may be noted that notices were duly given to the respondents. 2. This writ petition has been filed by the petitioner for the following relief(s) :

(I) For issuance of a writ in the nature of mandamus or any appropriate writ with commanding and directing the respondent Municipality, Bagaha for making payment of the arrears of salary to the petitioner due with effect from 25.12.1992 and the current salary,

(II) For issuance of an appropriate writ/writs declaring the appointment of the petitioner on the post of Lower Division Clerk in Bagaha Municipality has been sanctioned in view of the letter as contained in Annexure-7 to the petition,

(III) For issuance of writ in the nature of mandamus or any other writ commanding and directing the respondent to make payment of the arrears of the salary on equal pay for equal work basis for a period of august, 1987 to 1992 for work rendered by the petitioner as Amin,

(IV) For any other relief/reliefs for which the petitioner is found entitled to.

2. The facts of the case in brief are that Bagaha-Municipality was constituted in the year 1983 and since then it is functioning. There was requirement for the post of Amin for which advertisement was published for appointment on the said post on daily wage basis and in response the petitioner applied for the said post as he had passed matriculation examination in the year 1983 conducted by Secondary Education Board and had also obtained diploma course in Survey and Plotting in a Registered Survey and Plotting Teaching Institute, Patna, Branch Bagaha and his candidature was screened, tested and finally he was appointed as Amin on 29.7.1987 on daily wage basis at Rs.19/- per day excluding the Holidays.

3. Subsequently, in the year 1990, one post of Lower Division Clerk got vacant in the Municipality due to superannuation of earlier post holder and for the purpose of filling up the said post, the Municipality constituted a Selection Committee on 31.7.1992 and the post was duly advertised on the notice Board of the office as no

daily newspaper was published from Bagaha. The petitioner and other persons applied and they were interviewed by the Selection Committee on 14.8.1992 and their documents were verified whereafter the Selection Committee found the petitioner most suitable candidate as he had requisite qualifications and experience for such working and hence, the Committee recommended the name of the petitioner to be appointed on the said post. The said recommendation was sent to the Board of the Municipality for its approval and the Board approved the same on 30.8.1992 and recommended the same to the Chairman of the Municipality for approval, who after according approval, issued letter to the Secretary, Department of Urban Development for approval of the appointment but there the matter remained pending for a long time. Thereafter the Municipality further issued a letter to the respondent on 30.1.1993 but after awaiting for a long time, it issued the appointment letter dated 25.12.1992 to the petitioner, whereafter the petitioner joined the post of Lower Division Clerk in the Municipality and continuously rendered his services.

4. However, due to the post not being approved by the authorities, the petitioner was not paid his salary for the work he rendered, although, in addition to his work as lower Division Clerk, he was also performing the work of Amin in the Municipality which was vacant. Hence the Special Officer (respondent no.7) also wrote letter to the authority concerned and after a long time, the Secretary of the said department, issued letter dated 22.11.1996 to the Special Officer, Bagaha Municipality indicating that if the appointment of the petitioner was made after compliance of the legal requirements, then the Municipality itself is competent to make appointment. This implies that the respondents had no objection to the appointment of the petitioner as the same was done in accordance with law.

5. A counter affidavit has been filed on 23.9.1997 on behalf of respondent nos.4, 5 and 7, namely, the Collector, West Champaran, the Sub Divisional Officer, Bagaha and the Special Officer, Bagaha Municipality respectively whereas the other respondents, instead of having full notice and information of the case, did not care either to file counter affidavit or to appear before this court. It may be noted that out of them, respondent no.7 is Special Officer, Bagaha Municipality and hence none appearance of its learned counsel is unexplainable. Furthermore, the plea of

learned counsel for the Bagaha Municipality that the copy of the writ petition was not available with him appears to be frivolous as the counter affidavit to the said writ petition has already been filed by the Executive Officer of the said Municipality about 14 years back.

6. In the counter affidavit it is stated that the petitioner was appointed as Amin without publication of any notice in the Newspaper and also that no such Committee was constituted by the authorities concerned and hence, the petitioner is not entitled to any wage for the period he worked as Amin. It is also stated that the petitioner can not be regularized on the post unless roaster etc. was obtained from the District Collector as the appointment of the petitioner on the post of Lower Division Clerk was not proper and legal and as such, no approval was granted by the department of Urban Development, Govt. of Bihar. Hence, it is stated that the petitioner can be regularized on the post claimed but no payment of wages could be made in his favour and at the time of appointment to the post of Lower Division Clerk, the petitioner was over age and is merely entitled for proper payment of work done in Bagaha Municipality as Amin on the basis of daily wage. It is submitted that the petitioner was being paid his daily wage for the work done in Bagaha Municipality from its own fund as per Rules of daily wages employees.

7. No material has been produced by the respondents to substantiate their aforesaid claim, rather from the materials on record it is quite apparent that petitioner's appointment was in accordance with law and he was working on the said post since such a long time with full knowledge and information of all the authorities concerned. Hence non-payment of his salary for the work rendered by him during that period as Amin from August 1987 to 1992 on the equal payment for equal work instead of daily wage, is highly arbitrary and fictitious in view of the fact that the petitioner was appointed as Amin by a competent authority in accordance with established procedure. He also satisfactorily rendered his services of Amin which is a cadre post. Further non-payment of salary to the petitioner for the work rendered by him as lower Division Clerk with effect from December, 1992 till date also appears to be highly arbitrary.

8. The respondents have miserably failed to produce any material whatsoever to show that the claim of the petitioner have ever been rejected or the recommendation of the authority of the Begaha Municipality had ever been taken by the high level authority, rather the materials on record show that the petitioner had applied for the post after publication of the advertisement on the notice Board, interviewed and duly appointed on the post of Lower Division Clerk and before that also, he had rendered his work on the post of Amin without any objection from any quarter. Now, after taking the work from the petitioner for 20 long years, the respondents authority have no case to deny the salary of the petitioner especially when they have been shamelessly taking the work from the petitioner without making any payment to him. 10. In the aforesaid facts and circumstances, this writ petition is allowed. The respondent authorities, especially, the Executive Officer, Bagaha Municipality is directed to regularize the services of the petitioner on the post of Lower Division Clerk with effect from the date he was appointed on 25.12.1992 and to pay him all the back wages and emoluments in accordance with law within a period of four months from the date of receipt/production of a copy of this order.

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