

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File Nos. **BHRC/COMP.2461/10** & 777/11

Cases of Yaduvanshi Yadav & Md. Ashrafuddin

These two files have been tagged together by order dated 26.9.2012 in File no.2461/10.

While the complaint of Yaduvanshi Yadav and others in File No.2461/10 relates to retiral dues of the former employees of Nagar Parishad, Supaul, the complaint of Md. Ashrafuddin in File No.777/11 is for 'disability pay'.

At the outset it may be mentioned that the State Government has allotted sum of Rs.5,79,11,436 to the Supaul Nagar Parishad – highest in the state (for district as small as Supaul) – for one time payment of retiral dues to its retired employees vide letter no.62 dated 19.3.2012 of the Urban Development & Housing Department. The Commission directed Executive Officer to make pro rata payment of the retiral dues to the erstwhile employees.

Sri Brajesh Kumar, Executive Officer, Nagar Parishad Supaul avoided compliance of the Commission's order on one pretext or the other. Initially he took the plea of lack of fund; and when he was told about the allotment of over 5 crore rupees, he took the stand that the payment can be made only with the approval of the Board which was in the process of being constituted. After the process of the constitution of the Board was complete he took the stand that a Committee has been constituted for enquiry/determination of the retiral dues. The Commission would concede that the dues in any case has to be determined and the determination involves calculation but the Commission is not able to appreciate as to why the process of calculation could not be initiated earlier. The decision regarding constitution of the committee was taken just prior to the scheduled date of hearing in the Commission. It is to be mentioned that some of the former employees have already died for want of money and others are on the verge of starvation. The Commission finds the conduct of Sri Brajesh Kumar to be malicious. He has no consideration for the human rights of the fellow-employees including retired employees; he has no regard for the Commission and indeed the government either.

In File No.777/11 the Commission by a speaking reasoned order dated 8.5.2012 directed Sri Brajesh Kumar to pay salary to the applicant Md. Ashrafuddin, despite not working on the post – on account of his physical

disability – in view of the provisions of section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. The Commission rejected the stand of the Executive Officer pointing out that as per Section 47 of the Act, every establishment is required to adjust an employee against any other post if he is not able to perform the duties of the post he has been holding – as a result of the disability, and where no such post is available, he has to be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier, but in no case can he be denied pay as admissible to the post held by him.

Sri Brajesh Kumar during subsequent hearing on 17.7.2012 took the stand that he has sought instructions/guidance from the Department but “reportedly” the letters are not available in the Department. In any case, he has not received any instruction from the Department. Sri Ram Binod Singh, Under Secretary, Department of Urban Development & Housing fairly pointed out that by letter no.2414 dated 12.7.2012 instructions have already been issued to the Executive Officer, Nagar Parishad Supaul to implement the Commission’s order dated 8.5.2012. He in fact produced copy of the letter dated 12.7.2012. In spite of the said instruction, Sri Brajesh Kumar did not implement the Commission’s order. He took the plea that meeting of the Board has not been convened for want of clear instructions from the Department and that direction has been sought on the point of payment as the applicant did not work during the period and therefore on the principle of ‘no work no pay’, he is not entitled to salary.

By order dated 28.8.2012 the Commission deprecated the conduct of the Executive Officer in scuttling implementation of its order and direction of the Government pointing out that the principle of ‘no work no pay’ has no application in a case covered by the provisions of section 47 of the Disabilities Act. The Commission observed that as a matter of fact, the said provision is designed to cover situations of the present type where a person on account of disability is unable to perform his normal duties. Clearly, it is not a case of voluntary refusal to perform duties; it is a case where work was not taken on account of applicant’s disability.

After the Commission passed the above order, the Executive Officer took the stand – at the latter hearing on 21.9.2012 that he has sought legal advice from the Advocate. It may be mentioned that the Commission had already rejected the ‘legal advice’ of the Nagar Parishad’s advocate and thereafter issued direction for payment of salary vide order dated 8.5.2012 (supra) and therefore there could no justification to seek legal advice again from the Parishad’s

advocate. The Commission observed in its order dated 21.9.2012 that there was a concerted attempt on the part of Sri Brajesh Kumar to circumvent not only the Commission's order but also direction of the Department and his conduct warrants enquiry and suitable action.

It is relevant to mention here that Deputy Secretary, urban Development & Housing Department has again issued direction to the Executive Officer, Nagar Parishad Supaul vide memo no.3317 dated 21.9.2012 to make payment to Md. Ashrafuddin stating that his case is covered by the provision of section 47 of the Disabilities Act.

It is not known as to whether during the intervening period since 21.9.2012 payment has been made to Md. Ashrafuddin or not. The Commission is of the view that even if payment has been made in the meantime, no credit can be given to Sri Brajesh Kumar and for his acts of omissions and commissions a disciplinary proceeding should be initiated against him.

The Commission would accordingly recommend that disciplinary proceeding be initiated against Sri Brajesh Kumar, Executive Officer, Nagar Parishad, Supaul.

Sri Brajesh Kumar is reported to be a member of Bihar Administrative Service and the authority/department competent to take such action is said to be the General Administration Department.

Let copy each of this order be sent to Principal Secretary, General Administration Department and the Principal Secretary, Urban Development & Housing Department for compliance/information/needful as the case may be.

Put up in the first week of December 2012 awaiting compliance report.

Date: 08.10.2012

Justice S.N. Jha
Chairperson