
(2009) 04 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5656 of 2004

Arbind Prasad Bhagat

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Bihar Panchayat Village Volunteer Force Rules, 1949 — Rule 3, 4
Constitution of India, 1950 — Article 14

Citation : (2009) 57 BLJR 1970

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : V. Shivnath and Gautam Kumar, for the Appellant; Baleshwar Yadav, JC to S.C. (Mines), for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition the petitioner prays for issuance of an appropriate writ, order or direction for quashing the office order No. 07/2004 as contained in Memo No. 353, dated 24.08.04 issued under the signature of respondent No. 2. The petitioner prays for a further writ, order or direction restraining the respondents permanently from acting pursuant to and in furtherance of the impugned order dated 24.08.04.

2. The facts, in brief, are set out as under:

The petitioner was appointed in accordance with the applicable rules as Dalpati on 03.09.1983 on the recommendation of the Mukhiya within the meaning of Rule 3 & 4 of Bihar Panchayat Village Volunteer Force Rule, 1949 on the recommendation of the Committee vide letter No. 57 dated 5.11.1983. The petitioner was approved by the District Panchayat Raj Officer, Santhal Pargana, Dumka. According to him he fulfilled all the criteria and requirement as prescribed in Rule 3 & 4 having his age between 21 to 30 years with a good moral character and strong physical fitness etc. and also having the certificate of middle vernacular. The petitioner functioned at Karakaram panchayat as Dalpati

from 1983 to 1989 with an unblemished service record and in 1986 he also underwent training under the Village Development and Panchayat Raj Department and was granted certificate on 20th of December, 1986 on successful completion of his training. The petitioner along with many others was selected for final selection for the post of Panchayat Sewak on 27.3.1989. After selection the petitioner was appointed as Panchayat Sewak and he joined at Sahebganj on 9.5.1989 and was sent for training on 4th May, 1989. On completion of training he was granted a certificate for his performance with effect from 11.5.89 to 8.8.89 and he was declared as successful in the second division, as per certificate dated 8.8.89. Thereafter the petitioner joined at the place of his posting, vide letter No. 163 dated 3.6.2000 addressed to the petitioner he was asked to produce all relevant papers/documents relating to his appointment as Dalpati/Panchayat Sewak. The petitioner submitted all required paper on 14.6.2000 to the District Panchayat Raj Officer, Sahebganj. On the same day petitioner also received letter No. 247 dated 14.6.2000 by a B.D.O. for production of relevant certificate along with letter No. 166 dated 3.6.2000 addressed by the District Panchayat Raj Officer, Sahebganj to B.D.O., Mandro. The petitioner informed the B.D.O. upon his notice that he has already submitted required paper before the District Panchayat Raj Officer Sahebganj which has been received and thus the order stood complied in any case. In the meanwhile the petitioner also applied and obtained a residential certificate from the Circle Officer, Raj Mahal as a resident of Babhangama panchayat and upon enquiry the residential certificate was issued on 12.2.2001 which was submitted before the District Panchayat Raj Officer, Sahebganj. On 09.7.2002 the petitioner was put under suspension by Deputy Commissioner, Sahebganj which led to filing of a Writ Petition (S) No. 6979 of 2002 and the same became infructuous and subsequently was stated to have been withdrawn by the petitioner. On 22.9.2002 the petitioner received charge sheet and was ordered to appear on 25.11.2002 for holding an enquiry. The petitioner submitted his written explanation on 27.2.2003 denying all the charges levelled against him. Finally the petitioner was discharged/dismissed vide impugned order dated 24.8.2004 which is under challenge in this Writ Petition.

3. The main contention raised by the petitioner is as to whether the impugned order of dismissal passed by respondent No. 2 after getting promotion and continuing in service for 21 years was illegal, arbitrary and violative of Article 14 of the Constitution of India. The second contention raised by the petitioner is that the ground on which he has been dismissed was on the face of it illegal and unsustainable because Rule 3 of Bihar Panchayat Village Volunteer Force Rule, 1949 there was no requirement to produce a permanent resident certificate of the village for appointment to the post of Dalpati. The third contention raised by the petitioner is that the enquiry report, in spite of repeated demand was not supplied which was against the well settled cardinal principles of natural justice and thus the entire action was vitiated and the ground on which the impugned order or dismissal was passed was on the face of it frivolous, misconceived and

unsustainable in the eyes of law.

4. The counsel for the respondents, in reply, submit that the petitioner did not produce any paper with regard to his residential proof and he further submits that there is an alternative remedy and he can move by way of an appeal before the Commissioner.

5. I have considered the rival submissions and pleadings and also the impugned order under challenge. It appears that vide impugned order dated 24.8.2004 issued by the Deputy Commissioner, Sahebganj there were five charges which were considered and all the charges somehow or other relates to residence proof except charge No. 5 and the same has been decided against the petitioner relying upon Rule 3 of Bihar Panchayat Village Volunteer Force Rule, 1949 which is quoted as under:

The Mukhiya, within one month of his election shall prepare a register in Form-1, of all male person residing within the territory of village Panchayat for recruitment who are between the age group of 18 to 30 years and are physically fit.

6. On perusal of the aforesaid Rule 3 it will be evident that the only requirement under the rule was that at the time of recruitment he resided in the same village panchayat where he was appointed. The aforesaid rule nowhere requires the candidate to be a permanent resident of that Panchayat and thus the charges of getting the employment based on forged document and or by committing fraud does not stand to reason and cannot be sustained in the eyes of law. The fact remains that even otherwise he produced the voter list at the time of the enquiry in which his name figured and there was no other document which he had produced at the time of appointment as recorded in the impugned order itself and thus levelling charges of forgery is baseless and illegal. Even the other charges of misleading the Mukhiya and the members of the Committee is on the face of it erroneous and unsustainable.

7. In the impugned order it has been recorded specifically about the production of the voter list and the name of the petitioner thereto in a year but it was erroneously held that it does not justify the fact that the petitioner was a permanent resident of that Panchayat. When there is no such requirement under law and in particular Rule 3 of the Bihar Panchayat Village Volunteer Force Rule, 1949, the very basis and the reasoning on which the petitioner has been dismissed from service appears to be an error apparent on record and liable to be set aside. The fact remains that the petitioner was residing for substantial period of about 7 years as stated by him and after considering all these facts the petitioner was appointed and was functioning as Dalpati in the aforesaid block since 3.9.1983. The observation in the impugned order that the petitioner did not produce any solid evidence of his being a residence of Karkaram Panchayat as required under Rule 3 of Bihar Panchayat Village Volunteer Force Rule, 1949 when the rule itself does not contemplates such requirement proves the total

non-application of mind. The petitioner has not given any false information or mis informed and thus the impugned order of discharge dated 24.8.2004 is on the face of it erroneous and unsustainable for the sole reason that there could not have been any question of misconduct and the findings are based on conjectures and surmises and are perverse and cannot be sustained in the eyes of law.

8. The petitioner rightly submits that the requirement under Rule 4 was that at least the person must have lived for 6 months or 180 days in totality as annexed as annexure 20 at page 82 and the petitioner clearly fulfilled that condition. It is further relevant to clarify that charge No. 5 relates to indiscipline which is also self-contradictory and unsustainable when the disciplinary authority in its impugned order itself records the fact that the explanation to the show cause was received and found to be not satisfactory and thus the charge of not giving the explanation to the show cause, was an act of indiscipline is also baseless and reflects the total non-application of mind.

9. Even otherwise the petitioner continued in service for good 21 years and was promoted also and at this belated stage the ground on which he has been dismissed is unsustainable and illegal.

Considering the aforesaid facts and circumstances of the case, the impugned order dated 24.08.04 is quashed and the writ petition is allowed.