
(2002) 05 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 2301 of 1998

Dinesh Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 26, 27
Bihar Panchayat Raj Act, 1993 — Section 32A
Bihar Panchayat Raj Village Volunteer Force Rules, 1949 — Rule 4

Citation : (2002) 3 PLJR 147

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Binod Kumar Singh and Bipin Kumar, for the Appellant; S.D. Yadav and Anil Kumar Verma, for the Respondent

Final Decision : Dismissed

Judgement

Shashank Kr. Singh, J.—The present writ application has been filed for quashing the (sic) dated 9.2.1998 (Annexure-1) concerned in letter No. 164/PR issued by Respondent No. 2, the Commissioner-cum-(sic) Rural Development, Government (sic) whereby all the appointments made (sic) post of Dalpati after coming into the Bihar Panchayat Raj Act, 1993 (sic) directed to be treated as illegal, as by judgments this Court had found the (sic) appointments to be bad. By aforesaid letter, it was further directed (sic) any appointment had been made (sic)quent to coming of the new Act the (sic) was to be treated as illegal.

2. On the query of the court that not the judgments which have been referred to in Annexure-1, the appointments subsequently made after coming into force of the new Act had been held to be invalid, as no such provision was there in the new Act and as a Division Bench of this Court in the case of Rohtas Zila Gram Raksha Dal Sangh with so many Ors. v. The State of Bihar and Ors. reported in Bihar Law judgments 2001 (3) 248 along with other analogous cases while considering the proposition as to whether the Bihar Panchayat Raj Village

Volunteer Force Rules, 1949 was saved from repeal by virtue of Section 27 of the Bihar and Orissa General Clauses Act, held that the same cannot be saved and as the Act has been superseded and a new Act has come into force the Rules framed under the old Act cannot be saved from repeal by virtue of General Clauses Act. The court while discussing the aforesaid proposition in paragraph 20 of the said judgment while comparing the similarity of the provision of Section 26 of 1947 Act and Section 32A of 1993 Act came to the conclusion and it was interpreted that there was inconsistency between the two provisions. The inconsistency between the two provisions is evident and manifest and hence the Bihar Panchayat Raj Village Volunteer Force Rules, 1949 cannot be saved from repeal by virtue of Section 27 of Bihar and Orissa General Clauses Act.

3. This Court while interpreting the subsequent amendment in the 1993 Bihar Panchayat Raj Act by Section 32A read with Rule 4 of the Bihar Panchayat Raj Village Volunteer Force Rules, 1949 came to the conclusion that the appointing authority of the Dalpati was not satisfied in 1993 Act. As such, without framing Rules under the provisions of 1993 Act, a Dalpati cannot be appointed.

4. Learned Counsel for the Petitioner does not controvert the contention of the State that the aforesaid judgment was challenged before the Supreme Court and SLP stood dismissed.

5. In view of the facts as stated above and in view of the judgment of the Division Bench specifically in paragraphs 20 and 23 thereof the submission of the Petitioner to the extent that the judgment as quoted in Annexure-1 and the Division Bench judgment in the case of Rohtas Zila Gram Raksha Dal (supra) has been obtained by suppressing the fact that Section 32A was incorporated in the Bihar Panchayat Raj Act, 1993 retrospectively and the Bihar Panchayat Raj Village Volunteer Force Rules, 1949 was still in force in view of the provisions of General Clauses Act cannot be sustained. The provisions of the General Clauses Act have been taken into consideration and already adjudicated by this Court and affirmed by the Supreme Court. While taking into consideration specifically Section 32A of the 1993 Act read with Rule 4 of the Bihar Panchayat Raj Village Volunteer Force Rules, 1949, this Court in the case of Rohtas Zila Gram Raksha Dal (supra) has specifically held that the appointing authority of Dalpati is not satisfied in 1993 Act. As such, without framing Rules under the provisions of 1993 Act, a Dalpati cannot be appointed.

6. In view of the aforesaid finding it has to be held that any appointment made to the post of Dalpati after coming into force of the 1993 Act and before a Rule is framed under the aforesaid Act is illegal. Admittedly till date the Rules have not been framed. As such, this Court does not find any infirmity in the order of Respondent No. 2, as contained in Annexure-1 treating all such appointments as illegal.

7. The writ application fails being devoid of merit. However, there will be no order as to costs.

Ravi S. Dhavan, C.J.

8. I agree.