
(2015) 06 PAT CK 0060

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 484 of 1999

Ganga Kumar Chaudhary

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Citation : (2015) 3 BLJud 211

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. Jitendra Kumar Roy, Advocate, for the Petitioners; Mr. Manoj Kumar Sinha, AC to SC 30, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Birendra Prasad Verma, J.—Heard the parties.

2. The matter at issue in the present proceeding is the validity and correctness of the government letter/decision dated 09.02.1998 (Annexure-1) issued under the signature of the Commissioner and Secretary, Department of Rural Development (Panchayat Raj Directorate), Government of Bihar, Patna, whereby a direction was issued to all the District Panchayat Raj Officers of the State to cancel the appointment of such Dalpati (Chief Officer) of the Village Volunteer Force of the Gram Panchayats, who were appointed after coming into force of the Bihar Panchayat Raj Act, 1993 (in short "1993 Act") with effect from 23rd August, 1993 as also the consequential action taken thereof.

3. The petitioners, 38 in numbers, have filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent no.2 to reconsider the matter of their termination from the post of Dalpati of different Gram Panchayats in the district of Saharsa by the order/communication dated 18.03.1998 (Annexure-1/A) issued by the respondent District Panchayat Raj Officer, Saharsa in the light of the government decision communicated vide letter dated 09.02.1998 (Annexure-1) under the signature of the respondent no.2.

4. Learned counsel appearing on behalf of the petitioners submits that all these petitioners were appointed on the post of Dalpati (Chief Officer) of Village Volunteer Force of their respective Gram Panchayats under the old provisions of law on different dates after coming into force of the 1993 Act with effect from 23.08.1993 and their appointments were duly approved by the respondent District Panchayat Raj Officer, Saharsa, which all were communicated to them by different letters of the year 1995 to 1997, as contained in Annexure-3 series. According to him, the appointments of the petitioners on the post of Dalpati were made under the provisions of The Bihar Panchayat Village Volunteer Force Rules, 1949 (in short "Rules, 1949") as also in the light of the letter dated 27.06.1994 (Annexure-4) issued under the signature of the Director, Panchayat Raj Directorate, Bihar, Patna. It is contended that, though, no rules was framed in terms of Section 32A of the 1993 Act for organization and constitution of Gram Raksha Dal (Village Volunteer Force), but the appointments of the petitioners made in the light of the letter dated 27.06.1994 (Annexure-4) and under the provisions of the Rules, 1949 are saved under the provisions of the Rule 27 of the Bihar General Clauses Act, 1917. Therefore, according to the learned counsel, the government decision communicated through letter dated 09.02.1998 (Annexure-1) directing for cancellation of appointments made on the post of Dalpati after 23.08.1993 after nullifying the effect of the letter dated 27.06.1994 (Annexure-4), as also the consequential order dated 18.03.1998 (Annexure-1/A) issued by the respondent no.5 cancelling their appointments are fit to be set aside and quashed by this Court. In support of the above contentions, he has placed reliance on a judgment and order dated 20th December, 2011 passed in CWJC No.7062 of 1998 by a Bench of this Court (Coram: Ahsanuddin Amanullah, J.).

5. The matter has been contested by the respondents by filing two separate counter affidavits; one on behalf of the respondent State of Bihar and another on behalf of the respondent nos. 2 and 3, but the pleas taken in the aforesaid two counter affidavits are almost similar and identical to the effect that the issues raised herein in the present writ petition stands concluded by the judgments and orders passed by the different Benches of this Court presided over by the respective learned Single Judges and affirmed by the Division Bench. Learned State counsel appearing on behalf of the respondents submits that, in view of the decisions by the different Benches rejecting the identical claims, which all were affirmed by the different Division Benches of this Court, the present writ petition is liable to be dismissed with costs. It is specifically pointed out that all the issues raised herein on behalf of the petitioners in the present writ petition were subject matter of consideration before a Division Bench of this Court (Coram: Ravi S. Dhawan, C.J. and Aftab Alam, J., as Their Lordships then were) in the case of Rohtas Zila Gram Raksha Dal Sangh and others v. the State of Bihar and others, AIR 2002 Patna 1, and after considering the entire scheme of the law governing the appointment of Dalpati (Chief Officer) of Village Volunteer Force, the pleas raised therein on behalf of the petitioners of those cases were negated and

government decision/letter dated 09.02.1998 (Annexure-1 to the present writ petition) was held to be valid and legal vide judgment and order reported in AIR 2002 Patna 1. It is also pointed out that against the aforesaid judgment of Division Bench, SLP (Civil) Nos.19307-19343 of 2001 were filed before the Hon''ble Apex Court, which were ultimately converted as Civil Appeal Nos.7992-8028 of 2001. The Hon''ble Apex Court finally dismissed the aforesaid Civil Appeal Nos. 7992-8028 of 2001 by the judgment and order dated 18.07.2006 and the judgment and order of the Division Bench in the case of Rohtas Zila Gram Raksha Dal Sangh v. the State of Bihar (supra) was affirmed.

6. At this place, it would be relevant to mention here that the present writ petition was earlier taken up for consideration by a Bench of this Court on 10.07.2003, but in view of the pendency of SLP (Civil) No.19307 of 2001 and analogous cases before the Hon''ble Supreme Court, it was directed to be listed in due course awaiting the decision of the Hon''ble Supreme Court. After disposal of the aforesaid SLP (Civil) No.19307 of 2001 and its analogous cases/appeals by the Hon''ble Apex Court by the order dated 18.07.2006, the matter was placed for consideration before this Bench.

7. In order to appreciate the issues of facts and law raised on behalf of the parties, it would be necessary to notice the relevant provisions of law governing the appointment on the post of Dalpati (Chief Officer) of Village Volunteer Force of the Gram Panchayats. Section 26 of The Bihar Panchayat Raj Act, 1947 (in short "1947 Act") provided for formation of Village Volunteer Force for the Gram Panchayats. The Village Volunteer Force could have been organized/constituted for a Gram Panchayat by its Executive Committee for general watch and ward, for meeting cases of emergency like fire, breaking of an embankment or dam, outbreak of epidemic, and occurrence of burglary, dacoity and for maintenance of peace and tranquility. The aforesaid Village Volunteer Force was to be called as Gram Raksha Dal in Hindi and was to be under the command of a duly appointed Dalpati (Chief Officer) by the Executive Committee of the said Gram Panchayat. All able bodied males of the village between the age of 18 to 30 years were to be members of the said Village Volunteer Force. Section 27 of the Act, 1947 empowered the State Government to make rules for organization of such Village Volunteer Force. In exercise of powers conferred by different clauses of Section 27 of the Act, 1947, the State Government framed the aforesaid Bihar Panchayat Village Volunteer Force Rules, 1949. Rule 4 (1) of the Rules, 1949 provided that Executive Committee of the concerned Gram Panchayat shall appoint a Chief Officer (Dalpati in Hindi) from amongst the members of Village Volunteer Force, which was required to be approved by the District Panchayat Raj Officer of the concerned district. Rule 4(2) of the Rules, 1949 laid down the eligibility criteria for appointment as Dalpati (Chief Officer) for a Gram Panchayat.

8. A radical change regarding the functioning and working of the Panchayats in our country were brought in by the Constitutional 73rd Amendment Act, 1992 coming into force with effect from 24.04.1993 and by aforesaid constitutional

amendment Part IX dealing with the Panchayats were inserted in our Constitution. Article 243-E and Article 243-N under Part IX of the Constitution provided duration of the Panchayats, and continuance of existing laws and Panchayats, respectively. In order to bring conformity with the purposes, substance and direction, consequent upon the aforesaid changes in our Constitution by the aforesaid 73rd Constitutional Amendment Act, 1992, it became imperative to repeal 1947 Act and enact altogether a new Bihar Panchayat Raj Act. Accordingly, the Bihar Panchayat Raj Act, 1993 was enacted by the State Legislature and the 1947 Act was repealed, which was assented to by the Governor of Bihar on 22nd August, 1993 and it came into force with effect from 23rd August, 1993 in view of issuance of a notification in the official gazette by the State Government on 23rd August, 1993 in terms of Section 1 (iii) of 1993 Act. Under the 1993 Act, as originally enacted, there was no provision for Village Volunteer Force of a Gram Panchayat or for a Dalpati (Chief Officer) of said Village Volunteer Force. However, subsequently, by the Bihar Panchayat Raj (Amendment) Act, 1995 Section 32A was incorporated which provided for organization of Gram Raksha Dal (Village Volunteer Force). The aforesaid Section 32A was deemed to have come into force with effect from 23.08.1993 itself, the date on which the Parent Act, 1993 had come into force. Section 32-A provided for organization/constitution of Gram Raksha Dal under a Dalpati for a Gram Panchayat, but that Dalpati was required to be appointed in the prescribed manner for which the State Government was authorised to frame Rules. Evidently, under Section 32-A of the 1993 Act (as amended) the Executive Committee of a Gram Panchayat was not authorised to make appointment of a Dalpati, rather appointment was required to be made in a prescribed manner. It is admitted case of the parties that the Rules was not framed by the State Government in exercise of its powers under Section 32-A of the 1993 Act (as amended).

9. Though no rules were framed in terms of Section 32-A of 1993 Act (as amended), yet on the basis of the letter dated 27.06.1994 (Annexure-4) issued by the respondent Director, the appointments of the petitioners on the post of Dalpati for their respective Gram Panchayats were made purportedly by the Gram Panchayats concerned, which was subsequently approved by the respondent District Panchayat Raj Officer, Saharsa vide orders as contained in Annexure-3 series, but the same was directed to be nullified/cancelled by the impugned government decision/letter dated 09.02.1998 (Annexure-1) issued by the respondent no.2 and accordingly, appointments of all the petitioners on the post of Dalpati have finally been cancelled by the impugned consequential order dated 18.03.1998 (Annexure-1/A) issued by the respondent no.4. The plea taken on behalf of the petitioners that their appointments, having been made after 23.08.1993 on coming into force of 1993 Act in the light of the letter dated 27.06.1994 (Annexure-4) under the provisions of the Rules, 1949, are saved under Section 27 of the Bihar General Clauses Act, 1917 cannot be countenanced and has to be rejected in view of the judicial pronouncement made by the

Division Bench of this Court in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra). All the issues raised here in the present writ petition with respect to validity and correctness of the impugned letter dated 09.02.1998 were raised there in that case before the Division Bench in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra). After considering the different provisions of law, the contentions raised on behalf of the petitioners of that case were rejected and it was held that the appointments made under Rules, 1949 after coming into force of 1993 Act are not saved under Section 27 of the Bihar and Orissa General Clauses Act, 1917 (now Bihar General Clauses Act, 1917). For better appreciation paragraph 20 of the aforesaid Division Bench judgment is reproduced, which reads as follows:-

"The submission to my mind is quite fallacious and hence, unacceptable. It is true that at the first glance the provisions of Section 26 of the 1947 Act and those in Section 32-A of the 1993 Act appear very similar. It is also true that both under Section 26 of the 1947 Act and Section 32-A of the 1993 Act, it is provided that the recruitment of Dalpaties will be made in the manner prescribed (under the Rules). But there is a basic difference between the old provisions and the provisions currently in force in that Section 26 of the 1947 Act clearly specified the Executive Committee of the old Gram Panchayat as the appointing authority for the recruitment of Dalpaties. Unlike the old provision, under Section 32-A of the 1993 Act the appointing authority is not identified and consequently the authority competent to make the appointment is also to be specified in the rules to be framed under the 1993 Act. It is, therefore, incorrect to submit that there was no 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 the Bihar and Orissa General Clauses Act."

10. It would be further relevant to mention here that the very validity and correctness of the impugned circular/letter dated 09.02.1998 (Annexure-1) was subject matter of challenge before the aforesaid Division Bench, which has been noticed in paragraph 17 of the said judgment and after recording reasons it has been concluded in paragraph 24 that the circular/letter dated 09.02.1998 (Annexure-1 herein) was valid and legal. Consequently, all the writ petitions as also LPA involving the same issues were dismissed by the Division Bench in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra). It would also be relevant to mention here that against the aforesaid judgment and order passed in a batch of writ cases and one LPA, since reported in AIR 2002 Patna 1 (Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar), a batch of SLP (Civil) Nos.19307-19343 of 2001 were filed before the Hon'ble Apex Court, which were subsequently converted as Civil Appeal Nos.7992-8028 of 2001, but all those appeals were finally dismissed by the Hon'ble Apex Court by the judgment and order dated 18.07.2006 affirming the judgment and order passed by the Division Bench of our own High Court in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra).

11. Mr. Jitendra Kumar Roy, learned counsel appearing on behalf of the petitioners in the present writ petition, was also one of the counsel appearing on behalf of the petitioners in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra) before the Division Bench of this Court, and had raised almost all the issues before the Division Bench, which are sought to be raised once again in the present writ petition on the ground of the order dated 20th December, 2011 passed in CWJC No.7062 of 1998 by a learned Single Judge of this Court. Mr. Jitendra Kumar Roy was the counsel appearing in the aforesaid CWJC No.7062 of 1998 before the learned Single Judge. Unfortunately, Mr. Jitendra Kumar Roy did not bring to the notice of the learned Single Judge the aforesaid decision of the Division Bench in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra). It further appears that the decision of the Hon''ble Supreme Court dated 18.07.2006 passed in Civil Appeal Nos.7992-8028 of 2001 approving the judgment of the Division Bench was also not brought into the notice of the learned Single Judge. After concealment of material facts regarding aforesaid two judgments, it appears that the order dated 20th December, 2011 in CWJC No.7026 of 1998 was obtained by learned counsel appearing on behalf of the petitioners of that case. It is apparent that the learned counsel appearing on behalf of the parties failed to discharge their professional duties, since they did not/could not bring to the notice of the learned Single Judge the judicial pronouncements by the Division Bench of this Court as also the Hon''ble Apex Court. Therefore, on the basis of the aforesaid judgment and order dated 20th December, 2011 passed in CWJC No.7062 of 1998, the letter/government decision dated 09.02.1998 (Annexure-1) and the consequential action taken by the competent authority cancelling the appointments of these petitioners on the post of Dalpati cannot be nullified.

12. It is well settled that the appointment made dehors the Rules is a nullity. Apparently, in terms of Section 32-A of the 1993 Act (as amended), no Rules were framed by the State Government for organization of Gram Raksha Dal/ Village Volunteer Force and for appointment of its Dalpati (Chief Officer). In absence of any Rules, appointments of the petitioners having been made after 23rd August, 1993 under the provisions of the Rules, 1949 on the basis of the letter dated 27.06.1994 (Annexure-4) are not saved under Section 27 of Bihar General Clauses Act, 1917, as already concluded in the preceding paragraphs.

13. For the reasons recorded above as also in view of the judicial pronouncement made by the Division Bench of this Court in the case of Rohtas Zila Gram Raksha Dal Sangh v. The State of Bihar (supra) duly affirmed by the Hon''ble Apex Court, this Court is of the considered opinion that the Government order/letter dated 09.02.1998 (Annexure-1) and all the consequential actions taken by the respondent authorities cancelling the appointments of the petitioners on the post of Dalpati (Chief Officer) of Village Volunteer Force for the different Gram Panchayats in the District of Saharsa cannot be legally faulted.

14. In the result, the writ petition has to fail and is, accordingly, dismissed, but

there shall be no order as to costs.