
(2015) 05 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 16951 of 2007

Jageshwar Bhindwar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 3 PLJR 451

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Rajeev Ranjan Prasad, for the Appellant

Final Decision : Allowed

Judgement

Rakesh Kumar, J—Heard Sri Rajeev Ranjan Prasad, learned counsel for the petitioner and learned A.C. to Govt. Pleader-27. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of writ of mandamus commanding the respondents to give effect to the appointment letter issued in favour of the petitioner, vide Annexure-2 to the writ petition.

2. It has been pleaded that petitioner along with other 28 persons, who were earlier Dalpaties, were appointed as Panchayat Sewak. The appointment of the petitioner, as Panchayat Sewak, was subject to completion of training and he was selected, vide Annexure-2 to the writ petition. The petitioner, in terms of Annexure-2, completed training and the certificate to this effect was issued by the Panchayat Prasikshan Sansthan, Jasidih (Deogarh), Jharkhand, which has been brought on record as Annexure-3 to the writ petition. A plea has been taken that out of 29 selected candidates, 28 Dalpaties were already appointed as Panchayat Sewak, however one way or the other, the appointment of the petitioner was not given effect to. Despite persuasion of petitioner, he was not allowed to join.

3. Learned counsel for the petitioner has drawn my attention to Annexure-5 to the writ petition i.e. a letter dated 19.5.2005 issued by the Secretary, Bihar Sanskrit Shiksha Board, Patna, addressed to the District Panchayat Raj Officer, Madhubani, whereby, it has been clarified that as per the record, the date of birth of the petitioner was 11.1.1967. He submits that it appears that with a view to unnecessary harass the petitioner, the respondent/State had made unnecessary correspondence with the Sanskrit Shiksha Board. Even after receipt of the communication from the Bihar Sanskrit Shiksha Board, the petitioner was not allowed to join. Thereafter, the petitioner filed number of representations before the authority concerned, however; all efforts went in vein. Finally, the petitioner was constrained to approach this Court by filing the present writ petition. It has been pleaded that once in the similar circumstances 28 other persons were appointed, there was no reason to discriminate the case of the petitioner.

4. In this case, a counter affidavit has been filed on behalf of respondent No. 4 & 5. Learned State Counsel tried to persuade the Court that now, a Niyamawali for appointment of Panchayat Secretary has already been implemented, vide Bihar Gram Panchayat (Sachiv ki Niyukti, Adhikar and Kartabya) Niyamawali, 2011. According to the new rule, appointment of the Panchayat Sewak/Secretary is to be done through competitive examination. Save and except, the plea of new rule, no stand has been taken as to under what circumstances the petitioner was not allowed to join, whereas, appointment letter was issued and the petitioner also completed the training. In paragraph-8 of the writ petition, a specific stand has been taken that 29 Dalpaties were selected on the post of Panchayat Sewak and out of 29 Dalpaties, who were selected as Panchayat Sewak, except petitioner, all others have been appointed after completing the training. The statement made in paragraph-8 of the writ petition has been accepted by the respondent, as correct, as stated in its paragraph-14 of the counter affidavit. The stand of the petitioner has not at all been refuted by the respondent, save and except, the plea of new Rule.

5. In view of the fact that the petitioner along with other 28 persons were selected and the petitioner also completed training similarly to other 28 persons, that too much before the new Rule had come, there was no reason to deny appointment to the petitioner, whereas, other 28 persons in similar situation have been given the benefit of employment. The action of the respondent/State is apparently in contravention of Articles 14 & 16 of the Constitution of India. So far as plea of new Rule is concerned, the Court is of the opinion that same point is not at all applicable in the present case, due to the simple reason that selection of the petitioner was made by the committee in the year 2003 itself and thereafter, in terms of appointment letter, he had completed the training, vide Annexure-3 to the writ petition. The certificate indicates that it was issued on 31.12.2004 and as such, there is no application of new Rule. Accordingly, the writ petition stands allowed with a direction to the respondents to give effect to the Annexure-2, in view of completion of the training by the petitioner, vide

Annexure-3. The petitioner must be allowed to join within a period of two months from the date of receipt/production of a copy of this order.