
(2005) 03 PAT CK 0117
In the Patna High Court
Case No : CWJC No. 1211 of 2000

Jawahar Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Citation : (2005) 2 PLJR 737

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Jitendra Kr. Roy and Harsh Anuj, for the Appellant; R.P. Bhagat and Sudhir Kumar, for the Respondent

Judgement

Barin Ghosh, J.—Heard both the parties. The Appointing Authority of Dalpatis is the Executive Committee of the Gram Panchayat. The District Panchayat Officer only grants approval to the appointment already made by the Executive Committee of the Gram Panchayat, it is the duty of the Executive Committee of the Gram Panchayat to obtain the approval of such appointment from the District Panchayat Officer. After the Executive Committee of the Gram Panchayat has approached the District Panchayat Officer to obtain his approval to an appointment given by the Executive Committee of the Gram Panchayat, it is the duty of the District Panchayat Officer to grant such appointment. The approval once granted relates back to the date of appointment. It is unfortunate that some Dalpatis who were appointed after the petitioner, their cases for approval were disposed of quickly; whereas the case for approval of the appointment of the petitioner was kept in the cold storage and as a result, as has been claimed those juniors, who were appointed after the petitioner, became senior to the petitioner. A seniority list of such Dalpatis was prepared, where it was shown that though a few persons were appointed subsequent to the petitioner, but by reason of early approval of their appointment, they become senior to the petitioner. On the basis of such seniority list promotions were also given to those juniors. Being aggrieved thereby, the petitioner approach this Court, when similar other

aggrieved persons also approached this Court and this Court declared that the seniority of a Dalpati shall be fixed from the date of his appointment and not from the date of approval of his appointment. The Court directed the respondents to give effect to the said pronouncement and to reach consequential benefits to the persons who were denied of their lawful rights by virtue of inaction on the part of Executive Committees of the Gram Panchayats in not forwarding the cases of appointments given by them for approval at an early point of time or over action on the part of the District Panchayat Officer in granting approval in relation to appointments of those, who were appointed later, before giving approval in relation to appointments of those who were appointed earlier. The State did not challenge the said decision of this Court any further, It, however, challenged a similar decision rendered in some other case before the Division Bench and lost. It did not approach the Supreme Court and as such permitted the matter to reach its finality. It, however did not implement the conclusion, which reached finality. As a result, the petitioner remained where he was, but was entitled to be somewhere else on the basis of such final conclusion, and accordingly has been forced once again to approach this Court by filing the present petition. In paragraph-6 of the counter affidavit, it has been stated that the appointment of the petitioner on the post of Panchayat Sewak was made in the year 1996 and so-called junior persons to the petitioners were appointed before the appointment of the petitioner and, therefore, seniority of the petitioner over them does not arise and so he is not entitled for any consequential benefits. This statement in the counter affidavit is again based on the approval of appointment, where the approval fixes the seniority as would be evidenced from the seniority list. The respondents have, thus, acted in a most irresponsible manner by making such a statement in the counter affidavit. The Learned Counsel appearing on behalf of the State submitted that whereas the; juniors to the petitioner were given promotion in 1989, although by machination, depriving the petitioners, but since that was corrected in 1996 only, despite the Judgment of this Court, the petitioners will remain juniors to those who have been given such promotion. Such stand is unwarranted in view of the binding precedent. The Learned Counsel for the State further submitted that those juniors should be made parties to the petition and unless they are made parties to the petition, the petition is not maintainable. The Court while delivering the judgment did not touch upon the promotions which were illegally accorded to the juniors through machination of the officers of the State. The Court only corrected the legal mistake which was being committed. The Court could not perceive that there was no legal mistake in fact, but it was a machination to give promotions to the; juniors by depriving the petitioners and accordingly, did not strike down those promotions but on the contrary, directed consideration of the cases of the petitioners on the basis of the pronouncement. In such view of the matter, the right of the petitioners to be promoted on the basis of their seniority in terms of the said judgment of this Court is not dependent on removal of or termination of the promotions already accorded, through such machination, and accordingly, the presence of those fortunate promotees who got their promotions through the

machination of the officers of the State, is no Way connected with the establishment of the right of the petitioner in this writ petition on the foundation of the law laid down in his favour by the Division Bench of this Court.

2. In those circumstances, this writ petition is allowed and the respondents are directed to give promotion to the petitioner which was accorded to the petitioner on 10th July, 1996 with effect from the date, his junior was promoted and to release to the petitioner of his entitlement on the basis of such promotion within a period of 12 weeks from service of a copy of the order.

3. It is made clear that the petitioner has been adjudged to be promoted and accordingly has been given promotion. If the petitioner had been considered for promotion while his juniors were considered, ignoring him without any just reason, the petitioner would have been promoted on and from the date when his juniors were promoted and would not have had to wait till 10th July, 1996. Therefore, the due promotion of the petitioner was pushed forward deliberately by an illegal machination by the Officers of the State to deprive him of his lawful rights which is now being corrected. This disposes of the writ petition.