

**(2019) 11 PAT CK 0009**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 17814 Of 2019

Madan Kumar

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

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**Date of Decision :** 05-11-2019

**Acts Referred:**

**Citation :** (2020) 1 PLJR 206

**Hon'ble Judges :** Chakradhari Sharan Singh, J

**Bench :** Single Bench

**Advocate :** Binoy Kumar Singh, Sweta Raj, Kumar Bharat, Kumar Alok

**Final Decision :** Dismissed

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## **Judgement**

The petitioner has questioned an order dated 14.03.2016 passed by the Sub Divisional Officer, Dhamdaha, Purnea, whereby his claim for his selection against the post of Gram Kachhari Secretary was turned down. The said order was passed by the Sub Divisional Officer in Case No. 15 of 2007 in the light of an order of this Court dated 11.01.2010 passed in C.W.J.C. No. 16463 of 2009. Aggrieved by the said order dated 14.03.2016, the petitioner had preferred an appeal in the Court of the District Magistrate, Purnea, giving rise to Misc. Appeal No.125 of 2016, which too has been dismissed by an order dated 08.03.2018. The order passed by the District Magistrate, Purnea, dated 08.03.2018, is also under challenge.

As has been noted, the present dispute arises out of a selection process undertaken for appointment as Gram Kachhari Secretary in Gram Panchayat Rangpura South, Dhandaha in the district of Purnea. It is the petitioner's claim that pursuant to notice inviting application for the said post, the petitioner had applied. A provisional panel, based on respective merits of the candidates, who had applied, was prepared. Objections were invited by persons aggrieved against preparation of the provisional panel in terms of the notice inviting applications. The panel was prepared by the Block Development Officer, in which the

petitioner's name figured at Sl. No. 3 with 60.22% merits points to his credit. Respondent No.6 was placed at Sl. No. 1 with 64.22 marks in the matriculation examination. 24.09.2007 was the date fixed for the counselling when the respective candidates were required to be present before Gram Kachhari Committee. It is further case of the petitioner that when a meeting was held on 27.09.2007 of Gram Kachhari Committee, Rangpura South under the chairmanship of respondent No.5, the persons at Sl. No. 1 and Sl. No. 2 of the merit list were absent and accordingly the petitioner was selected for the said post and a decision to this effect was communicated to the Block Development Officer (respondent No.4), by respondent No.5. An appointment letter was issued in petitioner's favour on 30.09.2007, pursuant to which the petitioner submitted his joining on 01.10.2007.

The above noted development resulted into filing of a complaint petition by respondent No.6 bearing Complaint Case No. 15 of 2007 on 26.12.2007 before the Sub Divisional Officer, Dhamdaha, Purnea, questioning the selection of the petitioner as Gram Kachhari Secretary and claiming his right to be selected and appointed against the said post on the basis of his superior merit. By an order dated 10.03.2008, the Sub Divisional Officer allowed the complaint filed by respondent No.6 and directed the selection committee to proceed in accordance with the merit list. The petitioner, being aggrieved with the decision of the Sub Divisional Officer dated 10.03.2008, in Complaint Case No.15 of 2007 filed an appeal before the District Magistrate, Purnea, giving rise to appeal No. 29 of 2009, which was rejected by an order dated 01.07.2009.

This lead to filing of a writ application by the petitioner before this Court giving rise to C.W.J.C. No. 16463 of 2009, putting to challenge the said orders dated 10.03.2008 and 01.07.2009 passed by the Sub Divisional Officer, Dhamdaha, and the District Magistrate, Purnea, respectively. This Court noticed the crucial fact that the petitioner was not noticed by the Sub Divisional Officer before he entertained and allowed the complaint filed by respondent No.6. The Court also took into account the fact that while upsetting appointment of the petitioner and directing the Selection Committee to make appointment on the basis of the merit list, it failed to consider as to whether the person at merit position 2 of the panel had participated in counselling or not. The Court also noticed that the authorities also failed to consider the stipulation requiring filing of any complaint within a period of 30 days. This Court, considering the facts and circumstances of the case, disposed of C.W.J.C. No. 16463 of 2009 by an order dated 11.01.2010 (Annexure-11) in the following terms : -

"Learned counsel for the State unable to defend the impugned orders even for the purposes of interim order suggested that the orders may be set aside but the petitioner may not be reinstated and the S.D.O. may be directed to hear both the petitioner and the respondent no.6 afresh and decide the matter again by a reasoned and speaking order arriving at definite finding of facts. Counsel for the petitioner has no objection to the same.

The impugned orders dated 9.1.2008 and 1.7.2009 are set aside. This shall not result in automatic reinstatement of the petitioner. The respondent State authorities are restrained from making any appointment on the post in question except for the petitioner or respondent no.6 as the case may be, after fresh decision by the Sub Divisional Officer.

Let such fresh consideration be done after hearing the petitioner and the private respondent no.6 as also the Sarpanch and a reasoned and speaking order be passed within a maximum period of two months from the date of receipt and production of a copy of this order.

The application stands disposed."

It is in the light of the said decision of this Court that the orders, which are impugned, have been passed.

From the order dated 04.03.2016, it can be noticed that the complainant/respondent No. 6 was not in a position to establish that he had participated during counselling. It was the case of respondent No. 6 that the Sarpanch had intentionally concealed the document/attendance register over which respondent No. 6 had put his signature at the time of counselling. The Sub Divisional Officer also noticed that none of the parties were in a position to establish their respective cases of participation/non-participation of the aspirants during the counselling. In that background, he ordered for appointment of respondent No. 6 as Gram Kachhari Secretary. The District Magistrate, Purnea, has refused to interfere with the impugned order of the Sub Divisional Officer recording a finding that it was basically a dispute as to whether respondent No. 6 had participated in the counselling or not. He recorded his suspicion over the claim of the petitioner of non-participation of respondent No. 6 in the counselling despite being placed at Sl. No. 1 of the merit list. In that background, the District Magistrate refused to interfere with the order of the Sub Divisional Officer by impugned order dated 08.02.2018 passed in Misc. Appeal No. 125 of 2016.

Mr. Binay Kumar Singh, learned counsel appearing on behalf of the petitioner, has argued that it was incumbent upon the Sub Divisional Officer, Purnea, to have strictly followed the direction of this Court dated 11.01.2010 passed in C.W.J.C. No. 16463 of 2009, whereby he was required to record his definite finding of fact on the question as to whether respondent No. 6 had participated for counselling or not. He contends that non-participation of a candidate for the post in the counselling would defeat his right of consideration, as has already been held by this Court in the order dated 11.01.2010 and, therefore, in the absence of any definite finding that respondent No. 6 had participated in the process of counselling, the authorities ought not to have sustained the claim of respondent No.6. He has contended that delay in making a complaint by respondent No. 6 before the Sub Divisional Officer itself was sufficient ground for dismissal of claim of respondent No. 6 inasmuch as limitation of 30 days for making complaint against selection was prescribed whereas, in the present, the

complaint was made after 60 days.

So far as delay in making of the application by respondent No. 6 before the Sub Divisional Officer is concerned, the same can no more be a ground available to the petitioner in view of the order of this Court dated 11.01.2010, whereby the matter was remanded back to the Sub Divisional Officer after setting aside the earlier orders passed in favour of respondent No.6, for a decision afresh by a reasoned and speaking order. This Court specifically recorded that the petitioner did not have any objection to fresh adjudication of the dispute on the matter having been remanded by this Court to the authorities.

It is true that the authorities have not recorded any definite finding as to whether respondent No. 6 had participated in the counselling or not. The Sub Divisional Officer in his order has recorded that none of the parties could adduce any concrete evidence in support of their respective claims. The District Magistrate in his appellate order also reached the same conclusion and, therefore, refused to interfere with the order of the Sub Divisional Officer.

It is evident from the pleadings in the writ application as also from the orders, which are impugned, that there is no finding recorded by the authorities that respondent No. 6 did not participate in the process of selection. The dispute as to whether the respondent No.6 had participated in the process of counselling or not, is the disputed question of fact.

In such circumstances, if the respondents have decided to allow the person who was placed at Sl. No. 1 in the merit list, exercising equitable writ jurisdiction of this Court, I am not inclined to interfere with such decision.

This writ application is accordingly dismissed.

There shall be no order as to cost.