
(2009) 10 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 6762 of 2009

Mahabir Choudhary and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Bihar Gram Kachahary Secretary (Appointments, Service Conditions and Duties) Rules, 2007 — Rule 94(2)

Citation : (2009) 4 PLJR 1034

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh, Manish Kumar in 6762, M/s Awadhesh Kumar Mishra, Chandra Bhushan Upadhaya, B.S. Mishra in 7476, 7478, 8493, Mr. Om Prakash Upadhaya in 8683 and Mr. Satish Chandra Jha in 6893, for the Appellant; Umesh Kr. Mishra for Respondent No. 6, M/s Archana Sinha, Ram Subhash Singh and Prabhat Bharti for the State, for the Respondent

Judgement

Navin Sinha, J.—This batch of the writ applications raised a common issue for determination and is, therefore, being disposed by this common order. Heard the learned counsel for the petitioners and the State.

2. This Court shall take up the records of C.W.J.C. No. 6762 of 2009 for discussion in example of the issues involved.

3. Despite adjournment granted for the purpose no counter affidavit has been filed. On the contrary, orders for termination of the petitioners have been issued which is assailed by I.A. No. 3846 of 2009.

4. Having heard the counsel for the parties and considering the issues involved the Interlocutory Application is allowed and the challenge to the order of termination shall form part of the original pleadings of the writ application.

5. The petitioners were applicants under an advertisement for the post of Panchayat Secretary regulated by the Bihar Gram Kachahary Secretary

(Appointments, Service Conditions and Duties) Rules, 2007 (hereinafter call the "Gram Kachahary Rules") framed under Rule 94(2) of the Bihar Panchayat Raj Act, 2006. The minimum qualification prescribed in the advertisement for appointment was "Matriculate".

6. The petitioners were successful and came to be appointed as Gram Kachahary Secretary in November, 2007.

7. There are no allegations of any nature with regard to their eligibility/ deficiencies/irregularities in the selection process impugning their selection on any other legal grounds.

8. A person who possessed the qualification of "Madhyama" appears to have come to this Court in C.W.J.C. No. 13905 of 2007 claiming that it was equivalent to "Matriculation" under a Government decision dated 11.1.1999, aggrieved by his non-consideration for lack of eligibility which was allowed on 31.1.2008,

9. In pursuance thereof, the State Government in the Department of Panchayat Raj under the pen of the Governor amended the Gram Kachahary Rules on 5.1.2009 with effect from 31.1.2008 accepting Madhyama as an equivalent qualification to Matriculation for appointment as Gram Kachahary Secretary.

10. Pursuant to the Amendment of the Rules on 5.1.2009 with effect from 31.1.2008 consequent to certain orders of this Court, the Secretary, Department of Panchayat Raj issued orders on 6.1.2009 by giving directions for cancellation of all appointments even prior to 31.1.2008 and directing fresh appointment after redrawing the merit list with consideration of those holding Madhyama qualification also. In pursuance thereof has followed the termination orders of the petitioners dated 20.6.2009.

11. The respondents have chosen not to file a counter affidavit. This Court is not persuaded to hold up the proceeding for that reason in view of the nature of the order to be passed hereinafter.

12. The issue in C.W.J.C. No. 13905 of 2007 did not concern appointments already made and the Court made no pronouncements in respect of the same.

13. Prima facie this Court finds substance in the submission on behalf of the petitioners that the termination of their services by an executive fiat contrary to statutory Rules is not sustainable. If the statutory Rules make the effective date fixed 31.1.2008, it cannot be shifted by any executive orders. This Court therefore, directs that the impugned orders of termination shall be kept in abeyance till determination in the manner hereinafter directed.

14. Since the writ applications are being disposed without a counter affidavit, in fairness to the respondents, this Court directs the Principal Secretary, Department of Panchayat Raj to re-decide the issue of termination of the petitioners in light of the aforesaid discussion that executive orders cannot override Statutory Rules and pass a reasoned and speaking order in accordance

with law within a maximum period of three weeks from the date of receipt/production of a copy of this order.

15. The order of termination shall abide by such final orders to be passed by the Principal Secretary, Department of Panchayat Raj. The writ application stands disposed.