
(2008) 03 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 2636 of 2006

Munilal Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Citation : (2008) 3 PLJR 265

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Jitendra Kr. Roy and Ashish Deo, for the Appellant; S.K. Ghosh and A.K. Changdar, for the Respondent

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the State. The controversy presently relates to the claim for seniority of the petitioner on the post of Dalpati and consequent seniority on the post of Panchayat Sewak.

2. The petitioner came to this Court earlier in CWJC No. 12559/92 which was disposed off with directions to consider the representation of the petitioner for fixation of his seniority within a time limit. The failure of the respondents to dispose his representation compelled him to come to this Court in CWJC No. 11378/98. A counter affidavit was then filed that he had been promoted to the post of Panchayat Sewak. The Court noticed the silence of the respondents on the representation of the petitioner for fixation of his seniority. Directions were then given for filing of a fresh representation for fixation of his seniority both, on the post of Dalpati, as well as, Panchayat Sewak before the District Magistrate, Patna.

3. In pursuance of the same the impugned order dated 21.3.2005 has been passed.

4. Learned counsel for the petitioner relies upon an order of this Court in CWJC No. 1211/2000 disposed on 17.3.2005". In this order a Bench of this Court has

noticed that the appointing authority of Dalpati was the Executive Committee of the Gram Panchayat. The District Panchayat Officer grants approval to the appointment made by the Executive Committee of the Gram Panchayat. It was the duty of the Executive Committee of the Gram Panchayat to approach the District Panchayat Officer and obtain approval for such appointment. That approval once granted related back to the date of the initial appointment by the Executive Committee. The Court noticed that based on fortuitous circumstances that papers of one appointment letter made later having been sent for confirmation earlier a Dalpati appointed earlier lost his seniority because of official reasons in forwarding his papers for confirmation after his juniors. It has also been noticed in the order that this Court had already declared earlier affirmed by a Division Bench that seniority of Dalpati shall be fixed from the date of his appointment and not from the date of approval of his appointment. That the judgment had attained finality and had not been questioned before a superior Court.

5. The petitioner was appointed by the Executive Committee of the Gram Panchayat on 20.2.1981. The approval for his services was granted by the District Panchayat Officer on 26.8.1985. On that basis his seniority has to be reckoned from 20.2.1981. This position in law has been clearly enunciated by this Court in CWJC No. 1211/2000 Reported in Jawahar Rai Vs. The State of Bihar and Others, noticed above.

6. A counter affidavit has been filed on behalf of the respondents. The impugned order dated 21.3.2005 purports to deny him seniority from the date of his initial appointment as Dalpati and proceeds to consider his seniority from the date of his appointment as Panchayat Sewak on 23.12.1997 in pursuance of the order of the Court in CWJC No. 12559/92 preferred by him, as noticed above. The counter affidavit is cryptic and perfunctory and does not at all deal with annexure-6 to even suggest how the petitioner was differently situated and was not entitled to the benefit of the aforesaid judgment.

7. The impugned order dated 21.3.2005 is accordingly set aside. The respondent No. 3 is directed to take a fresh decision with regard to the seniority of the petitioner reckoning his date of initial appointment on the post of Dalpati in the manner as noticed above in law and fix his consequent seniority as a Panchayat Sewak accordingly. The writ application is allowed to that extent.

8. This Court notices a disturbing feature which perhaps is one of the major reasons for increasing the burden of the Courts with its dockets bursting at the seams.

9. In the present case the question in issue has already been decided by this Court. The order of this Court was appended as an annexure to the writ application. The respondents had the benefit of considering the same before filing their counter affidavit and contesting the matter. Undoubtedly, the State has the right to contest a matter and to protect Government revenues in

whatever manner it may be affected. But, the State does not stand as an ordinary litigant. It also has a duty of fairness in assisting the Court to adjudicate the matter properly by placing correct facts before it. In the facts and circumstances of the present case, more particularly when conscious of their own limitations, the respondents have chosen to maintain complete silence in their counter affidavit with regard to annexure-6, a case which covers the claim of the petitioner, this Court considers it appropriate to direct the Secretary, Panchayat Raj, Government of Bihar to hold an enquiry of the circumstances under which the State insisted on justifying the present litigation incurring expenses for the State when the matter already stood decided by this Court and more importantly the order of this Court was already appended as annexure to the writ application.

10. Quite obviously, the deponent of the counter affidavit at the bottom of the list of respondents cannot be faulted with alone. Based on such enquiry let responsibility be fixed of the manner in which the State imposed an unnecessary litigation on this Court and after fixing responsibility the entire costs of the litigation incurred by the State be recovered from the salary of the erring official quite apart from the issue of departmental proceedings to its satisfaction to prevent recurrence of such situation. Let such appropriate decision be taken within a maximum period of two months from the date of receipt/production of a copy of this order alongwith all consequential monetary benefits.