

(2011) 08 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 266 of 2010

Nilam Kumari Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Bihar Gram Kutcheri (Appointment, Service Conditions and Duties) Rules, 2005 — Rule 5, 8(2)
Constitution of India, 1950 — Article 226

Citation : (2012) 1 PLJR 169

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner, the State and the Respondent No. 9.

2. The petitioner is aggrieved by the order dated 31.10.2009 by which she has been removed from the post of Secretary, Gram Kutcheri, whereafter the private respondent came to be appointed.

3. Learned Counsel for the petitioner submits that under Rule 5 of the Bihar Gram Kutcheri (Appointment, Service Conditions and Duties) Rules, 2005 only a "matriculate" was eligible to apply. The private respondent was a "madhyama". Therefore her application could not have been entertained much less could she have been given any appointment in pursuance of such a wrongly entertained application. The petitioner was the only eligible candidate based on her possessing qualification of matriculate and therefore her appointment on 21.11.2007 was in consonance with law. The statutory rules have been amended with effect from 31.1.2008 prospectively. A person holding qualification of "Madhyama" became eligible to apply after that date and not before.

4. Counsel for the private respondent submits that this Court had earlier relying

on a Government notification of 1999 held that Madhyama was equivalent to Matriculation and given directions for consideration. The application of the petitioner came to be considered in that light and direction for her appointment given.

5. The Court finds that in the order relied upon by the private respondent the question of applicability of Rule 5 did not come up for consideration. No Court of law much less any authority can give any direction contrary to statutory provisions for making appointment in teeth of the eligibility criteria prescribed in the statutory rules. If before 31.1.2008 only matriculates were eligible to apply, any application entertained from an ineligible person not holding qualification of matriculation cannot be made a foundation for a subsequent appointment after the amendment of the Rules with effect from 31.1.2008.

6. By reason of the aforesaid discussion the Court holds that the impugned order dated 31.10.2009 unseating the petitioner is not sustainable and is accordingly set aside.

7. That brings to the fore the question of nature of the relief to be granted. In exercise of its powers under Article 226 of the Constitution the Court may set aside a bad order and yet refuse to grant relief for reason of the changed circumstances specially when the changed circumstances arise out statutory provisions. Under Rule 8(2) the term of the Gram Kutchery with regard to which the contest for the post of Secretary arises is co-terminus with the Panchayat. The Court is informed that the fresh elections have already been held and therefore naturally fresh appointment has to be made of the Secretary after constitution of fresh, Gram Kutchery, in accordance with law, whether it may be the petitioner or the private respondent who may be selected thereafter.

8. The application is allowed to the extent indicated above.