

(2018) 01 PAT CK 0001

In the Patna High Court

Case No : 351 of 2014?IN?Civil Writ Jurisdiction Case No 2590 of 2006

Nirbhay Kumar Singh

APPELLANT

Vs

The State Of Bihar & Ors

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

Citation : (2018) 01 PAT CK 0001

Hon'ble Judges : Anil Kumar Upadhyay

Bench : Single Bench

Advocate : Jitendra Kumar Roy, Ratna Kumari, Ajay Mukherjee

Final Decision : Allowed

Judgement

1. Seeking exception to an order dated 14.08.2013 passed by the learned Writ Court in CWJC No. 2590 of 2006 this appeal under Clause 10 of the Letters Patent has been filed.

2. Petitioner filed the writ petition in question in the year 2006 and it was his grievance that in the year 1999 certain vacancies in the category of Panchayat Sewak were filled up and persons working as Dalpati like the petitioner were considered and they were granted promotion, inter alia, contending that respondent no. 7 was also appointed as Dalpati by promotion. He was junior to the petitioner and, therefore, ignoring the claim of the petitioner and granting appointment by promotion of respondent no. 7 on the post of Panchayat Sewak was unsustainable. The writ petition was dismissed on two counts, one on the ground of delay and laches. The learned Writ Court found that appointment and promotion were made in the year 1999 and the petitioner was filed in the year 2006 by which time and thereafter up to 2013 during pendency of the matter much water has flown and the Division Bench of this Court in CWJC No. 6977 of 2000 and various other cases has held that Dalpatis cannot be appointed as Panchayat Sewaks and only 531 persons have been from the category of Dalpati appointed as Panchayat Sewak and now in view of the subsequent judgment of

the Division Bench no indulgence can be made and the writ petition is dismissed.

3. However, having heard learned counsel for the parties and on going through the record we find that as far as delay in approaching the Court is concerned, the petitioner in the year 1999 itself approached this Court by filing the writ petition being CWJC No. 7279 of 1999, wherein he sought appointment on the post of Panchayat Sewak and it was his contention that ignoring roster point and his seniority, persons junior to him have been appointed. When this matter came up for hearing on 16.12.2004 it was seen that the petitioner has not disclosed the illegal appointments made and the illegally appointed persons have also not been impleaded. The petitioner therefore filed an application seeking withdraw the writ petition and sought liberty to challenge the illegal appointments.

4. It is specifically pleaded in the original writ petition CWJC NO. 2590 of 2006 which is now filed that after granting promotion illegally to respondent no. 7 the second writ petition was filed in 2006. This aspect of the matter even though specifically pleaded and indicated in the writ petition from paragraph -14 onwards and has not been adverted to or considered by the learned Writ Court which is an error apparent on the face of record that has occurred in dismissing the writ petition.

5. That apart, in the case of Subhsah Chandra Shukla & Ors. decided by the Division Bench reliance upon which has been placed by the learned Writ Court .i.e. CWJC No. 6243 of 2000 and CWJC No. 6977 of 2000, the question was with regard to the right of Dalpati seeking appointment on promotion on the post of Gram Sewak and the admission made by the learned Advocate General to say that a Dalpati cannot be appointed as Panchayat Sewak and the statement is that now after appointment of 531 Dalpatis as Panchayat Sewaks no further appointment will be made the issue was decided.

6. However, in this case, the inter se dispute in the matter of appointment of respondent no. 7 ignoring the claim of the petitioner still subsists and it seems that respondent no. 7 was one of the 531 Panchayat Sewaks who have been appointed by promotion and it is the grievance of the petitioner that in doing so his claim has been ignored. If that be the position, the question as to whether the principle decided by the Division Bench in CWJC No. 6977 of 2000 was properly applied in the present case also becomes relevant which has not been considered by the learned Writ Court.

7. Taking note of all these circumstances we see that as the issue raised by the petitioner has not been properly considered based on the pleading in the writ petition of the appellant and the assertions made it is a fit case where the appeal should be allowed and the matter reconsidered.

8. Accordingly, we allow this appeal, quashed the order dated 14.08.2013 passed by the learned Writ Court restoring the writ petition to its original file and direct for its hearing afresh in accordance with law.