

(2011) 03 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12863 of 1996

Nirmal Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Bihar Panchayat Village Volunteer Force Rules, 1949 — Rule 4(1), 5

Citation : (2011) 59 BLJR 1108

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Jitendra Kumar Roy, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the Petitioner and counsel appearing for the State.

2. Prayer of the Petitioner in this writ application is for fixing his seniority on the post of Panchayat Sewak with effect from the date allowed to Respondent No. 5, who was admittedly junior to him and also to allow him all consequential benefits from the date of his promotion to be fixed on the basis of Government order contained in Memo No. 6537 dated 26.11.1987.

3. Petitioner's case is that initially he was appointed on the post of Dalpati in Visharah Gram Panchayat by the Executive Committee in the district of Rohtas as per the provision under Rule 4(1) of Bihar Panchayat Village Volunteer Force Rules, 1949. His appointment was approved by the District Panchayat Officer, Rohtas with effect from 25.11.1981 and the same was communicated to him vide Memo No. 664 dated 4.12.1981. Petitioner completed his mandatory training provided under Rule 5 of 1949 Rules and declared successful in the examination for which a certificate was granted to him on 20.5.1983.

4. The post of Panchayat Sewaks was filled by the Dalpatis as per the Government circular and notification issued time to time. In the year, 1987 the

government took decision for giving training to untrained Dalpatis for appointment on the post of Panchayat Sewak on the basis of seniority. It was also decided to prepare a district wise gradation list as per the 1987 guidelines. The District Magistrate and District Panchayat Officers were directed to prepare gradation list of Dalpatis. The criteria fixed by the State Govt. for fixing seniority as laid down in Memo No. 6537 dated 26.11.1987, was the date of approval of appointment by the District Panchayat Officer on the post of Dalpati.

5. Petitioner's grievance is that ignoring the guideline of the State Govt. contained in Memo No. 6537 dated 26.11.1987 the gradation list was prepared in which the seniority was decided on the basis of date of training instead of date of approval on the post of Dalpati. The senior Dalpatis were promoted to the post of Panchayat Sewak. Due to this reason, Petitioner, whose appointment was approved vide Memo No. 457 dated 1.8.1989 was not considered for promotion to the post of Panchayat Sewak and juniors to the Petitioner, especially Respondent No. 5 was given promotion with effect from 1.8.1989.

6. The issue involved in this writ application has already been decided by this Court in C.W.J.C. No. 9220 of 1992. In this writ application a direction was issued to the Respondents to prepare a gradation list giving effect to 1987 guidelines, fix seniority as per 1987 guideline and to give notional promotion to the post of Panchayat Sewak, on the basis of this seniority with effect from the date their appointments on the post of Dalpati were approved, but so far consequential benefits are concerned, that was to be paid with effect from the date they approached this Court, by filing the writ application.

7. Counter affidavit on behalf of Respondent No. 2 has been filed in which it has been stated that the service of Respondent No. 5 on the post of Dalpati was approved with effect from 3.12.1981 and the service of Petitioner was approved with effect from 5.12.1981, as such Respondent No. 5 was senior to the Petitioner.

8. Counsel for the Petitioner in reply to it has stated that approval of the Petitioner's appointment on the post of Dalpati was with effect from 25.11.1981 (Annexure-1) earlier to Respondent No. 5. Counsel for the Petitioner has stated that on account of error in reckoning the date of approval of Respondent No. 5 on the post of Dalpati, vis-a-vis Petitioner, Respondent No. 5 has been shown above the Petitioner in the gradation list, though Petitioner is senior to Respondent No. 5.

9. Considering the fact that the issue has already been decided and for giving the seniority the date of approval of appointment, on the post of Dalpati is relevant. Petitioner's appointment being approved on 25.11.1981 earlier to the approval of Respondent No. 5, his date of appointment being 5.1.1981. In this way the Petitioner is entitled for being placed in the gradation list above the Respondent No. 5 and also for his notional promotion to the post of Panchayat Sewak, prior to Respondent No. 5. Respondent No. 5 was given promotion with effect from

1.9.1989. The Petitioner is also entitled for his notional promotion at least with effect from 1.9.1989. So far consequential benefits are concerned, Petitioner was given promotion to the post of Panchayat Sewak in the year, 1995 and started getting all consequential benefits attached to this post, with effect from the date of his appointment i.e. 28.8.1995. This writ application has been filed on 17.12.1996 i.e. subsequent to appointment on the post of Panchayat Sewak, as such the date of filing of writ application has got no relevance in the case of Petitioner. The Respondents will allow notional promotion to the Petitioner to the post of Panchayat Sewak with effect from 1.9.1989 and his position in the gradation list will also be corrected, above to Respondent No. 5.

10. This application is allowed.