
(2013) 01 JH CK 0133
In the Jharkhand High Court
Case No : Writ Petition (S) No. 94 of 2006

Parmeshwar Pandit and Others	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Constitution of India, 1950 — Article 16(4)(B)

Citation : (2013) 2 AJR 554 : (2013) 4 JLJR 321

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V. Shivnath and Mr. Niraj Kishore, for the Appellant;

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The writ petitioners claim promotion from the post of Dalpatis to Panchayat Sewaks after having possessed the requisite qualification and training as on 10th of May 2001.

2. These petitioners claim that 25 vacant posts of Panchayat Sewaks in the district of Sahebganj, on the failure of sufficient number of scheduled castes/scheduled tribes eligible candidates for a period of three years, were required to be filled up after dereservation of such vacancies which the respondents have not done while carrying out the exercise for promotion to the post of Panchayat Sewak from the post of Dalpati. It is the contention of these petitioners that these petitioners who were working as Dalpatis in different Panchayats in the district of Sahebganj from various periods ranging from 1990 onwards, were entitled to be considered for promotion to the post of Panchayat Sewaks and were likely to be promoted if these posts were dereserved by the respondent State.

3. Respondents have appeared and filed their counter affidavit. It is their contention that there were 126 posts of Panchayat Secretary (Panchayat Sewak) in the district of Sahebganj which were sanctioned and 92 Panchayat Secretaries

were working in the year 2003. Out of 34 vacant posts of Panchayat Secretary, 50% of the total vacancies i.e. 17 posts were to be filled up through the trained Dalpatis by the District Level Appointment Committee and 50% were to be filled up through direct recruitment by the Commission. Therefore, after coming into force of the Jharkhand Panchayati Raj Act, 2001 and Jharkhand Panchayat Secretary (Appointment, Service Condition and Duty) Rules, 2002 with effect from 10th of May 2001, respondents sought roaster clearance from the competent authority i.e. Divisional Commissioner, Santhal Paragana in the existing vacancies for taking steps for filling up the said posts. Out of 17 posts i.e. 50% of 34 posts which were vacant as on the date of coming into force of the Rules, the roaster clearance for 17 vacancies were made in the following manner: 04 posts for S.C., 08 posts for S.T. and 05 posts for General Category. Thereafter, in the selection exercise conducted on 20th December 2003, 05 Dalpatis were selected against unreserved vacant post of Panchayat Secretary from General Category and 01 Dalpati was selected from scheduled tribe category from the seniority list of 2003 in which petitioners name also occur. The Gradation List of Dalpati is annexed as annexure-3. Respondents therefore submits that after the said exercise, these petitioners could not be considered because of the absence of unreserved vacancy of Panchayat Secretary in the district of Sahabganj. It is further contended that the selection process of Panchayat Sewak has not been challenged by the petitioners and Rules of 2002 have also been finally published after 30 days notice to persons to make objection to the same. In that view of the matter, it is the contention of the respondents that out of 34 vacancies existing, 17 have been filled up through promotion in accordance with the Rules of 2002 in which 05 persons of general category have been promoted and the petitioners name could not figure in that.

4. Counsel for the petitioners however vehemently argues that the respondents ought to have taken a considered decision in respect of dereservation of 25 vacancies existing as on the date of coming into force of the Act of 2001 and Rules of 2002 which remained unfilled by the scheduled castes and scheduled tribes candidates. Respondents have not taken any decision in respect of the same and proceeded to carry out the promotional exercise which is vitiated in law and if would have been carried out, it could have entitled these petitioners to promotion to the post of Panchayat Sewak.

5. I have heard learned counsel for the parties and gone through the relevant records.

6. These petitioners claim themselves to be trained Dalpaties have been working in Sahabganj district from 1990 and thereafter in different years as per their individual cases. These petitioners have tried to make out a case that 25 posts of Panchayat Sewak had remained vacant in respect of scheduled castes and scheduled tribes as on the date when the Jharkhand Panchayati Raj Act, 2001 and Jharkhand (Panchayat Secretary) (Appointment, Service Condition and Duty) Rules, 2002 had come into force. As per the said rules, 50% of the vacant posts

were to be filled up by the trained Dalpaties, while 50% were to be filled up by direct recruitment through Commission. Respondent's case is that out of 34 vacancies existing on the date against 126 posts of Panchayat Sewaks in Sahebganj district, 50% of the vacant posts were earmarked to be filled up by the trained Dalpati. Thereafter, roaster clearance was obtained and as per the roaster clearance, 05 posts which were meant for general category, have been filled up through trained Dalpaties from the general category. These petitioners, according to the Gradation List prepared in the said district of Sahebganj, though their names occur in the said list, have not been found in the list of selected candidates by the Committee constituted to conduct the selection process in its meeting dated 20th December 2006. Petitioners have not challenged the said selection process.

7. The claim of the petitioners for dereservation of the said vacant posts, as claimed by them, does not seem to have been made out in view of the stand of the respondents as also the provisions of Article 16(4)(B) of the Constitution of India. The respondents in their wisdom, have chosen to fill up the vacant posts as remaining on the cut off date after complying with the rules for filling up vacancies from respective categories of scheduled castes, scheduled tribes and general category upon roaster clearance in which 05 posts were found to be left for general category and have been filled up from the same category. Petitioners obviously though being in the gradation list, have not been figured in the said list and the selection exercise however is not subjected to challenge in the present writ application. In that view of the matter, the claim of the petitioners for dereservation of the unfilled 25 seats, appears to be misconceived and petitioners claim for promotion from the post of Dalpaties to Panchayat Sewaks in the facts situation which have been recorded herein above, is not made out. In these circumstances, petitioners have failed to make out any case. Accordingly, writ petition is dismissed.