

(2011) 12 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 7159 of 1998

Proshan Kumar Roy and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 27

Citation : (2012) 4 PLJR 166

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Jitendra Kumar Roy, Sumit Kumar, for the Appellant; Manoj Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Challenge in the present writ application is to the order contained in memo no. 58 dated 28.3.98 issued by the District Panchayat Raj Officer, Katihar, by which the services of the petitioners have been terminated from the posts of Panchayat Sevak as well as Dalpati in view of letter issued under memo no. 164 dated 9.2.98 by the Commissioner-cum-Secretary, Rural Development Department, Government of Bihar, Patna, which is also impugned. Perusal of the original order of the State Government dated 9.2.98 reveals that relying upon certain decisions of this Court passed in CWJC No. 5600 of 1996 (Ram Chandra Mandal vs. State of Bihar & Ors.), CWJC No. 325 of 1996 (Raj Kishore Shah vs. State of Bihar & Ors.), CWJC No. 432 of 1996 (Om Prakash Shah vs. State of Bihar & Ors.), as well as CWJC No. 10492 of 1994 (Arun Kumar Singh vs. State of Bihar & Ors.) as well as the fact that upon coming into effect of the Panchayat Raj Act, 1993, with effect from 23.8.93, the Village Volunteer Force Rules, 1949 automatically came to an end and thus any appointment made on the post of Dalpati after 23.8.93 as per the provisions of the old Rules of 1949 were illegal and were directed to be set aside. Reference to the orders of this Court were to the effect that this stand had been approved by the Court. The

decision also made clear that letter no. 3188 dated 27.6.94 issued by the Directorate would be treated to be ineffective. Learned counsel for the petitioners submits that the petitioners were appointed as Dalpati during the period 27.6.94 to 24.2.97. Thereafter they became Panchayat Sevak on 6.8.97 and 31.12.97. Learned counsel has drawn the attention of this Court to Annexure-3 which is a wireless message dated 12.8.93 from the Director, Panchayati Raj, Bihar, addressed to all District Panchayat Raj Officers, in which it is clearly stipulated that no appointment to the post of Panchayat Sevak and Dalpati should be made. It appears that the Director, Panchayati Raj, Bihar, issued letter no. 3188 dated 27.6.94 in which it was stated that the earlier ban imposed on recruitment of Dalpati and Panchayat Sevak stood vacated from the date of issue of the letter and it was also stipulated in very clear terms that the appointments would be as per the procedure being followed in the past. The letter also vacated/withdrew the ban which had earlier been imposed as per the wireless message dated 12.8.93. Learned counsel submits that in view of the petitioners being appointed as Dalpati during the period when no ban was imposed on such recruitment and in fact a positive direction was given to make appointment as per the previous prevailing Rules such appointment could not be faulted either in law or on facts. Learned counsel also submits that the order dated 9.2.98 cannot be sustained in so far as it relates to giving effect to the new Rules retrospectively, i.e. with effect from 23.8.93 though the same was issued only on 9.2.98. He submits that since during the intervening period rights had accrued, the same could not have been taken away just by stipulating that the new Rules would have retrospective effect and also giving the colour of illegality to any appointment which had taken place during the interregnum. Learned counsel has brought on record the decisions of this Court rendered in the cases referred to above. The decision in the case of Ram Chandra Mandal vs. State of Bihar (supra) dated 17.7.96, though by a Division Bench, is not applicable to the issue which is involved in the present writ application. The Court had only taken into consideration the fact that the State Government had communicated to all District Panchayat Raj Officers asking them not to make any appointment to the post of Panchayat Sevak and Dalpati in view of the Bihar Panchayat Raj Act, 1993. In view of the discussion, the writ petition was not pressed and accordingly disposed off. Thus, in the opinion of this Court, the decision cannot be construed to be a binding precedent or a decision with regard to the issue involved in the present writ application. As far as the decision rendered in the case of Arun Kumar, Raj Kishore and Om Prakash Shah (supra), the same have been rendered by a learned Single Judge of this Court. After going through the same, this Court is of the opinion that the decisions rendered were without noticing the fact that though the Act of 1993 came into force on 23.8.93, and no fresh Rules made u/s 27 of the Act but the same did not take into consideration letter no. 3188 dated 27.6.94 by which there is specific permission to go ahead with the recruitment as per the Rules which were already in existence. In that view of the matter, the said decisions also cannot be considered to be a binding precedent with regard to the issue involved in the present case.

2. Learned counsel for the petitioners has relied on the decision of the Hon''ble Apex Court in the case of B.N. Nagarajan and Others Vs. State of Mysore and Others, , with regard to the proposition that even in the absence of Rules the State is empowered to go ahead with recruitment, the relevant being at paragraphs 5, 6 and 7.

3. Learned counsel for the State, on the other hand, refers to the pleadings in the counter affidavit held by him on behalf of respondent no. 4 and submits that the orders impugned are justified and valid in the eyes of law for the reason that a new Act came into effect from 23.8.93 and the Rules were framed sometime in 1998 and during the intervening period in view of the earlier Act being repealed, the Rules made under the earlier Act of 1947 became ineffective and should not have been resorted to by the authorities for making any appointment. He further submits that this Court having upheld the contention that after 23.8.93, in the absence of fresh Rules, no appointment could be made the order impugned could not be assailed or struck down.

4. Considering the facts and circumstances of this case, this Court is inclined to accept the submissions made by learned counsel for the petitioners. From the pleadings and the facts of the case it is apparent that though the Panchayat Raj Act, 1993 came into effect from 23.8.93, but it is equally an admitted position that the State itself on 27.6.94 permitted recruitment on the post of Dalpati as per the previous existing Rules. The said ban at best can be construed from 9.2.98 when letter no. 164 was issued by the State. In the present case, the petitioners were appointed as Dalpati during the period 27.6.94 to 24.2.97, i.e., after issuance of the letter granting such permission and before the letter dated 9.2.98, and thus the appointment of the petitioners could not have been cancelled. As far as retrospectivity is concerned, it is not in dispute that the law does not envisage a complete bar on giving retrospective effect to any Rule or Statute but it has to be balanced with respect to fresh rights having accrued during the interregnum. The Statute or the Rule has to address the issue and without addressing the same, retrospectivity, which in effect leads to having adverse consequences on the rights of persons who have benefited as per the Statute or the law prevalent during the interregnum, cannot be faulted or made to suffer in view of the fresh law being enacted or brought into force at a later stage, which also incidentally is sought to be given effect to from a date prior to the rights having accrued, i.e., retrospectively. Further, the stand of the State that in the absence of any Rule, recruitment could not be made also does not hold much water in view of the decision of the Hon''ble Apex Court in the case of B.N. Nagarajan vs. State of. Mysore (supra).

5. In view of the discussions made hereinabove, and considering the facts and circumstances of the case, this Court holds that the letter of the State dated 9.2.98 contained in memo no. 164 in so far as it gives retrospective effect to the new Rules framed under the Panchayat Raj Act, 1993, cannot be sustained and is hereby set aside. In effect, the consequential order dated 28.4.98 also stands set

aside. The petitioners shall be entitled to all consequential benefits on account of their being confirmed on the post of Dalpati from the retrospective date and having subsequently been confirmed and validly appointed to the post of Panchayat Sevak. The writ petition stands allowed to the extent indicated above.