

(2004) 03 PAT CK 0111
In the Patna High Court
Case No : L.P.A. No. 1252 of 1997

Ram Baran Prasad

APPELLANT

Vs

The State of Bihar Ors.

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0111

Final Decision : Dismissed

Judgement

Shashank Kumar Singh and V.N. Sinha, JJ.—The present appeal has been preferred against the order dated 24.6.97 passed in CWJC No. 645/96 whereby the learned court taking into consideration the fact that the Rules framed under Bihar Panchayat Raj Act, 1947 did not survive after the repeal of the Act has quashed the appointment of Respondent No. 8 Appellant on the post of Dalpati.

2. The Appellant has been appointed as Dalpati by the Executive Committee of Jagarnothpur Grampanchayat (Gaya) on 13.11.95 after the old Act was repealed. The provision of Section 27 of the Bihar & Orissa General Clauses Act, 1917 is quoted hereinbelow.

Where any enactment is repealed and re-enacted by a Bihar and Orissa Act (or Bihar Act) with or without modification then unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, by-laws or form made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form made or issued under the provisions so re-enacted.

3. The learned writ court after taking into consideration the aforesaid provisions came to the conclusion that rules validly made became part of the Repealing Act and survived the repeal of the Act provided it is not inconsistent with the provisions of re-enacted enactment. However, as has been discussed in the

aforesaid order after repeal of 1947 Act the provision relating to organization of Village Volunteer Force was not, retained but subsequently the same was inserted by Section 32A of the Act by which a provision was made to organize a Village Volunteer Force under a Dalpati appointed in the prescribed manner. u/s 26 of the old Act such organization was to be made by the Executive Committee, whereas under new provision such organization and appointment of Dalpati is required to be made as per a procedure, which is yet to be prescribed. Taking this aspect of the matter and judgment of the Apex Court in the case of Chief Inspector The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., the court came to the conclusion that as the appointing authority was not competent as such, the appointment could not be sustained. We are also of the considered opinion as has been held by a Division Bench of this Court in case of Dinesh Prasad Singh Vs. The State of Bihar and Others, that the aforesaid appointment cannot be sustained in the eye of law. No infirmity has been shown in the order impugned.

4. In the result, this appeal fails and it is, accordingly, dismissed.