

(2003) 03 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 533 of 2002

Ramyad Ram and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Jharkhand Village Volunteer Force Rules, 2001 — Rule 29

Citation : (2003) 4 JCR 114

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Dilip Jerath, O.P. Mishra and Nilendu Kumar, for the Appellant; Ritu Kumar, G.P.-IV, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Heard learned counsel for the appellant and the Government Counsel appearing on behalf of the respondents.

2. The appellants were the petitioners in C.W.J.C. No. 6567 of 1998 (P). They were appointed as Dalpatis on various dates in the years 1994 and 1995 as can be seen from page 3 of Annexure 3. The appointments were purported to be made under the Bihar Panchayat Village Volunteer Force Rules, 1949. On 23.8.1993, the Bihar Panchayat Raj Act, 1947 was enacted and the Bihar Panchayat Raj Act, 1949 and Bihar Panchayat Miscellaneous Rules, 1961 were both repealed. In the year 1993, a ban was imposed on appointment of Dalpati under the 1949 Rules. The ban was lifted on 27.6.1994. It was after the ban was lifted, that the appellants were appointed as Dalpatis. Subsequently, the appellants were chosen for appointment as Panchayat Sewak based on their initial appointment as Dalpatis. They were required to undergo a training which they successfully completed and they were posted as Panchayat Sewaks in various Panchayats. Meanwhile, the validity of appointments of Panchayat Sewaks was questioned before the Patna High Court in C.W.J.C. Nos. 10492 of 1994, 325 of 96, 432 of 96 and 5600 of 1996. It was decided by the High Court

that all appointments made under the 1949 Rules, subsequent to 23.8.1993, were invalid. Thus the appointments of the appellants as Dalpatis subsequent to 23.8.1993, became invalid and non-est. In view of this, an order of termination dated 20.4.1998 (Annexure 9) was issued to the appellants. Thus the services of the appellants were terminated. Thereupon, the appellants approached this Court by filing the writ petition. C.W.J.C. No. 6567 of 1998, challenging the order of termination. The contention of the appellants, inter alia, was that they were not parties to the writ petitions before the Patna High Court and, as such, they were not bound by the decision given in the said writ petitions. Since they had subsequently been chosen for appointment as Panchayat Sewaks, their services could not be terminated on the ground that their appointments were hit by that decision. It was further contended that Jharkhand Village Volunteer Force Rules, 2001 was brought into force with effect from 1.6.2002 and Rule 29 thereof saved the appointment of persons like the appellants. Their contentions were opposed by the State by pointing out that the Patna High Court had declared the law and the same was binding on the Government as well as on all persons who were appointed, even though they were not co-nominee parties to the writ proceedings before the Patna High Court. Their appointments as Dalpatis were made under a non-existent Rule and since the appointments of Dalpatis were declared invalid by the Patna High Court, the fact that the appellants were subsequently appointed as Panchayat Sewaks from Dalpatis, cannot confer a right on them to continue in the post of Panchayat Sewaks. The further submission was that the Rules of 2001 actually went against the appellants since it came into force with effect from 1.6.2002 and the services of the appellants were terminated with effect from 20.4.1998 and there is no rule which contemplates the grant of any benefit to persons whose services have been terminated prior to that date.

3. The learned Single Judge found that since the appellants were appointed to the post of Dalpatis under the Bihar Panchayat Raj Village Volunteers Force Rules, 1949 which stood repealed when the appellants were said to have been appointed and the new Act of 1993 had come into force by then, the appellants could not claim any right to continue in service. The learned Single Judge also held that even assuming that the appointment was covered by the subsequent Rules of 2001, no relief could be granted to the appellants since their services already stood terminated, when that rule came into force. Hence, the learned Single Judge was not inclined to interfere with the order of termination and, accordingly, the writ petition was dismissed.

4. It is seen that the appellants were appointed under a Rule that was not in existence since it stood repealed by the 1993 Act. The Patna High Court had declared that any appointment made subsequent to 23.8.1993 under the 1949 Rules was illegal. The law thus declared by the Patna High Court was obviously binding on the State as well as on all persons who had obtained appointments under the 1949 Rules subsequent to 23.8.1993. Although the appellants were not co-nominee parties to the writ petitions before the Patna High Court, they

cannot be heard to contend that the said declaration of law was not binding on them or that their appointments were not illegal. It is seen that the decision of the High Court was challenged in the Supreme Court and the Supreme Court also dismissed the Petition for Special Leave to Appeal. Thus the law declared by the Patna High Court with respect to appointment made after 23.8.93 under the 1949 Rules, holds good and is binding on the appellants. The argument of the appellant that the law so declared is not binding on them cannot be accepted.

5. The second contention of the appellants is that since they have subsequently been chosen for appointment as Panchayat Sewak and that was under the 1993 Act, they would not be affected by the law declared by the High Court to the effect that their appointments as Dalpatis were illegal. This argument cannot also be accepted because, their appointment as Panchayat Sewaks was dependant upon their invalid appointment as Dalpatis. Only a Dalpati could be chosen as a Panchayat Sewak as far as they are concerned. Therefore, once the initial appointment is found to be not legal as declared by the High Court, their further appointment/selection as Panchayat Sewaks cannot be recognised or considered valid. The initial appointment being illegal, their services were rightly terminated in the light of the declaration of law by the High Court.

6. The argument that Rule 29 of Jharkhand Village Volunteer Force Rules, 2001 saves the appointment of the appellants as Dalpatis, cannot also be accepted. First of all, the said Rule came into force only on 1.6.2002. It is only a subordinate piece of legislation. Normally, such a legislation cannot have retrospective operation and, therefore, the rule which came into force in 2002, cannot hold the appellants to contend that their termination with effect from 23.8.93 was bad. Secondly, Rule 29 does not specifically deal with persons whose services have already been terminated before its coming into force. Rather, it purports to deal with those who are continuing in service. Thirdly, we are concerned with a rule, and a Rule cannot prevail over the law declared by the High Court whereby appointments made under the 1949 Rules after 23.8.93, were declared to be illegal and void. Even if the Legislature may have the power to alter the basis of a judicial decision, it does not have the power to invalidate a decision rendered by the High Court. This cannot be achieved by a Rule. After all the Jharkhand Village Volunteer Force Rules, 2001 is only a subordinate piece of legislation and it cannot override the law declared by the High Court.

7. Thus on an anxious consideration of the relevant submissions made, we are not satisfied that any case for interference is made out. This appeal is hence dismissed; We make no order as to costs.

8. We make it clear that we are not saying anything about the stand taken by the respondents in paragraph 7 of their counter affidavit.