
(1999) 08 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 392 of 1998

Satya Narayan Paswan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Citation : (2000) 1 BLJR 230 : (1999) 3 PLJR 624

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Counsel for the parties.

2. By this writ application the petitioner has prayed for issuance of a writ of mandamus commanding upon the respondent No. 4, District Panchayat Raj Officer, Aurangabad, to consider the name of the petitioner for approval of his appointment on the post of Dalpati of Parsa Gram Panchayat as per the decision taken by the Executive Committee of the said Gram Panchayat dated 26-12-1996, treating his date of birth as 2-1-1970.

3. Learned Counsel for the petitioner submitted that Executive Committee of the Gram Panchayat vide resolutions dated 26-12-1996 and 28-10-1996, as contained in Annexure-5, selected the petitioner for appointment as Dalpati and the matter was sent to the Block Development Officer, Kutumba, for forwarding the same to the District Panchayat Raj Officer to accord approval in terms of Rule 4 of Bihar Panchayat Village Volunteer Force Rules, 1949 (hereinafter referred to as the Rules) and the Block Development Officer, Kutumba, in its recommended the case , of the petitioner for approval before the District Panchayat Raj Officer, Aurangabad, vide letter dated 20th January, 1997, as contained in Annexure-6, but till date no order has been passed by the District Panchayat Raj Officer either according approval or by declining the recommendation so far the petitioner is concerned.

4. Two sets of counter-affidavit have been filed on behalf of respondent No. 2, the Director, Panchayat Raj, Bihar, Patna, and respondent No. 3, the District Panchayat Raj Officer, Aurangabad. In both the counter-affidavit, it is stated that at the time of selection of the petitioner on the post of Dalpati he was under age as per the date of birth of the petitioner recorded in the Matriculation examination as 18-12-1976 and, therefore, the petitioner was not eligible for appointment on the post of Dalpati and, therefore, there is no question of according sanction so far his appointment is concerned.

5. From the writ application, it appears that at the time of selection of the petitioner the petitioner had disclosed his date of birth as per Admit Card as 2-1-1970 whereas as per the Matriculation certificate his date of birth has been shown as 18-12-1976. Admittedly, there-fore, at the time the decision taken by the Executive Committee of the Gram Panchayat the petitioner was under age from both the angles even assuming his date of birth as 2-1-1970 or 18-12-1976. But, the question remains as to whether the petitioner should be of the age of 21 years at the time of selection on the post of Dalpati by the Executive Committee or at the time of approval by the District Panchayat Raj Officer. A bench of this Court in the case of Banarsi Rajak v. State of Bihar C.W.J.C. No. 168 of 1988, while interpreting Clause (a) of sub-rule 2 of the aforesaid Rule held that the date of appointment has to be understood with reference to the date on which the approval is granted by the District Panchayat Raj Officer in terms of Rule 4 of the Rules. This Court further interpreted that the date of appointment accruing in Clause (b) has to be understood as the date of approval. Learned Counsel, thus, submitted that till date approval has not been granted by the District Panchayat Raj Officer and till date the petitioner is above 21 years of age and below 30 years of age and, therefore, the contentions raised on behalf of the respondents in the counter-affidavit should not be taken note of.

6. In the counter-affidavit, nothing more has been stated save and except that at the time of selection the petitioner was below 21 years of age. In view of the legal proposition, as noticed above, the authorities concerned are not correct in holding that at the time of selection of the petitioner on the post of Dalpati he was below the age of 21 years.

7. For the reasons, aforementioned, therefore, I direct respondent No. 4, the District Panchayat Raj Officer, Aurangabad, to pass necessary orders in terms of Rule 4 of the rules considering the date of birth of the petitioner as per the matriculation certificate as 18-12-1976 and necessary orders, thereafter, shall be passed in accordance with law within a period of two months from the date of production/ receipt of a copy of this order.

8. With this direction and observation, this application is allowed.