

(2003) 04 PAT CK 0142
In the Patna High Court
Case No : C.W.J.C. No. 1902 of 2003

Shyam Deo Mehta and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 32

Citation : (2003) 2 PLJR 748

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Rajesh Kumar Singh and Satyendra Kumar Singh, for the Appellant;
Azfar Hasan and J.P. Kishore for State, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties and considered the counter affidavit filed on behalf of the State.

2. The writ Petitioners pray for issuance of direction upon the Respondents to appoint them on the vacant and sanctioned posts of Panchayat Sewak in the district of Aurganabad in light of Section 32 of the Bihar Panchayat Raj Act, 1993 (hereinafter to be referred to as "Act").

3. Precisely, it is stated by learned Counsel appearing on behalf of the Petitioners that the Petitioners are trained Dalpatis and 95 sanctioned posts of Panchayat Sewaks are lying vacant in the district of Aurangabad and even though the Petitioners are eligible to be appointed on the posts of Panchayat Sewak, their cases are not being considered. Learned Counsel further submitted that in view of the provisions laid down in Section 32 of the Act, the trained Dalpatis should be appointed as Panchayat Sewak against the sanctioned vacant posts, as Panchayat Sewaks would function as the Secretaries of the respective Gram Panchayats. Learned Counsel further submitted with reference to Annexure 30 that the State Government has now decided to appoint the Panchayat Sewak,

and, therefore, the Petitioners could have been considered for appointment on the posts of Panchayat Sewak.

4. A counter affidavit has been filed on behalf of the Respondents stating therein, inter alia, that the State Government will have to bear additional financial burden of Rs. 13.20 crores per annum, if fresh appointments are made against the vacant posts of Panchayat Sewak, and, therefore, it would be extremely difficult for the State Government to bear this expenditure at the present juncture and for the reasons aforementioned, the State Government, at present, has decided not to appoint Dalpatis to the vacant posts of Panchayat Sewak and vide notification No. 2295 dated 27.7.2001 the State Government has decided to fill up the vacant posts of Panchayat Sewak through deputation from amongst the village level workers and Halka Karmacharis.

5. Section 32 of the Act reads as follows:

32. Staff of Gram Panchayat-(1) There shall be a Secretary in every Gram Panchayat who shall be appointed by the State Government.

(2) The Secretary shall be in charge of the office of the Gram Panchayat and shall perform all the duties and exercise all the powers imposed or conferred upon him by or under this Act or any rules or bye-laws made thereunder.

6. On reading of Section 32 of the Act, it appears that there shall be a Secretary in every Gram Panchayat, who shall be appointed by the State Government and the Secretary shall be in charge of the office of the Gram Panchayat and shall perform all the duties and exercise all the powers imposed or conferred upon him by or under this Act or any Rules or bye-laws made thereunder.

7. In paragraph 6 of the counter affidavit, it is clearly stated by the Respondents that the Panchayat Sewaks have been declared as Gram Panchayat Secretaries by the State Government u/s 32 of the Act. In this case, reference may also be made to Annexure B to the counter affidavit, which manifestly makes it clear that the Panchayat Sewaks will function as Secretaries in the respective Gram Panchayats. Obviously, therefore, the Panchayat Sewaks have been notified by the State Government to work as Secretaries of the respective Gram Panchayats.

8. A plea has been taken by the State Government in its counter affidavit that interim arrangements are being made to take work of the Secretaries of the respective Gram Panchayats from amongst the village level workers and the Haika Karamcharis to avoid unnecessary expenditure, which would be incurred on appointment of regular Panchayat Sewaks.

9. From the counter affidavit, however, it is clear that till Panchayat Sewaks are appointed on regular basis, this interim arrangement would continue.

10. The fact that the Panchayat Sewaks would function as Secretaries of the respective Gram Panchayats is not being denied.

11. Under the provisions of the Act, 1993, Zila Parishad have been reconstituted

and chairmen have been elected. This has been done to ensure the functioning of the Local Self Government at the grass-root. The Panchayat Samiti cannot function without Secretary and the Panchayat Sewaks have been notified to work as Secretaries of the respective Gram Panchayats. In absence of the Secretary of the Gram Panchayat, the Zila Parishad will not function properly. It is not the case of the State that the State is not incurring expenses in maintaining the status of the Chairman of the Zila Parishad. Either way the State has to incur the expenses and merely because there is resource crunch, the claim of the Petitioners cannot be de-nied. There is no denial of the fact that 95 sanctioned vacant posts of Panchayat Sewaks are lying vacant in the district of Aurangabad. It is also not in dispute that the Petitioners are trained Dalpatis and they are eligible to be appointed on the posts of Panchayat Sewaks.

12. Under the circumstances, the theory propounded by the State in its counter affidavit is not acceptable.

13. In the given facts and circumstances of the case, this writ application is allowed and the Respondent authorities are directed to consider the cases of the Petitioners for their appointment on the posts of Panchayat Sewaks in the district of Aurangabad expeditiously.

14. No order as to costs.