
(2003) 02 JH CK 0058
In the Jharkhand High Court
Case No : CWJC No. 6929 of 2000 (R)

Sunil Kumar Das and Others	Vs	APPELLANT
State of Bihar (Now Jharkhand) and Others		RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 548

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : A.K. Kashyap, for the Appellant; M.S. Akhtar, SC-II and A.K. Sahay, SC, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the learned counsel for the parties.

2. Learned counsel for the petitioner states and submits that this case is squarely covered by the judgment/order dated 16.11.1999 passed in CWJC No. 7217 of 1998 (Annexure-6).

3. In this case the six petitioners were appointed as Dalpati for one or other Panchayat within the Districts of Sahebganj (including the Rajmahal Sub-division) after 23.08.1993 on approval of the concerned District Panchayat Raj Officer. On the ground that the Bihar Panchayat Raj Act, 1993 came into effect with effect from 23.08.1993 in which there was no provision made for the post of Dalpati, the impugned decision was taken to cancel the appointment of the petitioner. It is undisputed that the present case is squarely covered by the aforesaid judgment dated 16.11.1999 passed in CWJC No. 7217 of 1998.

4. In view of the Division Bench judgment reported in Basudeo Besra Vs. Union of India (UOI) and Others , the Patna High Court and this Court has held, that such orders of cancellation of appointments, have been issued without considering the effect of the said judgment, Basudeo Besra (supra), wherein it

was held that the Bihar Panchayati Raj Act, 1993 is not applicable to the Scheduled areas.

5. It is not in dispute that the areas in question in this case are scheduled areas. It has been further held that proper opportunity to the petitioners of those cases was not given and the impugned orders of cancellation of appointment were issued mechanically.

6. Following the said judgments and in the facts and circumstances of this case, the impugned order of cancellation of appointment contained in Memo No. 140/Pan dated 03.07.1998 (Annexure-5) cannot be held to be legal and, accordingly, the same is set aside.

7. In the result, the petitioners stand reinstated to their original posts. However, this order will not stand in the way of the respondents to pass any order in accordance with law after notice to the petitioners, taking into consideration, the decision of this Court in the case of Basudeo Besra (supra).

8. The Writ petition is allowed with the aforesaid observations/directions.