

(2006) 04 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 7498 of 2004

Umesh Prasad Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 157

Citation : (2006) 2 PLJR 461

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Jitendra Kumar Roy, for the Appellant; Ranjeet Kumar Pandey, for the Respondent

Judgement

Barin Ghosh, J.—Heard both the parties.

2. The word "Sewak" in Hindi means "servant". The word "Secretary" if translated into Hindi would mean "Sahayak". The Bihar Panchayat Raj Act 1947 provided for appointment of Sewak in every Gram Panchayat, Who shall be so appointed was decided by the Government and in that regard various executive orders were issued from time to time. In terms thereof. Dalpaties working in the Gram Panchayat on being trained were entitled to be appointed in the vacant posts of Sewak available in the blocks where the Dalpaties were working. The legislature brought in Bihar Panchayat Raj Act, 1993 and by Section 157 thereof repealed the Bihar Panchayat Raj Act, 1947. While repealing the said Act, it provided that notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by and under the 1993 Act as if the 1993 Act was in force on the date on which such thing or action was done or taken. In the 1993 Act, the legislature did not authorize appointment of Sewak. It authorised appointment of Secretary i.e. Sahayak. In terms of the 1947 Act, Sewaks had already been appointed. The 1993 Act directed that such appointments shall continue. The 1993 Act did not authorize

appointment of Sewaks and accordingly, Sewaks, who had already been appointed in terms of the 1947 Act, could only be accommodated in the post of Secretary created for the first time by the 1993 Act. That was exactly done by the Government. However, the Government found that 843 more Secretaries are to be appointed having regard to the fact that more number of Gram Panchayats have been constituted. . The Government at that stage did not notice the difference in the language used by the legislature in the two statutes namely, "Sewak" and "Secretary" and proceeded on the basis as if the 1993 Act authorized appointment of Sewak and as such even after the 1993 Act was brought in Sewaks were being appointed from Dalpaties on the basis of the old redundant rules and in particular, those which came to an end by reason of the repeal of the 1947 Act. After the 1993 Act came into force, Rules for appointment of Secretary had been made. Before that Rules came into force, there was no other rules, which authorized appointment. of Secretary and accordingly, question of giving retrospective effect to the said Rules did never arise. The petitioners, in the instant writ petition, are Dalpaties. They are seeking to be appointed in the post of Secretary. They want to be appointed in the post, of Secretary on the basis of Rules made by administrative fiats for appointing Dalpaties to the post of Sewak. Although, ostensibly the petitioners are seeking to be appointed as Sewaks. the main object is to be appointed as Secretary. For the language used in the 1993 Act, after the 1993 Act came into force there remained no post of Sewak in any Gram Panchayat. They can only be appointed to the post of Secretary provided rules have been made to appoint them as such. In the thick brief, as prepared by the petitioners, they have not been able to bring in any rule made subsequent to the 1993 Act authorizing a Dalpati to be appointed as Secretary. The Government decisions upon which reliance have been placed do not speak a word for appointing Dalpaties to the post of Secretary. They speak about appointment of Dalpaties to a now non-existing post of Sewak. A Writ Court can only protect an existing right, of a citizen, who approaches the Writ Court. The post of Sewak as was available before the 1993 Act came into force was a post created by the legislature. The legislature itself has abolished that post and has created a new post of Secretary by the 1993 Act. Once, the legislature has touched a legislative field, the executive is not entitled to touch that field. When the legislature, in replacement of Sewak, has authorised appointment of Secretary, the Executive by issuing executive fiats could not take any decision to appoint Sewak for the legislature has not permitted appointment of Sewak since after coming into-force of the 1993 Act.

3. In those circumstances, a Division Bench of this Court has, in the very recent past, directed the Dalpaties as that of the petitioners to rake up their claim to be appointed as Secretaries as and when by altering the rules it shall be decided to appoint Dalpaties as Secretaries.

4. In those circumstances, the writ petition fails and the same is dismissed with the observation that in the event rules are altered, surely the petitioners will be entitled to the benefit thereof.

5. This disposes of the writ petition.