

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10980 of 2000

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Sri Niwas Tiwari son of Sri Shankatha Tiwari, resident of village-Kathaura, Gram Panchayat, PO and PS-Sonhan, Block-Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary-cum-Commissioner, Department of Rural Development, Govt. of Bihar, Patna.
3. The Director, Directorate of Panchayati Raj, Govt. of Bihar, Patna.
4. The Deputy State Organisor, Heard Quarter, Village Volunteer Force, Directorate of Panchayati Raj, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy
M/s Nikki Singh

For the Respondent/s : Mr. Karandeep Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-03-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The Government has framed the Rule in exercise of power under section 121 read with section 32A of Bihar Panchayat Raj Act, 1993.

The petitioner has raised a grievance with regard to clause 7 of the 2004 Rules, as he has claimed that Dalpaties are the employees of the Panchayat Raj, not the employees of the State Government and, as such, the exercise should have been made under section 151 of the Bihar Panchayat Raj Act, 1993, getting strength from paragraph 10 and 13 of the counter affidavit filed by the

Secretary-cum-Commissioner, Rural Development Department,
(R.E.O. and Panchayat Raj) and the Director, Panchayat Raj, Bihar.

The paragraph of the counter affidavit speaks as follows:

Para 10 *“That section 151 deals with the rules of recruitment of the employees of the Panchayats and their service conditions. The State Government is supposed to make rules relating to the method of recruitment and terms and conditions of service including the pay and allowances, superannuation, provident fund and gratuity of the employees of the Panchayat.*

Para 13 *That it is a fact that Dalpaties are the employees of the Panchayat. Keeping in view the assertion of the petitioner that it is Rule 151 and not Rule 32A which should empower making Rules for the appointment of Dalpaties the matter will referred to the Law Department for its legal opinion. This will be done after the Rules have been approved by the Department of Personnel and when they are being sent to the Law Department for vetting.*

The Law Department will be requested for guidance on whether they should be notified u/s 32A or Section 151. after obtaining the opinion of the Law Department the

draft rules have to be approved by Government in the Panchayat Raj Department. If Government in the Department agrees with the proposal then the matter has to be referred to the Finance Department for concurrence. Subsequently the proposal has to be sent through a memorandum to the Council of Ministers. As the framing of rules is a consultative process of Subordinate Legislation, sufficient time would be required to get through the entire process.”

As in the present case the Rule is not under challenge, the prayer has been made to frame the Rule.

The Government has framed the Rule. If the petitioner has still grievance with regard to certain provisions of the Rule, he may take appropriate steps in accordance with law.

With the above observation, this petition is disposed of.

(Shivaji Pandey, J)

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