

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1278 of 2006

Chandeshwar Prasad Singh, son of Late Sukhal Singh, resident of village-Bhimpura, under Gram Panchayat and Post Office- Baga, Police Station-Ajimabad, Block-Sandesh, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. State of Bihar
2. Pramod Narayan Jha, the Director, Directorate of Panchayati Raj, Government of Bihar, Patna.
3. Rabindra Pawar, the Commissioner, Patna Division, Patna.
4. Jitendra Kumar Srivastava, the District Magistrate, Bhojpur at Ara
5. Haribansh Nr. Pandey, the Deputy Development Commissioner, Bhojpur, at Ara.
6. Ram Bihari Upadhaya, the District Panchayat Raj Officer, Bhojpur at Ara.

.... Respondent/s

with

Miscellaneous Jurisdiction Case No. 1279 of 2006

1. Shiv Kumar Singh son of Sri Ram Gati Singh, resident of village-Vikrampur, Post-Garochak, Police Station and Block-Fatuha.
 2. Radheshwar Prasad son of Sri Nathuna Prasad, resident of village-Nawada Simri, P.O.Bhpura, Police Station and Block-Bihta.
 3. Satya Prakash Gupta, son of Late Ram Nath Prasad, resident of village-, P.O. and Police Station and Block-Naubatpur.
 4. Chandrika Prasad Singh, son of Sri Radhey Singh, resident of village and P.O. Korha, Police Station and Block-Fatuha
 5. Tripit Narain Sharma, son of Late Chandrika Sharma, resident of Village-Tarwa, P.O. Arap, Police Station and Block-Naubatpur.
 6. Ram Pravesh Prasad, son of Late Dukhi Mahto, resident of village-Narainpur, P.O. Kurmichak, Police Station and Block-Ghoshwari.
- All belong to the District of Patna.

.... Petitioner/s

Versus

1. State of Bihar
2. Sudhir Kumar Rakesh the Secretary, Department of Rural Development (Panchayati Raj) Government of Bihar, Vishwariya Bhawan, Patna.
3. Sri P.N. Narayanan, the Secretary, Department of Finance, Governemnt of Bihar, Patna.
4. Sri Subhash Sharma, the Secretary, Staff Selection Commission, Bihar, Patna.
5. Pramod Narayan Kha, the Director, Directorate of Panchayati Raj, Government of Bihar, Patna.
6. Sri Rabindra Pawar, the Commissioner, Patna Division, Patna.
7. B. Rajendran, the District Magistrate, Patna.
8. Sanjay Kumar Agrawal, the Deputy Development Commissioner, Patna.
9. Sri Satya Narayan Jha, the District Panchayat Raj Officer, Patna.

.... Respondent/s

Appearance :**(In MJC No. 1278 of 2006)**

For the Petitioner/s : Mr. JITENDRA KUMAR ROY

For the Respondent/s : Mr. D.K. Sinha, AAG-2

Mr. Biresh Kumar Sinha, A.C. to AAG-II

(In MJC No. 1279 of 2006)

For the Petitioner/s : Mr. JITENDRA KUMAR ROY

For the Respondent/s : Mr. AAG-II

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**and****HONOURABLE JUSTICE SMT. ANJANA MISHRA****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)****Date: 24-04-2015**

Heard learned counsel for the petitioners and learned
A.A.G.-II for the State.

The petitioners have approached this Court alleging willful
disobedience of the order dated 3.1.2006 passed in C.W.J.C.
No.12443 of 2006 and its analogous cases.

By the aforesaid order dated 3.1.2006, the writ application
was disposed of with the direction that the respondents/concerned
respondents shall consider the case of the petitioners for appointment
on the post of Panchayat Sewak, if in future decision is taken by the
Government for appointment on the post of Panchayat Sewak.

Learned counsel for the petitioners submits that the State
Government has taken a decision to make appointment on the post of
Panchayat Sewak from Dalpati and thus in terms of various letters
issued by the State Government in the year 2008, the petitioners
should also be considered for appointment.



Learned A.A.G.-II appearing for the opposite parties, on the other hand, submits that the decision of the State Government was only to make appointment on additionally created 531 posts of Panchayat Sewak from eligible Dalpaties by order dated 20.8.1998. It is further submitted that by the said decision as many as 843 posts have been created on the said date and after the re-organization of the State of Bihar 531 posts remained with the State of Bihar and accordingly, a decision was taken as a one time measure that the appointment of Dalpati to the post of Panchayat Sewak would be made only on those 531 posts.

It is also submitted that the said issue was considered by a Division Bench of this Court in L.P.A. No.789 of 2006 and by judgment and order dated 11.8.2009, it was held that in view of the legal position, obtaining as of that day, a Dalpati cannot be considered for appointment as Panchayat Secretary and in that view of the matter, the contention on behalf of the writ petitioners that it would be open to the State Government to fill up the posts of Panchayat Secretaries from the open market, only if not available from amongst the Dalpaties was rejected.

In fact, it was one of the principal submissions on behalf of the writ petitioners that the selection of Panchayat Secretary from amongst Dalpaties cannot be confined to 531 posts, which was rejected



by the L.P.A. Bench and the Court further observed that the action of the State may not necessarily have the stamp of approval of the Court but the State Government was permitted to so appoint/ promote them because the various orders of this Court have obtained finality and it was further clarified that only those Dalpatis not exceeding 531 post would be appointed/promoted whose names have been approved by the Staff Selection Commission. Although the stand of the State all through was with regard to 531 posts out of 843 by order dated 20.8.1998, yet the Division Bench in paragraph No.16 of its judgment mentioned the word '531 persons'.

Learned counsel for the petitioners has sought to take the advantage of the word 'persons' in the said decision of the Division Bench.

Learned counsel for the State has relied upon the order dated 9.4.2012 passed by a Division Bench of this Court in M.J.C. No.348/2011 in which the issue of reference to '531 persons' was duly considered by this Court and this Court observed that it was misnomer as it was clear from the Annexures of the State that reference should have been for 531 newly created posts in the year 1998.

We are fully in agreement with the view of the Division Bench in the matter, as there is no other reason for the origin of the

said 531 posts and a reference was definitely made to 531 posts of the State Government in the said proceedings which related to the district of Siwan. Since no posts were created for the district of Siwan under the order dated 20.8.1998, hence, it was held that the petitioners could not claim against the post created by the said letter dated 20.8.1998.

Learned A.A.G.II submits that the said decision applies to the districts of Bhojpur and Patna also to which the petitioners belong, wherein no post has been created by the Government order dated 20.8.1998.

In the aforesaid view of the matter, the stand of the opposite parties in their show cause is fit to be accepted.

For the said reasons, we find no merit in the contempt application and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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