

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16711 of 2007

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Mithlesh Kumar, son of Rambaran Singh resident of village Thallubigha,
under Gram Panchayat – Lakhwara, Police Station and Block - Ghoshi,
District Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director , Directorate of Panchayati Raj Government of Bihar,
Patna
3. The District Panchayat Officer, Jehanabad
4. The Block Development Officer Ghoshi, District Jehanabad
5. The Mukhiya Lakhawar Gram Panchayat, Police Station and Block
Ghoshi District Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kr.Roy

For the Respondent/s : AC to SC 19

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
CAV ORDER

11 02 -11-2015 The petitioner invoking writ jurisdiction of this court

under Article 226 of the Constitution of India, has prayed for

quashing of an order contained in Memo No. 243 dated

17.4.2007 passed by the District Panchayat Raj Officer,

Jehanabad, whereby the claim of the petitioner for his appointment

as Dalpati was rejected (Annexure - '1' to the writ petition).

Brief facts of the case is that the petitioner has claimed

that he was appointed as Dalpati of Lakhwar Gram Panchayat,

Ghoshi, in the district of Jehanabad by the Executive Committee

on 10.6.1992. Thereafter, as per prevalent Rule the said



appointment was to be approved by the District Panchayat Raj Officer, Jehanabad which was sent for its approval to the office of Block Development Officer, Ghoshi. Since his appointment was not approved, the petitioner earlier approached this Court by filing a writ petition vide C.W.J.C. No. 12667 of 1999, which was disposed of on 4.8.2005 granting liberty to the petitioner to avail internal remedy and file representation, which was to be considered and disposed of expeditiously. The petitioner thereafter filed representation on 23.9.2005 vide Annexure- '7' to the writ petition to the District Panchayat Raj Officer, Jehanabad. Finally, on the representation order has been passed on 17th April, 2007 by the District Panchayat Raj Officer, Jehanabad, which has been assailed in the present writ petition.

Learned counsel for the petitioner submits that since the petitioner was appointed by the Executive Committee of the Gram Panchayat which was presided over by the then Mukhiya on 10.6.1992, he may not be denied his appointment only on the ground of its non -approval by the District Panchayat Raj Officer. He submits that the action of the Respondents is arbitrary and in violation of Articles 14 and 16 of the Constitution of India. He has further argued, on the basis of the pleadings in the writ petition, that in identical situation in the case of one



Chandrabhanu Prasad Chaurasia, in compliance with the order of this court passed in C.W.J.C. No. 1310 of 2000 relief was granted. According to Sri Jitendra Kumar Roy, learned counsel for the petitioner, the rejection of the claim of the petitioner for his appointment as Dalpati is not in consonance with law and it is contrary to the decision vide Annexure - '8' to the writ petition. On the aforesaid grounds it has been prayed to quash the impugned order i.e. Annexure - '1' to the writ petition.

Learned AC to SC No. 19 opposing the prayer of the petitioner, at the very outset submits that the case of the petitioner is not similar to the case of Chandrabhanu Prasad Chaurasia. He submits that though the petitioner has claimed that he was appointed by the Executive Committee of the Gram Panchayat, the said appointment was never given effect in view of the fact that the said appointment was never got approval by the District Panchayat Raj Officer nor the request for approval was ever received in the office of Block Development Officer or it was ever pending before the District Panchayhat Raj Officer. Accordingly, a prayer has been made on behalf of the State to reject the writ petition.

Besides hearing learned counsel for the parties, I have also perused the materials available on record including the



counter affidavit and supplementary counter affidavit filed on behalf of the respondent no. 3 and 4. In this case earlier by order dated 20.2.2015 it was directed to list this case along with the record of C.W.J.C. No. 1310 of 2000 disposed of on 17.3.2005. On perusal of the materials available on record and particularly the stand taken in the counter affidavit and supplementary counter affidavit it is evident that the Block Development Officer or District Panchayat Raj Officer were never approached by the Executive Committee of the Gram Panchayat in respect of approval of appointment of the petitioner. In the counter affidavit the respondent no. 3 and 4 have also brought on record a copy of supplementary counter affidavit which was sworn on 15.7.2005 in C.W.J.C. No. 12687 of 1999 which was filed on behalf of the respondent no. 6 in C.W.J.C. No. 12687 of 1999 which was sworn by the Block Development Officer, Ghosi, District Jehanabad. It depicts that no such letter was received in the year 1992 pertaining to appointment of the petitioner on the post of Dalpati of Lakhawar Panchayat. Same fact has been reiterated in the counter affidavit and supplementary counter affidavit filed in the present writ petition. Those counter affidavits and supplementary counter affidavits which were filed on behalf of the respondent no. 3 and 4, has not been replied by the petitioner

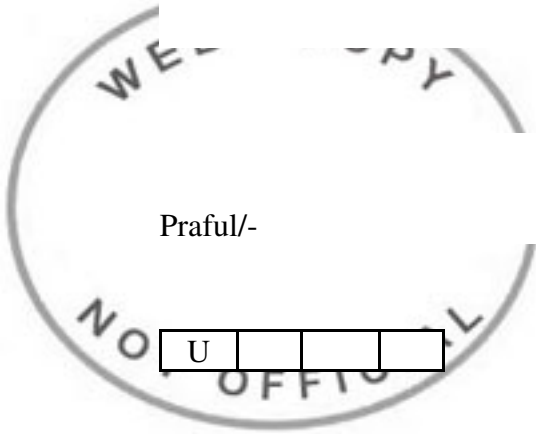


by way of filing any rejoinder. Meaning thereby, that the stand of the Respondent / State that recommendation for approval of the petitioner was never received in the office of Block Development Officer for its approval by the District Panchayat Raj Officer is deemed to be accepted. It is further evident that subsequently after enactment of the Bihar Panchayat Raj Act, 1993 the entire process has already been changed. Earlier appointment of Dalpati was to be made under the provisions of Village Volunteers Force Rule, 1949 which is evident from the order dated 17.3.2005 passed in C.W.J.C. No. 1310 of 2000 (Chandrabhanu Prasad Chaurasia @ Chandra Bhanu Prasad vrs. The State of Bihar & Ors.). It is evident that as per Rule 4 of the Village Volunteer Force Rules, 1949 proposal for appointment on the post of Dalpati was mandatorily required to be approved by the District Panchayat Raj Officer. In the present case it is not in dispute that appointment of the petitioner made by the Executive Committee of the Gram Panchayat was never approved by the District Panchayat Raj Officer, and as such, in absence of approval of appointment by the District Panchayat Raj Officer, Jehanabad petitioner's claim for appointment as Dalpati is not sustainable. So far as the case of Chandrabhanu Prasad Chaurasia is concerned, it is evident from the order dated 17.3.2005 that in the said case a counter



affidavit was filed on behalf of the State and it was simply stated that in his case Executive Committee of Gram Panchayat passed resolution for his appointment on the post of Dalpati and thereafter it was sent to the District Panchayat Raj Officer, Siwan for its approval by a letter dated 21st September 1991. In the said case a stand was taken that a Title Suit was pending and as such, no decision could be taken. Accordingly, in view of the facts of the said case the writ petition was allowed. So far as the present case is concerned, in the counter affidavit a specific stand has been taken that no such resolution was ever received in the office of Block Development Officer nor it was kept pending in the Office of either Block Development Officer or District Panchayat Raj Officer. Accordingly, the petitioner may not claim parity with the case of Chandrabhanu Prasad Chaurasia. Keeping in view the fact that there is nothing on record to suggest that the resolution of the Executive Committee of the Gram Panchayat in respect of appointment of the petitioner was either received in the office of Block Development Officer or it was pending with the District Panchayat Raj Officer, whereas it has specifically been denied by the Respondents which is un-controverted. Accordingly, I do not find any error in Annexure – '1' to the writ petition.

The writ petition stands dismissed.



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(Rakesh Kumar, J)