IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.269 of 2011
With
I.A. No.783 of 2011

==========

Dhananjay Kumar, S/O Sri Amar Ram, R/O Village & P.O.-Bigaha, P.S.-Manjhi, District-Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Panchayati Raj Department, Bihar, Patna.
3. The Secretary, Panchayati Raj Department, Bihar, Patna.
4. The District Magistrate, Saran, Chapra.
5. The District Panchayat Raj Officer, Saran, Chapra.

.... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Abhay Kumar Singh No.1
Mr. Bharat Bhushan, Advocate
For the Respondent/s : Mr. Sushil Kumar, GP-22
Mr. Uday Prasad, AC to GP-22

==========

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 16-08-2016

Heard Mr. Abhay Kumar, learned counsel appearing for the petitioner and learned State Counsel.

The petitioner is aggrieved by the order dated 2.1.2011 passed by the Sarpanch whereby the services of the petitioner as Secretary, Gram Kachahari has been terminated relying upon an advisory dated 5.7.2010 passed by the Secretary, Panchayati Raj Department, Government of Bihar, Patna.

The facts stands noted in the order dated 26.7.2016 and briefly stated is that an appointment process was initiated for filling up the post of Secretary, Gram Kachahari, Bhajauna Nachap, under Manjhi Block in the district of Saran. A panel was prepared, a copy of which is present at Annexure-2. The name of the petitioner

WEB COPY NOT OFFICIAL

appears at serial no.2 and that of the respondent no.8 is present at serial no.3. The person at serial no.1 of the panel namely Deepak Kumar did not choose to join and thus the post should have gone to the petitioner who was at serial no.2 but instead was handed over to the respondent no.8 whose name appeared at serial no.3. The petitioner filed his objection against such illegality vide Annexure-3 and which was acted upon in the light of the orders passed by this Court as well as the guidelines of the department. Ultimately, vide Annexure-13, a direction was issued for cancellation of the appointment of respondent no.8 and for taking fresh steps for appointment in consideration of the merit list. Following the said direction issued that the petitioner was appointed on 23.8.2010 vide Annexure-16. In between a decision was taken by the Principal Secretary of the department as contained in memo dated 5.7.2010, which is in context with the enforcement of Bihar Gram Kachahari Secretary (Appointment, Service Condition and Conduct) (Amendment) Rules, 2008 (hereinafter referred to as 'the Rules'). It was clarified that the said Rules would take effect from 31.1.2008 and all appointments made prior to 31.1.2008 would not be disturbed. It is following such advisory that the respondent-Sarpanch upon completely misreading of the advisory has treated the appointment of the petitioner as an appointment made after 31.1.2008 and has cancelled the same vide order passed on 2.1.2011 placed on record vide Annexure-18 to the interlocutory

application bearing I.A.No.783 of 2011 and has restored the appointment of respondent no.8. The petitioner feeling aggrieved is before this Court.

A short argument has been advanced by Mr. Abhay Kumar Singh, learned counsel appearing for the petitioner to question the order of the Sarpanch dated 2.1.2011. He submits that the order is in complete misconstruction of the advisory issued by the Principal Secretary dated 5.7.2010 placed at Annexure-17. It is submitted that the case of the petitioner is not a case of an appointment post 31.1.2008 rather the appointment process was completed much before that date when the merit list was prepared on 22.10.2007 and since the appointment made was not in tune with the panel that the appointment of respondent no.8 was questioned by the petitioner and the error was corrected. He submits that the appointment order issued in respect of the petitioner was only a completion of formality. It is submitted that since the person at serial no.1 did not choose to join and the respondent no.8 had been wrongly appointed that this error was rectified by the appointment of the petitioner vide Annexure-16 dated 23.8.2010. It is also argued by learned counsel that the termination order was passed without opportunity of hearing to the petitioner.

I have heard learned counsel for the parties and I have perused the records.

The termination order is impugned at Annexure-18 and

which simply refers to the memo dated 5.7.2010 of the Secretary, Panchayati Raj Department to terminate the appointment of the petitioner and to order for appointment of the respondent no.8.

A counter affidavit is on record and which apart from making reference to the advisory dated 5.7.2010 has made a bald reference to an order of this Court passed in CWJC No.1996 of 2010 to pray for dismissal of the writ petition. The questions which would arise for consideration are as follows:

a) If the petitioner was at serial no.2 of the merit panel present at Annexure-2, how the respondent no.8 could be appointed.
b) The merit panel was prepared on 22.10.2007 i.e. much before the cut-off date i.e. 31.1.2008 and thus whether the issuance of the appointment order post 31.1.2008 would make it a case of appointment post 31.1.2008.
c) Whether the advisory of the Secretary, Panchayati Raj Department dated 5.7.2010 in any manner effected the appointment of the petitioner.
d) Whether the order is in violation of principles of natural justice.

Having heard learned counsel for the parties I am of the considered opinion that this writ petition is fit to be allowed on all four counts. It is not in dispute that the person at serial no.1, Deepak Kumar did not choose to join. Obviously in such situation the appointment should have gone to the person present at serial no.2 i.e. the petitioner herein. It has nowhere been explained as to

why the selection committee decided in favour of the respondent no.8 whose name appeared at serial no.3. In such undisputed circumstances it was merely a rectification of error that on an objection of the petitioner, the appointment in favour of the respondent no.8 was cancelled and the petitioner was appointed vide Annexure-16 which is dated 23.8.2010.

In between an issue arose regarding the enforcement of 'the Rules' in the light of the judicial pronouncement of this Court which stands discussed in the advisory of the Secretary dated 5.7.2010 present at Annexure-17. It is rather surprising that even when the Secretary has clarified at paragraph-4 of the advisory that 'the Rules' would be effective from the date of enforcement on 31.1.2008 and the appointments made prior thereto shall not be disturbed and even when the merit panel in the present case was prepared on 22.10.2007 i.e. much before 31.1.2008 yet it is only on account of the fact that the appointment letter was issued after 31.1.2008 that the appointment of the petitioner has been interfered with when in fact the appointment of the petitioner vide order dated 23.8.2010 present at Annexure-16 was only a rectification of error earlier committed by the Selection Committee in appointing the respondent no.8 even when the petitioner was higher in the merit list. The order of termination placed at Annexure-18 is in complete misappreciation of the advisory dated 5.7.2010 of the Principal Secretary. The order is neither sustainable on merits nor on grounds

of being issued in violation of the principles of natural justice.

For the reasons so discussed above, the order dated 2.1.2011 passed by the Sarpanch, Gram Kachahari Bhajauna Nachap, district Saran impugned at Annexure-18 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

Interlocutory Application No.783 of 2011 is disposed of.

NOT OFFICIAL

(Jyoti Saran, J)

deepika/-

NAFR	
CAV DATE	
Uploading Date	23.08.2016
Transmission Date	