

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2436 of 2017

In
Letters Patent Appeal No.1029 of 2015

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Rajkishor Tiwari, son of Late Baboo Nand Tiwari, Resident of Village- Manik Chhapra, P.O.- Panchdeori, P.S.- Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Department of Panchayati Raj, Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The District Panchayati Raj Officer, Gopalganj.
5. The Sub- Divisional Officer, Hathua, District- Gopalganj.
6. The Block Development Officer, Panchdeori Block, District- Gopalganj.
7. The Nodal Officer cum Panchayat Supervisor, Block- Panchdeori, District- Gopalganj.
8. The Gram Kachahri Kuesa Khurd through its Sarpanch Maya Devi, Gram Panchayat Raj Kuesa Khurd, Block- Panchdeori- District- Gopalganj
9. Smt. Maya Devi, Wife of Not known, Sarpanch Gram Kachahri Kuesa Khurd, Block- Panchdeori, District- Gopalganj.
10. Smt. Kusumawati Devi, Wife of Not known, Up- Sarpanch Gram Kachahri Kuesa Khurd, Block- Panchdeori, District- Gopalganj.
11. Babuna Sah, Son of Vishwanath Sah, Resident of Village- Machawan, Gram Panchayt Raj Kuesa Khurd, P.S.- Kateya, District- Gopalganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey No-5,Advocate

For the Opposite Party/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-09-2019

Re: M.J.C. No. 2436 of 2017

Having heard learned counsel for the applicant we
find that the cause shown is sufficient and accordingly the



application is allowed and the order dated 02.08.2017 passed in L.P.A. No. 1029 of 2015 is recalled. L.P.A. No. 1029 of 2015 shall stand restored to its original number.

Re: L.P.A. No. 1029 of 2015

We have heard learned counsel for the appellant after having restored the appeal in M.J.C. No. 2436 of 2017. Challenge raised in this appeal is to the order dated 8th April, 2015 passed by a learned Single Judge of this Court dismissing the writ petition being C.W.J.C. No. 9394 of 2008 filed by the appellant challenging the order dated 17.02.2008 whereby his appointment as Secretary in a Gram Kachahari was cancelled. It is the said order dated 17th February, 2008 which has been assailed contending, that in order to cancel the appointment of the appellant, a judicial proceeding was instituted which was impermissible in law. Learned counsel contends that the procedure adopted for cancellation being a nullity and being without jurisdiction, the learned Single Judge committed an error by proceeding to decide the case on the inferences drawn without delving into the issue of the validity of the order on the ground aforesaid. He therefore submits that the impugned judgment of the learned Single Judge as well as the order dated 17.02.2008 deserve to be quashed.



Replying to the said submissions, learned Standing Counsel submits that the order of cancellation ultimately cannot be faulted with keeping in view the fact that the appellant had utilized a certificate for gaining employment which was false and misleading. To the contrary he succeeded in getting appointment in spite of the fact that he was ineligible being debarred on account of being 41 years of age. Learned Standing Counsel submits that this finding of fact which has been recorded in the order dated 17th February, 2008 having been not dislodged by any cogent material, there was no occasion for any interference with the order dated 17th February, 2008 and consequently this appeal also deserves to be dismissed.

We have considered the submissions raised. At the very outset we may point out that the appointment on the post of Secretary of a Gram Kachahari at the time when the selection and appointment of the appellant was made came to be governed by the then prevalent Bihar Gram Kachahari Secretary (Appointment, Service Conditions and Duties) Rules, 2007. According to the said Rules, the selection and appointment was to be made on a contract basis for a tenure till the existence of the Gram Kachahari. The panel for selection had to be prepared and approved by a committee comprising of the Sarpanch of the



Gram Kachahari as its Chairman, the members of the Gram Kachahari as the members of the Committee and a Nodal Officer nominated by the Block Development Officer as a Member Secretary. Upon approval by the said Committee, the matter is to be placed before the District Magistrate whereafter objections would be invited and then the panel would be finally published, whereupon appointment would be made on the basis of the merit-panel prepared for the said purpose.

It appears that the appellant's name was empaneled and he was extended the benefit of appointment which came to be challenged by the respondent Babuna Sah on the ground that it was he who was entitled to be appointed and not the petitioner who had wrongly depicted his age. It was the contention of the respondent that the appellant was 41 years of age his name being Rajkishor Tiwari for which certain documents were filed on record. It was also stated that the date of birth of the appellant was not 4th of July, 1988, inasmuch as, the date of birth of Rajkishor Tiwari as recorded in the School Register as well as other documents is 2nd of January, 1967. Apart from this, the Voters' List and other documents was also pressed into service to demonstrate that the appellant had become over age and was not entitled for appointment.



Having heard learned counsel for the parties, we find that the impugned order was passed on 17th February, 2008 on the institution of a judicial proceeding before the Gram Kachahari by the respondent Babuna Sah. In our considered opinion, the appointment could not have been cancelled by the institution of a judicial proceeding in the Gram Kachahari itself. The said exercise was therefore not within the competence of the Gram Kachahari to have adjudicated the cancellation in a judicial proceeding, but at the same time, upon an examination of the facts of the case, it is evident that the appellant utilized the name of Rajkishor Tiwari who was admittedly his elder brother for the purpose of getting appointment. It was later on disclosed that the date of birth of Rajkishor Tiwari was 2nd of January, 1967 and, therefore, calculating the age on the strength of such material, the conclusion drawn that the appellant was 41 years of age cannot be faulted with. This question relating to this particular fact of the age of the appellant could not be successfully disputed before us.

Thus, even though the learned Single Judge has not delved into the issue relating to the jurisdiction of the Gram Kachahari to enter into the adjudication on the judicial side which could not have been done, as stated above, yet, for the



reasons aforesaid, it cannot be said that the appellant had any right to even apply for the said post keeping into view his age of 41 years as indicated in the documents that were filed on record. Having found that the proceedings before the Gram Kachahari were not in conformity with law, we would not proceed to exercise our discretion under Article 226 of the Constitution of India to set aside the same, inasmuch as, by setting aside the order we would be sustaining an otherwise unsustainable appointment of the appellant. There is therefore no need for us to attempt a futile exercise of jurisdiction.

Consequently, we do not find any merit in the appeal, which is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

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