

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2590 of 2006

Nirbhay Kumar Singh, son of Late Siya Ram Singh, resident of Vilage Dubba under Gram Panchayat and Post Office Barhara, PS Belhar District Banka

... .. Petitioner

Versus

1. The State Of Bihar
2. The Director, Direcorate of Panchayati Raj, Government of Bihar Patna
3. The Commissioner Bhagalpur Division, Bhagalpur
4. The District Magistrate, Banka
5. The Deputy Development Commissioner, Banka
6. The District Panchayati Raj Officer, Banka
7. Nand Kumar Pandit, son of Basudeo Pandit, r/o Village Tilakpur, Gram Panchayat Gher Baiyar (Sahebganj), PS and Block Belhar at present post of Panchayat Sewak in Dheniya Block District Banka

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Jitendra Kr.Roy Mr. Sumit Kumar & Mr. Shankar Kumar
For the Respondent/s	:	Mr. Shashi Shekhar Kumar Prasad, AC to PAAG 2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-09-2019

Heard learned Counsel for the petitioner and the learned State Counsel for the respondents.

The writ petition has been filed by the petitioner seeking direction for appointment in his favour as Panchayat Sevak/Secretary from the post of Dalpati. The appointment of respondent No. 7 has also been assailed in the instant proceeding.

Submission of learned Counsel for the petitioner is that prior to the instant proceeding he had filed a writ petition in the year 1999. In view of the fact that the petitioner had only prayed for appointment without challenging the appointment of the person in whose place he



was seeking appointment this Court had accorded permission to withdraw the writ petition for moving afresh by challenging the appointment of the person in whose place the petitioner was claiming appointment. Having availed such liberty from this Court, instant proceedings were instituted in the year 2006. The substance of grievance of the petitioner is that in 1998 the state authorities had added four additional posts in the unreserved/general category, such addition was by rectifying the earlier illegal roster in terms of order passed by this Court in CWJC No. 9514 of 1996. Even though four posts had been added in the general category the same was still filled by persons of the reserved category. Such filling up of posts in 1998 by reserved category candidates against the general category roster point was never challenged or assailed by the petitioner.

In 1999 when the roster was again prepared the same did not provide four posts for general category in terms of order passed by the writ court earlier in the proceedings arising out of CWJC No. 9514 of 1996. The petitioner was aggrieved by the same. It is his submission that on account of non availability of four posts in the general category in the roster prepared in 1991 the respondent No. 7 who was just below him in the seniority list of Dalpati has wrongly been appointed ignoring his claim. It is in this background that the present writ petition has been filed.

While the petitioner's claim was pending in this Court, the issue regarding appointment of Panchayat Sevak/Secretary from the



Dalpati stands concluded in at least two orders which have been placed in the proceedings today. One of the orders is one passed in the case of *State of Bihar Vs. Subhash Chandra Shnukla in LPA NO. 789 of 2006* reported in *2009 (4) PLJR 569*. The other judgment which has been placed in the proceedings is judgment in the case of *Siya Ram Sharma vs. State of Bihar*. This judgment is also a judgment of the division bench.

Earlier this writ petition was heard on 14.8.2013. The writ petition was dismissed on the said day having regard to the fact that on account of concession made by the State Government only 531 persons from Dalpati were to be appointed as Panchayat Sevak. Taking note of the order passed by the division bench in the aforesaid two cases the writ petition was dismissed. The petitioner thereafter preferred a Letters Patent Appeal against dismissal of the instant writ proceeding. LPA No. 351 of 2014 was allowed on 25.1.2018 and the instant case was restored to its original file for consideration of the writ petition. The division bench while remitting the matter has observed as follows:-

“It is specifically pleaded in the original writ petition CWJC NO. 2590 of 2006 which is now filed that after granting promotion illegally to respondent no. 7 the second writ petition was filed in 2006. This aspect of the matter even though specifically pleaded and indicated in the writ petition from paragraph -14 onwards and has not been adverted to or considered by the learned Writ Court which is an error apparent on the face of record that has occurred in dismissing the writ petition.

That apart, in the case of Subhsah Chandra Shukla & Ors. decided by the Division Bench reliance



upon which has been placed by the learned Writ Court .i.e. CWJC No. 6243 of 2000 and CWJC No. 6977 of 2000, the question was with regard to the right of Dalpati seeking appointment on promotion on the post of Gram Sewak and the admission made by the learned Advocate General to say that a Dalpati cannot be appointed as Panchayat Sewak and the statement is that now after appointment of 531 Dalpatis as Panchayat Sewaks no further appointment will be made the issue was decided.

However, in this case, the inter se dispute in the matter of appointment of respondent no. 7 ignoring the claim of the petitioner still subsists and it seems that respondent no. 7 was one of the 531 Panchayat Sewaks who have been appointed by promotion and it is the grievance of the petitioner that in doing so his claim has been ignored. If that be the position, the question as to whether the principle decided by the Division Bench in CWJC No. 6977 of 2000 was properly applied in the present case also becomes relevant which has not been considered by the learned Writ Court.

Taking note of all these circumstances we see that as the issue raised by the petitioner has not been properly considered based on the pleading in the writ petition of the appellant and the assertions made it is a fit case where the appeal should be allowed and the matter reconsidered.”

It is in this background that the matter is being heard again today.

The grievance of the petitioner arises out of deprivation in the matter of consideration in the matter of appointment of Panchayat Sevak/Secretary on account of non availability of four posts in the roster point for reserved category in the year 1999. The grievance of the petitioner is on account of four posts being diverted to the persons of



reserved category. The challenge is to the appointment of respondent No. 7 on the same ground that though he was junior to the petitioner, by not providing four posts in the roster point for general category the petitioner has been deprived and at the cost of his consideration respondent No. 7 has wrongly been appointed.

In this connection, this Court would take note of the fact that the case of the petitioner is that four roster point were not made available. Whether respondent No. 7 was the first amongst the alleged four reserved point not made available or the last is an issue which has not been placed on record. Merely because he was just below the petitioner whether appointment of respondent No. 7 can be assailed or not is an issue which also arises for consideration. Since four vacancies in the general category are claimed by the petitioner in the roster of 1999, the petitioner would be required to identify as to at what point those vacancy would occur and if so who is the person who has been appointed against the roster point which was available to the petitioner. That is an issue not dealt with in the instant proceeding.

The decision in the case of *Siya Ram Sharma* (supra) arising out of proceedings in CWJC No. 6977 of 2000 is a decision of the Division Bench. The Division Bench has clearly taken note of the fact that there can be no appointment beyond 531 and that also because even after coming into force of the new rules the Advocate General appearing on behalf of the State of Bihar had given an undertaking that there were specific orders of the Court in favour of those 531 persons and therefore



they would be appointed. The relevant consideration in this respect in order of Division Bench is being extracted for easy reference as follows:-

3. Learned Government Pleader no. 3 has opposed the writ petition. He submits that Dalpatis have been appointed as Panchayat Sewak/Panchayat Secretary under orders of the Court. He next submits that it has been held in the aforesaid judgment that a Dalpati is ineligible to be considered for appointment to the post of Panchayat Sewak/Panchayat Secretary. He also submits that the petitioner is not amongst 531 persons.

4. We have perused the materials on record and considered the submissions of learned counsel for the parties. The question whether or not a Dalpati can be considered for appointment as Panchayat Sewak/Panchayat Secretary is now concluded by the judgment in the case of State of Bihar and Ors versus Subhash Chandra Shukla (Supra) wherein it has been held that, in the scheme of the laws governing Panchayat Raj in Bihar, they cannot be considered for such appointment. However, the State Government conceded, as has been noticed in paragraph 16 of the judgment, that 531 Dalpatis shall be appointed as Panchayat Sewak/Panchayat Secretary because they have approached this court earlier, orders were passed in their favour which have attained finality. In that view of the matter, the writ petition was disposed of with the direction in paragraphs 15 and 16 of the judgment. The same are reproduced hereinbelow for the facility of quick reference:-

“15. We, however, note the submissions of the learned Advocate General that the State Government is promise-bound to appoint 531 Panchayat Secretaries from amongst Dalpatis for the reason that the same is being done in compliance of the orders of the Court which have attained finality. The orders of the learned Single Judges in those writ petitions have not been brought to our notice, let alone those being the subject matter of the present appeal. We are in no position to appreciate the circumstances which persuaded the courts to pass orders to the effect that those petitioners, who were



working as Dalpatis, shall be considered for appointment/promotion as Panchayat Sewaks. It is a possible situation only to illustrate it in a hypothetical manner, that the State Government may have taken the decision to appoint Panchayat Sewak/Panchayat Secretary from amongst Dalpatis to meet the emergent situation on account of the vast number of vacant posts of Panchayat Sewak/Secretary in the State of Bihar.

16. In view of the mandate of the Constitution, the Act has to be effectively implemented without any loss of time. A workable system had to be put in place. Learned Advocate General has further submitted that the figure of 531 has been arrived because those Dalpatis had approached this court by way of various writ petition and orders have been passed in their favour. Let it be made clear that such an action may not necessarily have our stamp of approval, but we permit the State Government to so appoint/promote them because the various orders of this court have attained finality. We wish to further clarify that only those Dalpatis, not exceeding 531 persons, would be appointed/promoted to the post of Panchayat Sewak/Secretary in different Panchayats of the State whose names have been approved by the Staff Selection Commission. Those of the present writ petitioners who had approached this court earlier, orders have been passed in their favour, and are within 531 Dalpatis, shall be similarly treated. We further clarify that in so far as appointment/promotion of 531 candidates is concerned, the State Government shall not keep in mind the distinction, if any, between the Gram Panchayat Sewak/Panchayat Secretary. The question whether or not the State Government wishes to make a distinction between the two posts will depend on the Rules that it is required to frame."

5. In so far as the present case is concerned, the petitioner has not been able to produce any order of this Court directing the State Government to consider him for appointment. In that view of the matter, the



present case is squarely covered by the judgment in the case of State of Bihar and Ors versus Subhash Chandra Shukla (Supra). It has been made clear in the judgment that appointment of 531 persons were being made because of specific orders of the Court in their favour subject to approval of the Staff Selection Commission. It was made clear that such an action may not have necessarily the stamp of approval of this Court but were being accepted because of the orders of various courts which have attained finality. In that view of the matter, learned Government Pleader is right in his submission that appointment of any allegedly junior Dalpati is because of such orders of the Court, and is not in the least attributable to the volition or discretion of the State Government.

Since 531 persons were being appointed pursuant to earlier orders of this Court in their favour the division bench had considered the issue to be closed after those 531 persons. The appointment thereafter, if at all, were to be made under the new rules. The admitted position is that there is no earlier order of the court in favour of the petitioner and petitioner is not amongst 531 persons taken note of in the decision of the division bench. He therefore cannot claim parity with the 531 persons who are beneficiaries of the earlier orders of the High Court in their favour, based on which the learned Advocate General had given a concession before the Division Bench.

Petitioner's Counsel however straneously submits that his claim was already pending before this Court and therefore his claim cannot be shut out by virtue of the division bench order. That is a submission which this Court sitting Singly is not in a position to consider. The division bench has already concluded the matter of



appointment prior to coming into force of new rules to the 531 persons in whose favour there were orders of the High Court.

The petitioner's grievance, therefore to the extent that it assails the appointment of respondent No. 7 who is one of the persons out of said 531 persons cannot be considered by this Court in the instant proceeding sitting Singly.

The writ petition therefore is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

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