

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3970 of 2023

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Krishna Kumari Yadav, W/o Ranveer Yadav, resident of Village- Shambhavi
Sadan Bajrang Bali Tola Chukti, P.S. Mansi, Town and District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Panchayati Raj, Bihar, Patna.
3. The Principal Secretary, Department of General Administration, Bihar, Patna.
4. The Principal Secretary, Department of Finance, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Suneil Kumar Thakur, Advocate
For the Respondent/s	:	Mr. Prateek Kumar Sinha, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-08-2023

Heard Mr. Y. V. Giri, learned senior counsel, duly assisted by Mr. Suneil Kumar Thakur, learned counsel appearing on behalf of the petitioner and Mr. Prateek Kumar Sinha, learned counsel representing the State.

2. The petitioner, who is an elected Chairman of Zila Parishad, Khagaria invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the Resolution, as contained in Letter No. 11868 dated 12.12.2022, issued under the signature of the Principal Secretary, Department of Panchayati Raj, Bihar, Patna addressed to all the District Magistrates of Bihar and the Chief Executive



Officers of all the Zila Parishads of Bihar, whereby it has been intimated that the State Government, after having due consideration in public interest, has decided to make appointment on the basis of contract upon the sanctioned vacant posts, such as Assistant Engineer, Junior Engineer, Head Assistant, Upper Division Clerk, Clerk and Accountant of the Zila Parishad by following the guidelines by a four Members Selection Committee, constituted at the District level under the Chairmanship of the District Magistrate.

3. Further, the petitioner also seeks a direction upon the respondent authorities not to interfere with the functioning of Zila Parishad in making appointment on Ad-hoc basis from the retired employees in complete transgression of the provisions of the Bihar Panchayat Samiti and Zila Parishad (Conditions of Service) Rules, 1964 (hereinafter referred to as 'the Rules, 1964').

4. While assailing the impugned Resolution dated 12.12.2022, issued under the signature of the Principal Secretary, Department of Panchayati Raj, Bihar, Patna, the learned senior counsel submits that the same has been issued by the Principal Secretary in its capacity, as the Principal Secretary, and, as such, does not have the power to meddle with the affairs



of the Zila Parishad in making appointments by transgressing the Rules, 1964, which is already in existence and mandates how appointment in the Zila Parishad is to be made. It is further submitted that the Resolution is not issued by the Government, rather has been issued under the signature of Principal Secretary.

5. Mr. Giri further submitted that the Zila Parishad is part of the local-self Government and interference of the Government also limited only to the extent that the Government has the power to appoint the Municipal Commissioner or the Chief Executive Officer, as the case may be, but the internal affairs of the local-self Government cannot be controlled or governed by the Executive Authority of the State.

6. Learned senior counsel while drawing the attention of the Court to the constitution of Committee under the impugned resolution submitted that even the Committee constituted based on which appointment on contractual basis from the retired employees are to be made, consists of State official only, which transgresses the authority of Zila Parishad in taking decision on its own, in terms of Rules, 1964 and also in terms of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act, 2006'). In support of his submission, he also highlighted the relevant provisions of Rules 1964 as well as as



the Act, 2006. He lastly submits that if the posts are sanctioned and vacant then why appointments on merely contractual basis, what prevented the authorities to fill up the vacant sanctioned posts by regular appointment and even if Ad-hoc appointment on contractual basis are to be made, then why the same was not made by the Zila Parishad. The aforesaid Resolution dated 12.12.2022 is nothing, but a clear transgression in the power and functioning of Zila Parishad by usurpation of its power by the Executive Authority of the State.

7. Per contra, learned counsel for the State, while refuting the contention of the petitioner, at the threshold, objected the locus of the petitioner as to under what capacity he is assailing the impugned resolution in absence of any decision of Zila Parishad, only in the capacity of the Chairman of Zila Parishad, Khagaria. In support of the aforesaid contention, reliance has been made on a judgment rendered by the Apex Court in the case of **Ahmedabad Municipal Corporation and Another Vs. Rajubhai Somabhai Bharwad and Another, (2015) 7 SCC 663**, especially para nos. 21 and 24 thereof.

8. Mr. Sinha further submits that since proper functioning of Zila Parishad is the matter of great importance, the Government of Bihar exercising its authority under Sections



156 and 172 of the Act, 2006 has taken a conscious decision to temporarily appoint employees of Zila Parishad in accordance with the departmental resolution no. 11868 dated 12.12.2022 on contractual basis among the retired Government servants or retired employees of other Zila Parishads or Boards. He further submits that the existing Rules, 1964 framed about 59 years back under the provisions of the Bihar Panchayat Samiti and Zila Parishad Act, 1961, which has already been repealed upon enactment of Bihar Panchayat Raj Act, 1993 (hereinafter referred to as 'the 1993 Act'). The 1993 Act also subsequently repealed on coming into force of Bihar Panchayat Raj Act, 2006. Since as of now, no new Rules regarding the Service conditions of Zila Parishad is in force, the old Rules of 1964 remained enforced resulting into cropping of various issues time to time, hence there is no point and propriety to stick on it.

9. He next submitted that a new Rule by the name of Bihar Zila Parishad (Service Conditions) Rules, 2023 has been framed by the Panchayati Raj Department and is in process of approval. As soon as it gets approved, new appointments in Zila Parishad shall be made in accordance with the new Rules.

10. After having given anxious consideration to the submissions made on behalf of the parties, before parting with



the final outcome, it would be apposite to take note of the relevant statutory provisions of the Act/Rules.

11. The Legislature of Bihar, in pursuance of the constitutional mandate, has enacted the Bihar Panchayat Raj Act, 2006. Section 62 of the Act, 2006 is relevant in the present context and is reproduced hereinbelow:

“62. Establishment of Zila Parishad. - (1) For every district there shall be a *Zila Parishad* having jurisdiction, save as otherwise provided in this Act, over the entire district excluding such portion of the district as are included in or under the authority of a Municipality or Cantonment Board constituted under any law for the time being in force.

(2) Every *Zila Parishad* shall be a body corporate by the name of its *Zila Parishad*, shall have perpetual succession and a common seal and, subject to such restrictions as are imposed by or under this Act or any other enactment, shall be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property movable or immovable, whether without or within the limits of the area over which it has authority of entering into contracts and of doing all things necessary, proper or expedient for the purpose for which it is constituted.”

12. Now coming to Section 87 of the 2006 Act, which



reads as follows:

“87. Staff of Zila Parishad. - (1)

The Government shall appoint an officer of the rank of Deputy Secretary or above, as may be specified by the Government, exclusively as Chief Executive Officer of the Zila Parishad. The Government may appoint an Additional Chief Executive Officer for a *Zila Parishad* on such terms and conditions as may be prescribed.

(2) The Government shall, from time to time, post or depute in every *Zila Parishad* such number of officers and staff, as the Government considers necessary.

(3) Subject to such Rules as may be made by the State Government in this behalf, a *Zila Parishad* may from time to time engage such number of paid or honorary functionaries or professionals as may be required by it for carrying out its functions.”

13. While refuting the contention of the petitioner, the learned counsel representing the State respondents submitted with all vehemence that the Government of Bihar exercising the authority under Sections 156 and 172 of the Act, 2006 has taken a conscious decision to temporarily appoint employees of the Zila Parishad in accordance with the impugned Resolution on contractual basis among the retired Government servants or retired employees of other Zila Parishad or Board. Thus it would



be relevant to reproduce Section 156 of the 2006 Act, which reads as follows:

“156. Directions from Government. - (1) Notwithstanding anything contained in this Act, it shall be lawful for the Government to issue directions to any Panchayat in matters relating to state and national policies, government programmes and any other matter of public importance and such directions shall be binding on the Panchayat.

(2) The Government may-

(a) call for any record or register or other document in possession or under the control of any Panchayat,

(b) require any Panchayat to furnish any return, plan, estimate, statement, account or statistics, and,

(c) require any *Panchayat* to furnish any information or report on any matter related/connected with such Panchayat.”

14. It is evident from the provision of law, as discussed hereinabove that Zila Parishad is a body corporate, shall have perpetual succession and a common seal and can sue or being sued in its capacity. Every Zila Parishad is a separate legal entity. The State Government should be mindful that it is a separate and distinct entity from the Zila Parishad. The authorities of the State Government, thus, should desist from



interfering and imposing its *Will* on the Zila Parishad that has its own power, duties and functions. Section 156 of the Act affords limited powers only to the extent of issuing direction in the matter relating to State and National policies, Government programmes or any matter of public importance.

15. So far Section 172 of the Act, 2006 is concerned, it is only mandated for removal of difficulties whenever any difficulty arises in giving effect to the provisions of this Act and even for such purpose the Government, may by order, publish in the official Gazette, as the occasion may require, had anything which appears to it to be necessary to remove the difficulty.

16. The aforementioned provision especially Section 87 of the 2006 Act, the Zila Parishad is empowered to engage such number of paid or honorary functionaries or professionals, as may be required by it for carrying out its functions.

17. Now coming to the relevant provisions of Bihar Panchayat Samiti and Zila Parishad (Conditions of Service) Rules, 1964, it is manifest that Rules, 3 and 4 of 1964 Rules categorizes the post of the officers and staff, who are supposed to be posted in each Zila Parishad/Panchayat Samiti only by the State Government.

18. Rule 7(4) envisages a selection committee



comprising of the Chairman, Deputy Chairman, District Development Officer and an officer nominated by the Collector of the District and in this way the appointment, posting, promotion and transfer shall be made by the District Development Officer on the recommendation of the Committee.

19. It is trite law that when a statute confers power to an authority to do certain act or acts or exercise power in respect of certain matters, the power is required to be exercised only in the manner prescribed under the Statute and not at all and all other modes of performance are necessarily forbidden.

20. Needless to observe that the Constitution of India, under Article 243 has conferred power upon the elected representative at the grass-root level of democracy by envisaging the independent three tier Panchayati Raj Institution to cater the needs of the public at large, especially the under privileged sections of the society. It is trite law that by issuing Executive instructions, the statutory Rules cannot be supplanted, although the same can be supplemented. Since the statutory provisions prescribed under the Act, 2006 and Rules 1964 have already prescribed the mode and manner of appointment of the staff of Zila Parishad that cannot be usurped and transgressed that too in such a manner, in the name of public importance.



Thus, whatsoever, bonafide intention of the Principal Secretary may be before issuance of any notification or Government instruction, it is to be tested on the touch stone of Article 14 of the Constitution of India before acting upon.

21. The impugned resolution further does not disclose as to under what authority of law, the same has been issued in conflict with the provisions of Bihar Panchayat Samiti and Zila Parishad (Conditions of Service) Rules, 1964, which still hold the field good. The constitution of four Members Selection Committee under the Chairmanship of District Magistrate also de hors the provisions of 1964 Rules, *prima facie*, is an attempt to usurp the power of Zila Parishad and would certainly termed as illegal.

22. This Court also finds substance in the submission of the petitioner that the impugned resolution has been issued by and under the signature of Principal Secretary, Department of Panchayati Raj, Bihar, Patna on his own without having been approved by the Executive of the State as well as under the order of His Excellency Governor of Bihar and as such the same is also in the teeth of Article 154 of the Constitution of India, which envisages that the Executive power of the State shall be vested in the Governor and shall be exercised by him either



directly or through officers Sub-ordinate to him in accordance with law. That apart, the impugned order is not in consonance with Articles 166(1) and 166(2) of the Constitution of India.

23. It is true that under Rule 5 of Rules of Executive Business Bihar, 1977, the business of the Government of Bihar is distributed and transacted in the departments specified in the first schedule, which is allocated by issuing one or more department to the charge of a Minister under Rule 6 thereof and each Department is to consist of Principal Secretary/ Secretary to the Government, who is to be official head of the Department and other officers, as the State Government may determine under Rule 8 thereof.

24. The Government of Bihar in the Department of Appointment vide Notification No. A933 dated 25.01.1952 issued in exercise of Article 166(2) of the Constitution of India clearly speaks that all orders or instruments made or executed by or on behalf of the Government of Bihar is to be expressed to be made or executed by order of the Governor of Bihar and every such order or instrument is to be signed by the Secretary, Joint Secretary, Under Secretary etc. save and except in cases where an officer has been specifically empowered and moreover in the case of substantial compliance, it would be suffice to



defend the instrument from declaring it in violation of Articles 154, 166(1) and (2) of the Constitution of India. But true it is that question regarding the authority of the Principal Secretary with respect to the contractual appointment to the retired employees in “Zila Parishad” would not fall within the 1st schedule of Rules of Executive Business.

25. So far the next issue regarding locus of the petitioner is concerned, needless to observe that the constitution of Selection Committee at the district level under the Chairmanship of the District Magistrate dehors the Chairman of the Zila Parishad clearly transgressed his right as bestowed upon him under the Rules, 1964 and the Act, 2006, thus in the opinion of this Court, the impugned resolution certainly affects the right of the petitioner, who has been elected as Chairman of Zila Parishad, Khagaria.

26. The decision of the Apex Court relied upon by the learned counsel for the State is distinguishable in the facts of the present case, as in the said case, an award has been passed by the Labour Court on the strength of a compromise entered into by the *Sarpanch* without getting any authority from the Gram Panchayat, which was found prejudicial to the right and interest of the Members of the Gram Panchayat. Hence it was, thus, held



that Section 5 of the Bihar Panchayat Raj Act, 1993 clearly lays down that a village Panchayat is a body corporate and thus the Sarpanch of the said panchayat in the absence of any authority and in the absence of any statutory permissibility it is absolutely inconceivable in law that a he can enter into settlement with a workman, which is contrary to the spirit of the responsibility cast on local self-government.

27. Further the reliance of the State Government on a Resolution No. 10000 dated 10.07.2015 showing it as a basis to empowers the State respondent to come out with the impugned Resolution dated 12.12.2022 is wholly misplaced, as the Resolution dated 10.07.2015 issued by way of a guideline, is only confined to appointment on contractual basis among the retired Government servant in different departments of the Government and regional offices.

28. This Court in the aforesaid premise and the position obtaining in law is of the conscious view that Section 156 and 172 of the Act, 2006 do not empower the State authorities to transgress in the domain of Zila Parishad, which has separate entity, having its power, duties and function within the area prescribed under the Statute.

29. In view of the discussions made hereinabove, this



Court is of the opinion that the impugned Resolution dated 12.12.2022, as contained in Annexure-1, is in the direct conflict of the terms of 1964 Rules as also of the 2006 Act and thus not sustainable.

30. Accordingly, the impugned resolution dated 12.12.2022, issued under the signature of the Principal Secretary, Department of Panchayati Raj, Bihar, Patna, is hereby quashed and cancelled.

31. The present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	18.08.2023
Uploading Date	31.08.2023
Transmission Date	NA

