

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.145 of 2022

In

Civil Writ Jurisdiction Case No.2652 of 2020

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Raj Kishore Son of Jay Krishna Singh Resident of Village Momindpur, Police
Station Fathua, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Panchayati Raj, Bihar, Patna.
2. The Additional Chief Secretary, Department of Panchayati Raj, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Additional Collector, Patna.
5. The District Panchayati Raj Officer, Patna.
6. The Block Development Officer, Fathua, Patna.
7. The Sarpanch, Gram Panchayat Momindpur, Fathua, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr. Ajay (GA 5)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 06-12-2023

I.A. No. 01 of 2023.

The present Interlocutory Application has been preferred for condoning the delay of one year and eleven months in filing the appeal. The reasons have been incorporated in paragraphs 3 to 5 of the petition. The State has no objection.

2. The delay in filing the appeal stands condoned.

I.A. No. 01 of 2023 is allowed.



L.P.A. No. 145 of 2022.

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Ajay, learned GA-5.

The present appeal is directed against the order dated 26.02.2020 passed by the learned Single Judge in CWJC No. 2652 of 2020 by which vide a reasoned order, the writ petition of the appellant-petitioner was dismissed.

2. The brief facts of the appeal is/are as follows:

3. The appellant-petitioner was serving as 'Gram Katchahary Sachiv' for Momindpur in Fatuha Block, Patna having been selected in the year 2008. At that time, the 'Sarpanch' was Sunita Devi. The appellant-petitioner served between the period 10.01.2008 to 31.05.2011. Later, one Parwati Devi was elected to the post of 'Sarpanch' for the Gram Katchari, Momindpur, Patna.

4. As the story moved further, the case is that the new 'Sarpanch' took illegal work from her relative in place of the appellant-petitioner for the period 2011-2016 i.e. till she served as the 'Sarpanch'. Meanwhile, case of the respondents is/are that the appellant-petitioner served in a private organisation.

5. Once the facts came to the notice of the



respondents, vide memo no. 2792 dated 11.12.2019 passed by the respondent no. 5, the District Panchayat Raj Officer, Patna after recording the said facts, while relieving the appellant-petitioner as Gram Katchahary Sachiv, Momindpur gave direction for institution of certificate case against the then 'Sarpanch', Parwati Devi for the realisation of the amount.

6. Thereafter, the appellant-petitioner preferred CWJC No. 2652 of 2020. The writ Court after hearing the parties passed an order on 26.02.2020 and the concluding part of the order read as follows:

“The aforesaid submissions based on procedure prescribed in the Regulation have to be viewed in the background of the facts which are admitted in the averments made in para 7 and of the writ petition. The admitted position is that in between 2011 to 2016 the Sarpanch was taking work from her relative and the payment which was due to the petitioner was being extended to her relative. The petitioner however has approached this Court only after an order dated 11.12.2019 has been passed whereby he has collaterally been removed. The admitted position is that in between 2011 to 2016 petitioner has not worked. On the contrary



he has by his silence tacitly allowed the Sarpanch to pay to his relative, amounts due to the petitioner as remuneration/honorarium.

Petitioner's Counsel places reliance on Annexure 4 to submit that the same specifies that he has worked. The submission however appears to be incorrect. The admission of the petitioner is there in the pleadings in the writ petition. Having absented from duty for five years and allowing the Sarpanch to extend payment to her relative in place of the petitioner, the petitioner cannot be permitted to invoke the equitable jurisdiction of this Court by raising the plea of procedural lapse in his removal.

This Court is not inclined to exercise jurisdiction in favour of the petitioner.

The writ petition is dismissed."

7. Aggrieved, the present appeal.

8. Mr. Abhinav Srivastava, learned counsel appearing for the appellant-petitioner submits that the appellant was forced to remain without work by the then 'Sarpanch' and was also threatened (which reflects from his petition dated 11.03.2019 addressed to the Additional Collector, Patna who was conducting an inquiry into the



matter).

9. It is his further submission that the new 'Sarpanch', Parwati Devi without adhering to the provisions started taking work from one Tinku Kumar who was son of the cousin brother of her husband. Further, once the tenure of Parwati Devi came to an end and Krishna Murari was elected as 'Sarpanch', he resumed duty.

10. The last submission is that the District Panchayat Raj Officer, Patna had no authority to pass the order in question under the Gram Katchahary Rules.

11. Mr. Ajay, learned GA-5, on the other hand, has taken this Court to the notification no. 4460 dated 29.08.2008 which relates to the employment and service conditions of the 'Sachiv' and titled as **Secretary, Bihar Gram Katchahary (Employment, Service Conditions and Duties) Rules, 2007** (henceforth for short, 'the 2007 Rules').

12. He submits that clause 8 of 'the 2007 Rules' clearly shows that the tenure of a Secretary will come to an end with the completion of the tenure of the Gram Katchahary. He as such submits that after the tenure of earlier 'Sarpanch', Sunita Devi came to an end in the year 2011, the appellant-petitioner automatically went out of service.



13. He further submits that it is not the case of the appellant-petitioner that he was subsequently re-appointed to the said post. In that background, he submits that the appellant do not have any case.

14. Having heard the parties and on perusal of records, the facts that emerges is/are:

(i) the petitioner was appointed in the year 2008 and admittedly, he served between the year 2008 to 2011;

(ii) it is further an admitted fact that from the year 2011 onwards, he did not work during the period Parwati Devi served as 'Sarpanch';

(iii) it is also not the case of the appellant-petitioner that once he was debarred from work in the year 2011 by Parwati Devi, he took steps in accordance with law for bringing the same to the attention of the authorities and/or knocked the doors of the Patna High Court;

(iv) in fact, he tacitly allowed the illegality to continue for next five years;

(v) it was only after the period of Parwati Devi came to an end, without any fresh selection, he claims to have resumed duty.

15. The clause **8(1) and (2) of 'the 2007 Rules'**



referred to by Mr. Ajay, learned GA-5 read as follows:

8. Other conditions of Service-

(1) The Secretary to the Gram Katchahry will be employed on fixed fee (contract amount) and Rs. 2,000/- (Two Thousand) per month will be payable to him.

(2) With the completion of the tenure of the Gram Katchary the contract of the candidate employed on contract to the post of Secretary, Gram Katchahry will terminate automatically provided that till the fresh employment on contract by the newly constituted Gram Katchahry, he/she shall continue to discharge the functions and responsibilities of the Secretary, Gram Katchahry and on completion of the procedure of employment make over his/her charge to the newly employed Secretary, Gram Katchahry.

16. This Court finds force in the submission put forward by the learned State Counsel. The tenure of the appellant-petitioner automatically came to an end with the completion of the tenure of the Gram Katchahary in the year 2011 whereafter as per his own admission, some other person served as Gram Katchahary Sachiv for next five years.

17. So far as the claim that the District Panchayat



Raj Officer, Patna, being the appellate authority could not have passed the order, the learned Single Judge clearly recorded that same has to be reviewed in the background of the facts that the appellant-petitioner did not work between the year 2011 to 2016 and as such he cannot be permitted to invoke the equitable jurisdiction of this Court by raising the plea of procedural lapse in his removal. While the termination of the Secretary is automatic and simultaneous to the completion of tenure of the Gram Katchahary; on the new Katchahary coming into office there should be a fresh appointment. The appellant thus stood terminated in 2011 and then, he was never appointed.

18. The order passed by the learned Single Judge need no interference.

19. The appeal has no merit and is accordingly dismissed. No Cost.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.12.2023
Transmission Date	

