

Jamuna Paswan Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-23-1993

Judge : S.B. Sinha and R.N. Prasad, JJ.

Appeal No. : C.W.J.C. No. 11211 of 1992

Appellant : Jamuna Paswan

Respondent : The State of Bihar and ors.

Disposition : Application Dismissed

Judgement :

S.B. Sinha, J.

1. In this application the petitioner has questioned the appointment of the respondent No. 6 to the post of Dalpati by the District Panchayat Officer, Madhubani as per the order as contained in Memo No. 468 dated 18-7-1992.

2. Bereft of all unnecessary details, the fact of the matter is as follows :

The petitioner is said to be a matriculate and he had been working as a Sectional Officer of the Village Volunteer Force of the Gram Panchayat. The Dalpati of the Gram Panchayat Shri Bisheswar Prasad died on 31-12-1990 and allegedly the petitioner was made Incharge of the post of Dalpati. For the purpose of filling up the post of Dalpati, an advertisement was issued filing the application before the

Secretary of the Gram Panchayat on 2-10-1991.

3. The petitioner allegedly filed an application pursuant to the said advertisement on 2-10-1991. It is further alleged that the petitioner's name was recommended by the Executive Committee and his name was sent for approval.

4. According to the petitioner the norms for appointment of the Dalpati had been fixed by the State in terms of. Circular letter No. 7643 dated 25-11-1986 which is contained in Annexure-3 to the writ application.

5. According to the petitioner he came to learn that the Mukhiya of the Gram Panchayat did not send his name for approval of his appointment to the District Panchayat Officer. The petitioner thereafter filed a representation before the. District Magistrate, Madhubani on 21-3-1992 and again on 15-5-1992.

6. However by reason of the impugned order dated 18-7-1992 the appointment of the respondent No. 6 was approved by the District Panchayat Officer.

7. In a counter-affidavit filed on behalf of the respondent Nos. 1 to 4, it has been denied that any application for appointment purported to be contained in Annexure-2 was filed by the petitioner. It has been stated that the petitioner has manufactured the aforementioned document. It has further been stated that the date fixed for filing of the application for appointment of the Dalpati was 5-8-1991 and not 2-10-1991 as alleged by the petitioner.

8. It has further been stated that the name of respondent No. 6 was only recommended by the Executive Committee on 10-4-1992 which was received (Illegible) District Panchayat Officer on 18-4-1992 and (Illegible) with regard to the appointment of Respondent (Illegible).

9. The respondent (Illegible) affidavit also reiterated the said facts.

10. Mr. Ajay Kumar Thakur, the learned Counsel appearing on behalf of the petitioner has drawn our attention to Rule 4(1) of the Bihar Village Volunteer Force Rules and submitted that the provisions thereof had not been followed nor the case of the petitioner had been considered.

11. The learned Counsel drew our attention to the proceeding of the minutes of meeting as contained in Annexure-A. It was also submitted that it would appear that the respondent No. 6 had also filed this application on 7-10-1991. He further drew our attention to Annexure-7 the counter-affidavit filed on behalf of the State which is a memo bearing No. 468 dated 18-7-1992 and submitted that from a perusal thereof it would appear that the Executive Committee was constituted for grant of approval and the name of the respondent No. 6 is contained in Item No. 9. He submitted that the said documents had been prepared only for the purpose of giving appointment to the respondent No. 6 and he submitted that from a perusal thereof it would appear that the proceedings appeared to be a disputed one :

12. Mrs. Asha Sinha, the, learned Junior Counsel to Standing Counsel No. 6 as also Mr. Shivendra Kishore learned Counsel appearing on behalf of the respondent No. 6 however submitted that only four applications were received for appointment in the post of Dalpati and the petitioner was not one of the applicants.

13. The learned Counsel further submitted that the statements made by the petitioner in paragraph 16 of the writ application that the Mukhiya of the Gram Panchayat had made a forgery by causing a change in the resolution of the Executive Committee as a result whereof the name of the respondent No. 6 was appointed was not correct.

14. The learned Counsel further submitted that the petitioner never acted as a Sectional Officer of the Village Volunteer Force.

15. The learned Counsel further submitted that Annexure-1 of the writ application which is said to be a certificate granted by the Mukhiya is a forged and fabricated document, which would be evident by comparison of the writings contained therein with his representation as contained in Annexure-D to the counter-affidavit.

16. Mr. Shivendra Kishore, the learned Counsel further submitted that from a perusal of the purported application filed by the petitioner contained in Annexure-2 to the writ application it would appear that no date for filing such an application is given therein and an illegible endorsement had been made allegedly by Panchayat Sewak on 2-10-1991. He further submitted that the respondent No. 4 applied

within the stipulated period, thus no illegality has committed.

17. Rule 4 of the Bihar Panchayat Village Volunteer Force Rules reads thus :

4(1) Subject to the approval of the District Panchayat Officer, the Executive Committee shall, for the purpose of commanding the force, appoint a Chief Officer from amongst the members of the force.

(2) A member of the force, in order to be eligible for appointment as the Chief Officer, must be--

(a) over 21 and under 30 years of age on the date of appointment;

(b) of good moral character;

(c) physically fit to stand the vigorous of outdoor duties

(d) not less than 5 feet 4 inches in height and 32 inches round the chest (inexpanded); and

(e) in possession of the Middle Vernacular Certificate:

Provided that in the event of non-availability of candidate possessing Middle Vernacular Certificate the upper primary certificate may be taken as requisite educational qualification.

(3) In selecting a person from amongst the members of the force for appointment as the Chief Officer, preference shall be given to a member who has had war or police service to his credit.

From a bare perusal of the said provision it would appear that the appointing authority of the Dalpati is the Executive Committee but the same would be subject to the approval of the District Panchayat Officer. The other criteria for appointment of Dalpati had also been laid down therein.

18. The post of Dalpati fell vacant on or from 1-1-1991 owing to super annuation of Bishesh war Pd. Sah. A meeting of the Executive Committee was held on 14-7-1991 and a resolution was adopted therein that a Dalpati be appointed and 5-8-

1991 was the date fixed for filing the application for appointment on the post of Dalpati.

19. According to the respondents, however four applications were received. The application of Ram Kumar was received on 5-9-91 that of Chandeshwar Thakur was received on 2-10-91, that of Bindeshwar Purbe was received on 4-10-1991 and of Mahesh Barti was received on 10-10-1991.

20. As noticed hereinbefore, according to the petitioner he filed an application for appointment which was received by the Panchayat Sewak allegedly on 2-10-1991. The other application do not appear to have been received by the Panchayat Sewak.

21. Further as noticed hereinbefore, the application of the petitioner which is contained in Annexure-2 to the writ application does not bear any date. It further appears from Annexure-1 to the writ application that the purported certificate granted in his favour to the effect that he had worked As a Sectional Officer is not a genuine document. The original certificats was a typed written one. However at the top of the said certificate the words' Sectional Officer Praman Patra' and at the bottom of the certificate, the words' Sectional Officer ke pad par karyrat hai are hand written.

22. As noticed hereinbefore, the contention of the respondent in this connection is that the said words have been inserted by the petitioner himself as would be evident from comparison of the writings of the petitioner in the said certificate with that of the representation tiled by him before the Collector which is contained in Annexure-D to the counter-affidavit tiled on behalf of the respondent Nos. 1 to 4.

23. It is noteworthy that the petitioner has annexed typed copies of the said representation in his writ application although the other documents annexed therewith are recorded copies. It is true that the application of all the four candidates have been received after 5-8-1991 on which date, in terms of the resolution of the Executive Committee dated 14-7-1991 applications were to be received.

24. However, it has now been contended by all the respondents that the Executive Committee in its meeting dated 20th October, 1991 considered the cases of all the candidates, whose applications had been received for appointment to the post of Dalpati and it was resolved therein that the respondent No. 6 be appointed. The respondent No. 6 in his counter-affidavit had also stated that in terms of the resolution he had been issued with the appointment letter by the Mukhiya dated 21-10-1991 as contained in annexure R-6/C and since then he had been working in the said post.

25. The Counsel appearing on behalf of the petitioner is also correct in his submission that from a perusal of the Annexure-7, to the counter-affidavit filed on behalf of the respondent Nos. 1 to 4, it would also appear that Selection Committee found the meetings to be a disputed one.

26. However, keeping in view the fact that the petitioner did not file any application for his appointment and further he guilty of forging the certificate which is contained in Annexure-1 to the writ application, it would not be proper for this Court to exercise our jurisdiction under Article 226 of the Constitution of India more so in view of the fact that the respondent No. 6 was also a member of Village Volunteer Force and was senior to the petitioner and he had been working on the post of Dalpati on 21-10-1991. It is also evident that the representation of the petitioner had been considered not only by the District Magistrate but also by the District Panchayat Officer who upon consideration of the entire records of the Gram Panchayat approved the appointment of Respondent No. 6 as Dalpati.

27. In this situation, we do not consider it fit and proper to interfere with the appointment of Respondent No. 6 at this stage.

28. This application is, therefore, dismissed but without any order as to costs.

R. N. Prasad, J.

29. I agree.