

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1165 of 2018

In

Civil Writ Jurisdiction Case No.16392 of 2008

-
-
1. Arun Kumar Sharma, Son of Sri Jagarnath Sharma, Resident of Village and Grma Panchayat- Rampurwa Mahanawa, Police Station and Block- Majhaolia, District- West Champaran at Bettiah.
 2. Mahmood Alam, Son of Shekh Maksood Alam, Resident of Village- Basantpur, Post Office, Block and Police Station- Mainatand, District- West Champaran at Bettiah.
 3. Baliram Sah, Son of Sri Puran Sah, Resident of Village- Shanwala Pakari, Post Office and Gram Panchayat- Chutta, Police Station- Manipur, Block- Maintand, District- West Champaran at Bettiah.
 4. Laleshwar Prasad, Son of Late Jitu Mahto, resident of Village- Hariapakar, Post Office- Gurwalia, Gram Panchayat- Tunia Bishanpur, P.S. Mainpur, Block- Chanpatti, District- West Champaran at Bettiah.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Secretary to the Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, West Champaran at Bettiah.
5. The Deputy Development Commissioner, West Champaran at Bettiah.
6. The District Panchayat Officer, West Champaran at Bettiah.
7. Radheshyam Mishra, Son of Sri Rama Shankar Mishra, Resident of Village and Post Office- Kehuria, Police Station- Shikarpur, Block- Narkatiya Ganj, District- West Champaran at Bettiah.
8. Hari Narayan Singh, Son of Sri Singheshwar Singh, resident of Village and Post Office- Bhabhtan Under Gram Panchayat- Bhabhatan Gopalpur, Police Station- Sathi, District- West Champaran at Bettiah.
9. Safedar Ali, Son of Late Julbikar Ali, Resident of Village- Khairatian Baldianwa, Post Office Shivrajpur, under Gram Panchayat- Siswan Bhumihar, Police Station- Nawalpur, Block- Jagdapatti, District- West Champaran at Bettiah.

... .. Respondent/s



Appearance :

For the Appellant/s : Mr.Jitendra Kumar Roy, Advocate
Mr. Sumit Kumar, Advocate
For the Respondent/s : Mr. P.K. Shahi, Advocate General
Mr. Manish Kumar, A.C. to AAG-5

=====
CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-08-2023

1. The appellants are persons who were appointed as Dalpatis who seek absorption in the post of Panchayat Sewak, which post according to the appellants is now called Panchayat Secretary. The appellants claim that their initial posting as Dalpatis in the district of West Champaran at Bettiah, in different Gram Panchayats, were made by the competent authority, the Executive Committee of the Gram Panchayat, approved by the District Panchayat Officer, West Champaran. The appellants were all Matriculates and some having higher qualifications who were given training in the Central Training Institute, Brambey at Ranchi. The Government of Bihar by a communication dated 24.06.1989 (Annexure-2) had directed filling up the post of Panchayat Sewak from retrenched employees. It was also prescribed that the minimum qualification for Panchayat Sewak is Matriculation and it was also stipulated that trained Dalpatis would be appointed. For



unreserved category of Dalpatis a training of two years was prescribed which was waived with respect to the reserved categories. There was also age relaxation of three years granted to the Scheduled Castes and Scheduled Tribes fixing the maximum age for unreserved category as 40 years and for the reserved category as 43 years.

2. A Commission was constituted on 15.07.2003 wherein the appointment to the post of Panchayat Sewaks were to be made only on the recommendation of the Staff Selection Commission. The authorities having dragged their feet, the Dalpatis approached this Court with CWJC No. 7652 of 2002, which stood allowed. Following the directions issued, the subsequent writ petition filed as CWJC No. 15200 of 2004 was also allowed. The earlier judgment was challenged unsuccessfully by the State in LPA No. 1042 of 2005 and Special Leave to Appeal (Civil) CC No. 639 of 2007. On filing a Contempt of Court Petition, the Department of Panchayat Raj issued Annexure-4 dated 28.03.2008 addressing the District Magistrates and directing them to carry out the orders of this Court. Annexure-4 also mentions Annexure-2 dated 24.06.1989.

3. It is stated that 69 posts of Panchayat Secretary were identified to be vacant up to March, 2008 in the District of



West Champaran. The appellants also challenge the allocation of posts, to the Scheduled Castes and Backward Classes and their absorption in excess of the permissible quota under the reservation policy. The appellants' specific case was with respect to allocation of an extra 12 posts to the Scheduled Castes and 8 posts to the Backward Classes.

4. The State places reliance on Annexures A, D and C by which it was very evident that no extra post of Panchayat Sewaks were created in the district of West Champaran and there was already excess persons working. It was also asserted that there were only 531 posts available in the entire State of Bihar for the purpose of posting of Dalpatis as has been declared in *Subhash Chandra Shukla & Ors. v. The State of Bihar & Ors.; 2009 (4) PLJR 569*.

5. Before the learned Single Judge the petitioners' counsel had taken a contention that the case of the petitioners should not be governed by the decision in *Subhash Chandra Shukla* but should be regulated by the decision in *Amod Kumar Singh & Ors. v. State of Bihar & Ors.; 2005 (2) PLJR 1*, wherein no such limitation of absorption of Dalpatis were provided; but this argument was not pursued before us in appeal. It was the specific contention of the counsel for the appellants



that if the Government could show that 531 posts were filled up by Dalpatis identical to the appellants and senior to them; then necessarily the appellants have no case. However, the State cannot now turn around and contend that there was no vacancy in the district of West Champaran.

6. The learned Single Judge considered the various notifications and communications issued by the State of Bihar on the subject matter which we find appropriate to notice. Annexure-2 dated 24.06.1989 indicates the policy decision of the State Government that Dalpatis would be appointed/absorbed as Panchayat Sewak in the undivided State of Bihar. By a subsequent communication dated 09.07.1996 preparation of seniority list of Dalpatis for appointment of Panchayat Sewaks was directed. 843 posts in the undivided State of Bihar was identified by a letter dated 20.08.1998 for absorption of Dalpatis to the post of Panchayat Sewak/Secretary; which letter is produced as Annexure-C. There were in total 12181 Panchayats wherein 11308 Panchayat Sewaks were working and the remaining 843 posts were available for absorption as Panchayat Sewaks. Excess Panchayat Sewaks would be transferred and adjusted in other districts where vacancies are found to be existing. In the district



of West Champaran, as is clear from the chart enclosed with Annexure-C, 8 excess Panchayat Sewaks found working were to be adjusted in other districts. Annexure-D communication dated 11.06.2008 showed that as per the directions of the High Court in *Amod Kumar Singh* and the various Contempt Applications 843 posts were created by the Cabinet of the State of Bihar, which stood reduced to 531 within the State of Bihar after bifurcation of the States of Bihar and Jharkhand. This fact is very evident from Annexure-A dated 24.02.2009 and Annexure-B dated 20.01.2009.

7. The learned Single Judge also looked at the various judgments placed before the Court. *Amod Kumar Singh* was a case in which Dalpatis prayed for their absorption as Panchayat Sewak which claim related to the Gopalganj district. It is based on the judgment in *CWJC No. 11008 of 1996* that the State of Bihar recommended sanction of 843 posts of Panchayat Sewaks; which could not be filled up on account of financial stringency and the consequent ban imposed on appointments to Class-III and Class-IV posts. The Bihar Gram Panchayat (Appointment, Powers and Duties of Secretary) Rules, 2003 was brought in which was made effective retrospectively which removed the Dalpatis from the zone of consideration for appointment. In



Amod Kumar Singh the decision was only with respect to the consequence of the withdrawal of the ban and applicability of the rule retrospectively, with a consequential direction that the retrospective operation of the rule cannot deprive the absorption of Dalpatis to the post of Panchayat Sewaks.

8. In *Subhash Chandra Shukla* the provisions in the Panchayat Raj Act juxtaposed with the 73rd amendment of the Constitution was considered and it was held that the duties and functions of the Panchayat Secretary; the erstwhile Panchayat Sewaks cannot be equated with the duties of a Dalpati. The Dalpatis were found to be not holding a civil post and there could be no claim raised for absorption as Panchayat Secretaries. It was held that only in the newly created 843 posts could there be an absorption of Dalpatis that too confined to 531 within the State of Bihar after the separation of Jharkhand.

9. A Gram Raksha Dal was found to be in the nature of a rudimentary police force, with the Dalpati, in charge. The duties of the Dalpatis were amorphous and was mostly general watch and ward. A Panchayat Secretary on the other hand has much more serious responsibilities being in charge of the vast responsibilities of a Panchayat. The Court found that there is no case made out for appointment of Panchayat Secretary from



amongst the Dalpatis. The contention of the petitioners to restrain the Government from appointing Panchayat Secretaries without first appointing all the eligible Dalpatis was rejected. The Court, however, did not interfere with the decision to appoint 531 Panchayat Secretaries from the Dalpatis, after specifically observing that such an action would not have the stamp of approval of the Court.

10. It was held categorically, by the learned Single Judge, in the impugned judgment, after looking into the averments made in the counter affidavit and the documents that there can be no mandamus issued in the writ petition since in West Champaran district there is no post available for accommodating extra Dalpatis. The Court also directed the Collector to reverify and examine whether the petitioners could be accommodated.

11. We have already dealt with the communications and the decisions placed before Court and fully agree with the learned Single Judge. As has been pointed out by the learned Advocate General, the post of Dalpati is a district cadre post and their absorption cannot be made outside the districts. Specific reference was made to Annexure-S and S/1 produced along with the supplementary counter affidavit of the first respondent dated



13.12.2022. The list indicates the sanctioned post of Dalpatis in the various districts, the posts available on reorganization of the State of Bihar after separation of the State of Jharkhand, the persons working in the post of Panchayat Secretaries and those created, newly to be accommodated. It is pertinent to mention here that *Subhash Chandra Shukla* specifically found that a Dalpati by virtue of his position as such cannot be considered for promotion and appointment as Panchayat Secretary, unless it is so provided by the Legislature. It was categorically held that a Dalpati cannot as a matter of right be considered for appointment as Panchayat Secretary but, since the Government created 531 posts it was directed that for the purpose of appointing Dalpatis as Panchayat Secretaries the said posts would be filled up from the Dalpatis.

12. Annexure S/1 indicates the 531 posts created in the various districts for the purpose of absorption of Dalpatis as Panchayat Sewaks and West Champaran does not have any such vacant post. We have already seen that there was no creation of posts in the West Champaran district from Annexure-S.

13. In the circumstances above, we find absolutely no reason to interfere with the judgment of the learned Single Judge. We dismiss the appeal leaving the parties to suffer their



respective costs.

14. Interlocutory Application(s), if any, stands closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	21.07.2023
Uploading Date	04.08.2023
Transmission Date	

