

(2002) 10 JH CK 0001

Jharkhand High Court

Case No: CWJC No's. 11139 and 11208 of 1995

Panchanand Singh and Another
and Dhananjay Eawani

APPELLANT

Vs

State of Bihar (Now Jharkhand)
and Others

RESPONDENT

Date of Decision: Oct. 4, 2002

Acts Referred:

- Bihar Panchayat Raj Act, 1993 - Section 26
- Bihar Panchayat Raj Rules, 1993 - Rule 4

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: Jitendra Kumar Roy and Nilendu Kumar, for the Appellant; S.L. Burnwal, AAG and Ganesh Kumar, JC to AAG, for the Respondent

Final Decision: Dismissed

Judgement

Vikramaditya Prasad, J.

1. As in both the writs common questions involved and similar reliefs have been sought for, so, both the writs have been heard together and are being disposed of by a common order.
2. The basic questions to be decided in these writ applications is whether in absence of approval by the District Panchayat Officer, the appointment to the post of Dalpati can be treated to be valid and legal? The next question is whether the resolution of the Executive Committee to appoint a man of Village Volunteers Force (hereinafter referred to as the "force") creates any right to such person which can not be denied by the District Panchayat Officer and the third question is whether the District Panchayat Officer is empowered to cancel the appointment and direct the Gram Panchayat to appoint another person in place of a person whose name has been recommended by the Executive Committee?

3. The short fact of CWJC No. 11139 of 1995 is that the petitioner passed his B.A. Examination and as per his matriculation certificate his date of birth is 15.6.1971. In the year 1992 he became a member of the Force and continued thereon till 1993, when the post of Dalpati became vacant, the Gram Panchayat issued a general notice for appointment on the post of Dalpati. 8 persons filed their applications. The petitioner's name appeared at serial No. 5. The dates for interview were fixed but were changed and ultimately on 28.6.1993 the interview was held and on 2.7.1993 the Executive Committee of the Gram Panchayat took a decision to appoint the petitioner as Dalpati and it was also decided by the Committee to send the letter to the District Panchayat Officer for his approval. (Annexure 6) and the Executive Committee also issued an appointment letter to the petitioner (Annexure 7). Thereafter the District Panchayat Officer did not grant approval despite the steps taken by the petitioner. Then finding no other alternative the petitioner filed the writ. CWJC No. 8869 of 1994 and the Court directed (Annexure 9) the District Panchayat Officer to take a final decision in the matter within two months from the date on which a copy of the order was produced before him. It was also directed that if in the meantime the petitioner had actually worked as Dalpati pending approval, he should be paid the pay and allowance payable to such person. Ultimately it was found that certain enquiries were conducted and, thereafter, again the Executive Committee filed an affidavit confirming the appointment of the petitioner and sent this to the District Panchayat Officer (vide Annexure 13). In the meanwhile, the petitioner was working as Dalpati. Then it transpires that the approval was not granted (vide Annexure 16) dated 20.9.1995.

4. Annexure 6 shows that the resolution for appointment was taken by the Committee and by Annexure 8 the proposal was sent to the District Panchayat Officer for approval. The petitioner has made a prayer for quashing the order No. 123 dated 12.9.1995 by which the appointment of the petitioner was declared illegal and not confirmed also for a direction to approve the appointment of the petitioner.

5. The respondents have appeared and contested the case denying the allegations made in the writ.

6. In CWJC No. 11208 of 1995, the petitioner made a prayer for quashing of the order of the District Panchayat Officer, Deoghar, contained in Memo No. 182 dated 3.11.1995, by which the officer has directed the Mukhia to appoint respondent No. 9 with a further prayer for a direction to approve the appointment of the petitioner. The petitioner of this case is a matriculate and his date of birth is 2nd January, 1966. He is a member of village Volunteer Force till then a post of Dalpati was vacant. The advertisement was made for appointment and the Committee decided to appoint him rejecting the claim of two persons namely respondent No. 9 and 10, respondent No. 9 was found below the prescribed age i.e. 21 years and as such he could not have been considered and respondent No. 10 had become over-age vide Annexure 5 and a letter was sent to the officer for approval vide Annexure 6 but thereafter two

persons who were not selected had made certain complaints. Consequently, enquiries were made and the result was that the approval was not given, therefore, the petitioner had moved this Hon"ble Court earlier.

7. Respondents had appeared and filed counter affidavit denying the claim of the petitioner.

8. Section 26 of the Bihar Panchayat Raj Act and Rules hereinafter reads as follows :--

"Village Volunteer Force.--For general watch and ward 2[***] for meeting cases of emergency like fire, breaking of an embankment or dam, outbreak of epidemic, and occurrence of burglary, dacoity 8[and for maintenance of peace and tranquility,] the Executive Committee may organize a village volunteer force 4[(to be called Gram Raksha Dal in Hindi)] under the command of a 4[WIHIT RITI SE NIYUKT EK DAL PATI] by the Executive Committee, and all able bodied males of the village between the ages of 18 and 30 years shall be members of the said force :

[Provided that if the Government decide to integrate the village Police with the Village Volunteer Force (Gram Raksha Dal) of any area the Dal Pati of the Force shall be appointed by the Sub-divisional Magistrate after consulting the Executive Committee, subject to such terms and conditions as the State Government may direct; and on such appointment being made, the appointment, if any, of any other person as Chief Officer of the village Volunteer Force made by the Executive Committee, shall be deemed to have terminated]."

9. Rule 4 of the rules reads as follows :--

"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 the appoint;

(b) of good moral character;

(c) physically fit to stand the rigours of outdoor duties;

(d) not less than 5 feet 4 inches in height and 32 inches round the Chest (unexpanded), and

(e) in possession of the middle vernacular certificate :

Provided that in the event of nonavailability 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."

10. From the provisions of Rule 4 aforesaid it is clear that the appointment has to be made by the Executive Committee but that appointment is subject to the approval of the District Panchayat Officer.

11. The word approval means an act of a Judge or a Magistrate in sanctioning and accepting as satisfactory a bond, a security or other instrument which is required by law who receive his approbation before it becomes operative. (Law Lexican, Edition 1987, Wadhwa & Company). The 2nd part of this definition that "other instrument which required by law to receive his approbation before it becomes operative is relevant meaning of word approval in the context of this provisions. Undisputedly, in neither of the cases approval was made. In one case even recommendation was cancelled and other person was directed to be appointed and in other case almost same situation was there so till the approval was given the orders of the committee giving appointment to the petitioners, does not become operative.

12. Yet I find a difference between the word "approval" and the "permission". The word used in the section is approval. In the case of approval the act remains good until disapproved, in the case of permission the matter does not become effective. As stated above, in this section, the word approval has been used, therefore, till the approval was obtained the performance by Dalpati was done in anticipation of approval then the letter of appointment issued to the petitioner remains valid and the duties performed by him also becomes a valid duty under the rules but if the approval does not come and finally it is denied then from that date the appointment letter becomes invalid and the petitioner ceases to be appointed under that appointment from the date of such disapproval. On the basis of this discussion it is held that the person who is required to grant approval, is also required to examine the matter before the granting approval. When the allegation has been received, enquiry has been made and the District Panchayat Officer has not found it fit to grant approval then he was within his jurisdiction, otherwise, if the intention of the legislature would have been that the District Gram Panchayat Officer will grant approval blindly, then no such provision for obtaining the approval would have been made in the rules.

13. In the aforesaid circumstance I hold as follows :--

(i) Approval has to be taken. Approval may not be given for the reasons to be given by the District Panchayat Officer, if he finds impropriety in the order of appointment.

(ii) From the date of resolution of the committee appointment letter can be issued and till it is not disapproved it is not illegal. But in case of denial of approval the appointment letter ceases to be effective from that date and the person working

under that appointment letter ceases to work from that date of this approval.

14. The basic question posed above is answered accordingly. The effect of the aforesaid discussion is that from the date of denial of that approval the petitioners seized to be the Dalpati. They cannot claim such appointment on the basis of the appointment letter issued by the Executive Committee. The result is that from the date of denial of approval or order to cancel the appointment letter they again revert to member of the Village Volunteer Force. The petitioner of CWJC No. 11139 of 1995 completed his age of 30 years on 15.6.2001 because his date of birth is 15.6.1971 and the petitioner of CWJC No. 11208 of 1995 completed his age of 30 years on 2nd January, 1996. Because his date of birth is 2nd January, 1966. Therefore, they have crossed the age of 30 years under Rule 21 which reads as follows :

"(1) A person shall cease to be a member of the force if he is over thirty years provided that he may be discharged by the Mukhia at any time on the ground physical incapacity or for any other satisfactory reason with the approval of the District Panchayat Officer.

(2) Every person who is discharged from the force shall be entitled to receive a certificate of discharge in Form No. 4.

(3) If a person ceases to be a member of the force, he shall surrender to the Chief Officer his certificate of enrolment together with the uniforms, armlets and equipments supplied to him."

They cannot be considered for the post of Dalpati being over age.

Therefore, at this stage no direction can also be given to appoint them on the post of Dalpatis.

15. Then a question is whether the District Panchayat Officer rightly did not approve or cancel the appointment. It transpires from Annexure-E that the matter was enquired by the B.D.O. and the B.D.O. after enquiry found that excepting the petitioner the eligibility of other person was considered and no legal notice was given prior to the appointment to any person, though the resolutions discloses these things. Therefore, the B.D.O. came to a conclusion that the question of approval of the appointment made by the committee does not become desirable. However, the B.D.O. also requested the District Panchayat Officer that he can get it enquired at his level also. This enquiry of the B.D.O. was based on the enquiry conducted by the Block Statistical Officer.

16. The respondent No. 5 District Panchayat Raj Officer, Deoghar also appeared and filed counter affidavit. The resolution of the Executive Committee has been annexed as Annexure-C. From this resolution it appears that only the written test was taken but no other physical test was done which is required under the rules for such appointment. This resolution also indicates that notice was given by beat of drum

but Annexure-D which is the report of the Panchayat Sewak shows that there was no notice given to the villagers or the desiring candidates by beat of drum. Annexure-E is the report of the B.D.O. which has already discussed above.

17. Thus, from the aforesaid annexures it is clear that the appointment was not conducted in the manner in which it should have been done as the proper notice was not given to the other candidates and no beat of drums was there for giving such information. In the aforesaid circumstances when the process of appointment was suspected then the approval was rightly not granted by the District Panchayat Raj Officer.

18. In the result the Writ being CWJC No. 11139 of 1995 has to be rejected and accordingly it is rejected.

19. So far CWJC No. 11208 of 1995 is concerned in this case the aforesaid District Panchayat Raj Officer also appeared and file counter affidavit. The relevant annexures are Annexures E & G. These annexure show that the resolution dated 2.7.1993 by which the petitioner was appointed by the Committee was not confirmed and it was decided to consider the case of other person and then to make appointment. Thus, the decision taken in the resolution, in absence of it's confirmation by the competent authority losses its legal force. This resolution also says that the earlier resolution No. 5 is recalled. In view of this resolution the appointment whatsoever of the petitioner was rightly cancelled. This Writ is also dismissed.