

**(2008) 05 OHC CK 0023**  
**In the Orissa High Court**

Ajit Narayan Sahoo and Arun Kumar Sahoo  
Vs

APPELLANT

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 01-05-2008

**Acts Referred:**

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

**Citation :** (2008) 106 CLT 3 : (2008) 2 OLR 1105 Supp

**Hon'ble Judges :** N. Prusty, J;I.M. Quddusi, J

**Bench :** Division Bench

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**Judgement**

I.M. Quddusi, J.—These two Writ Petitions have been filed seeking relief for issuance of a writ of mandamus commanding the Opposite Parties to accord approval on the recommendation made by the Selection Committee selecting the Petitioner in each of the Writ Petitions as Secretary of Gram Panchayat. Petitioner in W.P.(C) No. 5151 of 2003 was selected by the duly constituted Selection Committee as Secretary of Dimbo Gram Panchayat whereas the Petitioner in W.P. (C) No. 5152 of 2003 was selected as such for the Naranpur Gram Panchayat both in the district of Keonjhar. Since in both the cases the facts and the question of law involved are same, they were taken up together and are being disposed of by this common Judgment.

2. Since the post of Secretary of the aforesaid two Gram Panchayats were lying vacant, the Gram Panchayats concerned/decided to fill up the posts and as such selections were made for selecting the Secretaries of those Gram Panchayats according to the Government Order Dated 24.3.2001 by which the Selection Committee was constituted with the following persons:

1. Additional District Magistrate Chairman 2. District Welfare Officer Member 3. Sub-Divisional Panchayat Officer Member 4. Sarpanch of the Gram Panchayat Member 5. Concerned Block Development Officer Member-Convenor.

3. (Sic) Consequent upon the notice inviting applications to fill up the post of Secretaries of the above Gram Panchayats separately, the Petitioner in each of

the Writ Petitions applied for the same and appeared before the Selection Committee resulting which they were selected by the Selection Committee. Thereafter, the Block Development Officer concerned who was the convenor of the Selection Committee intimated the Petitioner in each of the Writ Petitions that he having secured highest mark in the interview has been selected as the Secretary of the Gram Panchayat and if he was willing to work as Secretary of the concerned Gram Panchayat, he should submit his joining report which he did and the matter was intimated to the District Panchayat Officer by the concerned Gram Panchayat who did not consider the same on the plea that the appointment without the approval of the District Panchayat Officer was contrary to law and violative of the directions given in letter No. 5140 dated 24.3.2001 of the Panchayati Raj Department.

4. Under Rule 212 of the Gram Panchayat Rules, it has been provided that no person shall be appointed as Secretary of a Gram Sasan without the previous approval of the District Panchayat Officer. Under Rule 213 of the Gram Panchayat Rules, the following procedure has been provided for selection of the candidates for Secretary of Gram Panchayat. The same is reproduced as under:

213. (a) After the Grama Panchayat decides in a meeting to appoint a Secretary for the Grama Sasan either on a whole time or on a part time basis, it shall invite application for the purpose by giving wide publicity by way of affixing notices in the notice board of the Panchayat Samiti and the different Grama Panchayats within the jurisdiction of the Panchayat Samiti concerned. The Grama Panchayat shall also notify the vacancy to the local Employment Exchange as required by Section 4 of. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

(b) All the applications so received shall be placed before the Grama Panchayat in a meeting and the Panchayat if necessary after interviewing the candidates shall select a person from among the applicants for appointment as Secretary.

(c) After a candidate is selected the Grama Panchayat shall write to the District Panchayat Officer for his approval under Rule 212. The Panchayat shall forward a copy of each of the Resolution under Clauses (a) and (b) above to the District Panchayat Officer.

(d) On receipt of the proposal for appointment of Secretary from the Grama Panchayat if the District Panchayat Officer is satisfied that the candidate selected by the Grama Panchayat possesses the prescribed qualification and is eligible for the post of Secretary and the selection has been made in accordance with this rule and the remuneration proposed to be paid to the Secretary is reasonable he shall approve the proposal. If the candidate selected by the Grama Panchayats is found to be disqualified for the post of Secretary or the remuneration proposed to be paid is excessive the District Panchayat Officer may direct the Grama Panchayat to select another candidate in the prescribed manner or reconsider their remuneration and resubmit the proposal.

(e) After receipt of the approval of the District Panchayat Officer, the Grama Panchayat may appoint the candidate as Secretary of the Grama Sasan;

Provided that before appointment the candidate selected for the post of Secretary shall produce a fitness certificate from a Medical Officer not below the rank of Assistant Surgeon;

Provided further that the persons who are in the offices of the Secretaries of the Grama Sasans shall be deemed to have been appointed under this rule.

(f) After appointment of a Secretary the Grama Panchayat shall depute him to the office of the District Panchayat Officer for a period of four months, where he shall receive his Departmental training. On completion of the training, the period of which may be, extended up to one month by the District Panchayat Officer for unsatisfactory work, the District Panchayat Officer shall issue a certificate that the candidate has completed his training.

However, the Government of Orissa in Panchayatiraj Department vide Order Dated 24.3.2001 (Annexure-1) laid down certain procedure relevant of which is as under:

(g) On completion of the selection, the Selection Committee shall select a candidate and recommend him/her name to the Gram Panchayat for appointment.

5. The names of the Petitioners were not approved, as mentioned in the counter affidavit filed by the District Panchayat Officer, due to the acts done by the Block Development Officer who was the convenor of the Selection Committee contrary to the procedure laid down after selection of the candidates. In para 4 of the counter affidavit filed in W.P.(C) No. 5151 of 2003, the reasons have been given. Similar reasons have been given in the counter affidavit filed in the other case, i.e. W.P.(C) No. 5152 of 2003. Para-4 of the counter affidavit is reproduced as under:

That it is submitted that after formation of the Gram Panchayat, namely Dimbo Gram Panchayat, advertisement was made for the purpose of filling up of a post of Secretary of the Gram Panchayat. It is submitted that for the purpose of selection of secretary, a selection committee was constituted comprising of the Addl. District Magistrate, as Chairman, District Welfare Officer as Member, Sub-divisional Panchayat Officer, Sarpanch of the Gram Panchayat and concerned Block Development Officer as members and Member-cum-Convenor. Accordingly, the selection committee selected the name of the Petitioner to be appointed as Secretary of the Gram Panchayat. It is submitted that as per the government order bearing No. 5140 dated 24.3.2001 in para 3(g), it has been provided that on completion of the selection, the selection committee shall select a candidate and recommend his/her name to the Gram Panchayat for appointment. But in the present case, in gross violation of the aforesaid government order vide Annexure-1 to the Writ Petition, the Block Development Officer-cum-Member

Convenor of the selection committee instead of recommending the name of the Petitioner to the Gram Panchayat for necessary action at their end, has illegally issued the appointment order in favour of the Petitioner vide his office order No. 2810 dt.30.9.02 and directed the Petitioner to join in the post of Secretary if he has willingness to join in the said post.

6. Considering the facts and circumstances of the case, we have come to the conclusion that it is not disputed that the Selection Committee duly considered the candidatures and the Petitioner in each of the Writ Petitions was selected for appointment as Secretary. Therefore, the selection of the Petitioner in each of the Writ Petitions for the post of Secretary of the above mentioned Gram Panchayats is not disputed. Dispute has arisen thereafter meaning thereby that instead of recommending the names of the selected candidates to the Gram Panchayats, the Convenor of the Selection Committee issued appointment order directly to the Petitioners intimating them that if they were willing to join, they should do so, failing which the order shall stand cancelled.

7. If appointment order was issued to the Petitioner in each of the Writ Petitions without recommending the names to the concerned Gram Panchayat, the District Panchayat Officer could have written to the Block Development Officer who was the Convenor of the Selection Committee intimating him to follow the procedure. It appears from Annexure-6 that the concerned Gram Panchayat has accepted the joining of the Petitioners and intimated the same to the District Panchayat Officer for approval. This was not a matter for not acting upon the selection made by the Selection Committee duly constituted.

8. Anyhow, since no action has been taken after selection of the Petitioners of these two Writ Petitions, we dispose of the Writ Petitions with a direction that the concerned Block Development Officer who was the Convenor of the Selection Committee shall forward the name of the selected candidates, i.e., the Petitioners to the concerned Gram Panchayat. The Gram Panchayat shall consider the same and shall forward the names to the District Panchayat Officer who shall act in accordance with law. In case, the Government have banned or imposed restrictions on the appointment of Gram Panchayat Secretaries or some other officers have been authorized to act as Secretary of the Gram Panchayat, it will be open for the concerned District Panchayat Officer to take a decision in the light of the Government orders with reasons to be communicated to the concerned Gram Panchayats and the Petitioners.

There would be no order as to costs.

N. Prusty, J.

9. I agree.