

(2012) 07 JH CK 0015

In the Jharkhand High Court

Case No : Writ Petition (S) No. 812 of 2012

Ram Prasad Sah and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : (2013) 1 AJR 62 : (2012) 4 JCR 613

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Shailendra Kumar Tiwari, for the Appellant;

Judgement

D.N. Patel, J.—The present petition has been preferred mainly challenging the order dated 7th November, 2009, which is Annexure 13 to the memo of the petition, passed by the District Superintendent of Education-cum-District Programme Officer, "Sarva Shiksha Abhiyan" at Garhwa, against the present petitioners, whereby selection as well as appointment of the petitioners as "shiksha mitra" has been cancelled. Counsel appearing for the petitioners submitted that petitioners were selected by "am sabha" convened by the "gram shiksha samitee" of the concerned village in accordance with law for their appointment as "shiksha mitra". They were selected on 28th February, 2008, vide order at Annexure 2 to the memo of the petition. Thereafter, petitioners served for some months and salary/honorarium was also paid by the respondent-Government. However, abruptly, by order dated 7th November, 2009 selection and appointment of the petitioners were cancelled. It is further submitted that the respondents, on examination of some witnesses available at their office, decided to terminate the services of the petitioners and the impugned order has been passed illegally without giving any notice, without giving any opportunity of being heard, without disclosing the name of these witnesses and without giving opportunity of cross-examination of those witnesses. The reliance has been placed upon only, examination-in-chief of the witnesses, which is not permissible in the eye of law.

2. Counsel for the respondents submitted that the respondents, after holding detailed enquiry, passed the impugned order. The witnesses were also examined and it is found that appointment of the present petitioners were illegal and therefore, their services have been terminated-by the impugned order.

3. Having heard both sides and looking to the facts and circumstances of the case. I hereby, quash and set aside the order passed by the District Superintendent of Education, Garhwa dated 7th November, 2009 (Annexure 13 to the memo of the petition) mainly for the following facts and reasons:

(I) Both the petitioners were selected by gram siksha samitee of Balgadih in village-Arsali, District-Garhwa on- 20th February, 2008. The selection process was reduced in writing and the same is at Annexure 2 to the memo of the petition. Thus, it appears that after their selection, petitioners were appointed as "siksha mitra" and salary/honorarium for some of the months were also paid by the respondents.

(II) It further appears that on 7th November, 2009 respondents passed the impugned order terminating selection and appointment of the petitioners on the basis of some enquiry in which few witnesses available at their office were also examined. Nobody. knows who those witnesses are and what they have stated. No opportunity of cross-examination was given to the petitioner. It appears from the. impugned order that these witnesses have stated before the concerned respondent authorities so as to prove it that the appointment of the petitioners were in violation of the Rules. Therefore, law points must have been enumerated by those witnesses before the concerned authorities. However, it has also not been recorded as to in contravention of which law petitioners were selected and appointed; Without giving any notice, without giving any opportunity of being heard and without giving an opportunity to cross-examine the witnesses services of the petitioners have been terminated and therefore, impugned order is absolutely arbitrary in nature and violative of the principles of natural justice.

4. In view of these facts, I, hereby quash and set aside the order dated 7th November, 2009, which is at Annexure 13 to the memo of the petition, passed by the District Superintendent of Education-cum-District Programme Officer, "sarva Sikhsha abhiyan" at Garhwa. The respondents are directed to allow the petitioners to work as "shiksha mitra" and to pay them salary/honorarium.

5. This petition is allowed with a cost of Rs. 5,000/- This cost will be paid by the respondents to the petitioners within a period of four weeks from the date of receipt of a copy of this order. The amount of cost will be initially paid by the State. Thereafter, it will be deducted from the salary of the erring officer of the State after holding proper enquiry.

6. The respondents will be paid the arrears of salary honorarium due to the petitioner within four weeks from the date of receipt of a copy of this order. This writ petition is accordingly, allowed and disposed of.