

(1995) 03 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5384 of 1994

Ramsakal Mistry and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Citation : (1995) 2 PLJR 848

Hon'ble Judges : S.J. Mukhopadhyaya, J

Bench : Single Bench

Advocate : Jitendra Kumar Roy, Mithilesh Kumar and Ram Narain Mahto, for the Appellant; D.N. Singh and Vishwambhar Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhyaya, J.—The Petitioners in this case has filed the writ petition challenging the order dated 17th May, 1994 (Annexure-13), passed by the Respondent-District Magistrate, Samastipur. By the said order dated 17th May, 1994, the selection for the purpose of appointment that was made in favour of the Petitioners and others vide order dated 22nd June, 1993 (Annexure-5) has been cancelled.

2. The facts or the case lie in a very narrow compass which are given below:

The Petitioners are Dalpaties working for more than 7 years in different Gram Panchayats in the district of Samastipur. They have got the qualification of matriculation. The Respondents State came out with a guideline vide letter dated 24th June, 1989 (Annexure-1). By the said guideline, the procedure for filling up the higher post of Panchayat Sewak was laid down. It was decided that the post of Panchayat Sewak is to be filled up from amongst the persons who have passed the matriculation examination and from amongst such Dalpaties who have completed two years of service, prior or after the training. It was further decided that with regard to the reserve category persons like Scheduled Caste/Scheduled Tribes, if a person is not trained then in that case relaxation should be given in

the matter of training and after their appointment on the post of Panchayat Sewak, they be sent for training. It was further laid down that the posts which will still remain vacant, after appointment of Dalpaties to the post of Panchayat Sewak, those posts are to be filled up by way of direct recruitment.

With regard to the age, 40 years was laid down for such Dalpaties, who belong to general category and 45 years with regard to such Dalpaties who belong to Scheduled Castes/Scheduled Tribes category. In the matter of direct recruitment, a different age limit is prescribed and different procedure of appointment is there. The State Government vide letter dated 24th June, 1989 has constituted a selection committee and the Respondent. District Magistrate is the Chairman of the said Committee.

According to the Petitioners, 60 posts of Panchayat Sewaks were lying vacant. The seniority list was prepared earlier in the year 1992 showing therein the positions of different Dalpaties. Steps were taken for filling up the posts of Panchayat Sewaks, from amongst the Dalpaties trained, the total number of vacancies as were existing in December, 1992 (60). For the purpose of screening as to whether a Dalpati is qualified for appointment to the post of Panchayat Sewak or not apart from holding the qualification of matriculation, a screening test was held on 5th January, 1993 in which minimum qualifying marks was laid down by the Selection Committee. The Petitioners along with others took part in the said screening test on 5th January, 1993 and having obtained the minimum qualifying marks became eligible for appointment to the post of Panchayat Sewak. Thereafter the matter was kept pending for preparation of a final gradation list as the appointment to the post of Panchayat Sewak was to be made from amongst the Dalpaties. The final gradation list was published on 2nd May, 1993, vide Annexure-3. Thereafter, the Selection Committee held its meeting on 15th June, 1993. The proceeding of the Selection Committee is Annexure-4. The Selection Committee took into note that only 60 posts of Panchayat Sewaks were lying vacant as on 30th March, 1993 and according to the reservation policy, only 30 posts of Panchayat Sewaks were to go in favour of reserve category and the rest 30 posts were to be filled up from amongst the general category. The Selection Committee found 30 general category persons, including the Petitioners, as fit for appointment to the post of Panchayat Sewaks and recommended for their appointment. Out of the reserve category, only 2 Scheduled Caste persons were found to be eligible for appointment to the post of Panchayat Sewak and 9 (nine) most backward category persons. Accordingly, recommendations were also made for appointing those two S.C. candidates and 9 (nine) most backward candidates for appointment to the post of Panchayat Sewaks. With regard to some more Scheduled Caste/Tribe persons, posts were kept reserved, as certain matters were pending with respect to them and it was decided to fill up the rest vacant posts of Panchayat Sewaks by way of direct recruitment. It was only after the recommendation of the Selection Committee, as contained in Annexure-4, the Petitioners were provided with an order of appointment, as contained in Annexure-5 dated 22nd June, 1993. By

Annexure-5, dated 22nd June, 1993, Petitioners were intimated that they have been selected along with others for appointment to the post of Panchayat Sewak, in the scale of Rs. 975-1540/-. They were ordered to proceed for training and it was ordered that on completion of training which was for a period of three months, they will be provided with order of appointment to the post of Panchayat Sewaks. It was further ordered that only after such appointment and joining to the post of Panchayat Sewak, they will be provided with their salary.

The Petitioners have asserted that on the basis of the aforesaid letter dated 22nd June, 1993 (Annexure-5), they proceeded for training as Panchayat Sewak. During the training some wireless message was sent and in pursuance thereof, they were stopped to take part in the said training.

6. Being aggrieved, the Petitioners along with others filed writ petition bearing C.W.J.C. No. 11059 of 1993. During the pendency of the writ petition, one order dated 29th December, 1993 (Annexure-6) was passed by the Respondent District Magistrate, Samastipur, cancelling the selection of the Petitioners and Others. The aforesaid order dated 29th December, 1993 (Annexure-6) was challenged by the Petitioners in the said writ petition, which writ petition was ultimately allowed and the order dated 29th December, 1993 was set aside. It was ordered by this Court that until lawfully the services of the Petitioners are terminated, they are entitled for their salary which they are being paid so far. The order was passed on 21st January, 1994 in the said writ petition as contained in Annexure-7.

It was only thereafter, the Petitioners were given show cause notice vide order dated 5-2-94, sample copy of which is Annexure-8 to the writ petition. In the show cause notice, certain vague allegations were levelled. It was alleged that reservation policy was not followed. The seniority was not taken into account and the examination which was conducted, was against the law. Thereby, they were asked to show cause as to why their selection be not cancelled.

The Petitioners filed initially letters, as contained in Annexure-9 asking for certain documents and informations, including the exact irregularity alleged to have been committed in the matter of selection of Petitioners. No reply were received by the Petitioners. They, however, filed their show cause vide Annexures-11 and 12. In the show cause, the Petitioners denied the at allegations as vague and pointed out that their selections were made legally after following the laws relating to reservation and further pointed out that there was no disturbance in the matter of seniority was made, when they were appointed to the post of Panchayat Sewak. The Petitioners categorically stated that if any person has not been provided with the order of appointment, he having found unfit by the Selection Committee, has not been provided with such offer. Thereafter, the Respondents have come out with the impugned order dated 17th May, 1994 (Annexure-13) cancelling the selection of the Petitioners made vide order dated 22nd June, 1993 (Annexure-5).

3. It will be evident from the impugned order dated 17th May, 1994

(Annexure-13) that the two grounds have been shown therein, namely, (a) the seniority has been disturbed in the matter of selection, and (b) the reservation quota has not been followed.

4. Counsel for the Petitioners submitted that all the procedures have been followed, including the reservation policy, there was no illegality in the matter of selection of the Petitioners. Further it was argued by the counsel for Petitioners that the persons who being senior, but have not been selected, it was only on account of the fact that they were found unfit by the Selection Committee. The Respondents State cannot hold that all the persons, only on the basis of seniority, are to be appointed to the post of Panchayat Sewak irrespective of the fact whether they are fit or not. Further it was contended by the Petitioners that the allegations are vague as no specific allegation made therein as to what irregularity that was committed in the matter of reservation, when it was shown by the Petitioners from the proceeding of the selection committee that 50 percent posts have been given to the general category persons against which the Petitioners have been selected.

5. Counsel for the Petitioners further submitted that in fact, they should have been provided with straight-way order of appointment to the post of Panchayat Sewak. They should not have been sent for training. According to him, in pursuance of the guidelines dated 24th June, 1989 (Annexure-1), Dalpaties, who belong to Scheduled Caste/Tribe categories and untrained, if they are selected for appointment to the post of Panchayat Sewak, only in their cases, they are liable for training. The Petitioners having already trained as Dalpaties, the question of sending them for training was redundant. It was for the said reason, the Petitioners have prayed for their salary of the post of Panchayat Sewak from the date, the order dated 22nd June, 1993 (Annexure-5) has been issued by the Respondent District Magistrate, Samastipur.

6. Counsel for the State submitted that the procedure followed in the cases of Petitioners is completely irregular and thereby the selection itself was illegal. He has only reiterated the statement as made in Annexure-13 (the impugned order). In the counter affidavit, nothing has been stated by the Respondents and the counsel appearing for the State also could not point out as to what irregularity was committed in the matter of following the reservation policy, when only 50 percent posts have been filled up from amongst the general category and the rests have been reserved for the Scheduled Caste/Tribe category and other categories. Further he could not point out from the counter affidavit and/or from the impugned order as to who is/are the person/persons, were found to be fit and by disturbing their seniority, the Petitioners were provided with the offer of appointment.

7. Having heard counsel for the parties, I hold that in the matter of selection of the Petitioners to the post of Panchayat Sewak, no irregularity was committed. The reservation policy was rightly followed and the Respondents have failed to show that seniority of any person was disturbed, who was found fit by the

Selection Committee. If any eligible and senior person to that of the Petitioners, who was found fit by the selection committee, was not given any offer of appointment, doors were open to the Respondents to throw the persons lowest in the seniority list out of the post of Panchayat Sewaks, but on that ground they could not have cancelled the whole selection itself.

8. Accordingly, the impugned order dated 17th May, 1994 (Annexure-13) being completely illegal, the same is set aside, so far as it relates to the Petitioners. Further I hold that on the basis of the Government policy decision dated 24th June, 1989 (Annexure-1), the Dalpaties are already trained like the Petitioners, they were to be provided with straight way order of appointment to the post of Panchayat Sewak. The only offer of appointment having been given in their favour by the Respondent-District Magistrate vide letter dated 22nd June, 1993, I direct the Respondent, District Magistrate, Samastipur to provide the Petitioners with letter of appointment to the posts of the Panchayat Sewak with effect from the date they acted on the basis of the letter dated 22nd June, 1993 (Annexure-5) and attend the training courses. Such order of appointment should be given in favour of the Petitioners and other similarly situated persons within a period of three months from the date of receipt/production of a copy of this order.

9. The Petitioners are also entitled for arrears of salary from the date of joining in training to the post of Panchayat Sewak, which will be also paid in favour of the Petitioners within a period of two months from the date of issuance of order of appointment in their favour.

10. The writ petition is allowed with the above observations/directions.