
(2009) 03 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 13066 of 2008

Shiv Prakash Manjhi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Citation : (2009) 03 PAT CK 0083

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Prayer of the petitioners in these two writ applications is for quashing the letter bearing No. 323 and 324 dated 7.8.2008 issued by Block Development Officer, Hathua, Gopalganj whereby petitioners appointment as Prakhanda Teacher in upgraded middle school Hathua Gopalganj has been cancelled. Further prayer is for a direction to the respondents to make payment of salary for fifteen months i.e. the period during which petitioners have worked in the school. Alternative prayer is for a direction to the concerned respondents to initiate appropriate enquiry against the respondents arbitrary act whereby the petitioners have been put to harassment causing financial hardship.

2. Petitioners were appointed on the post of teacher in upgraded middle school, Kabilsawa, Hathua, Gopalganj by letter bearing No. 595 dated 20.4.2007 issued by Block Development Officer, Hathua. Petitioners gave joining in the concerned school on 21.4.2007 which was duly accepted by the Headmaster of upgraded middle school, Hathua. Information regarding acceptance of petitioners joining was duly communicated by the headmaster of the school to the Block Education Extension officer, Hathua vide letter dated 4.5.2007. Petitioners were allowed to work and they continued for more than 15 months but salary was not being paid to them as such they represented before the concerned authorities for making payment of their salary. Since pressure mounted on the authorities, instead of paying salary, their appointment has been cancelled. Cancellation of appointment has been made on this ground that appointment letters in favour of petitioner were issued due to computer error. That mistake is being rectified and the

appointments letters are cancelled.

3. Petitioners have filed supplementary affidavit for bringing relevant documents on record of the case in order to highlight the arbitrary act of the respondents and the irregularities committed by them. These documents were earlier not available to petitioners as such they failed to bring relevant facts on the record of the case. Subsequently they filed an application for supply of such documents under Right to Information Act and the documents were supplied to them. These document revealed that reason for canceling petitioner's appointment as disclosed by the respondents is incorrect.

4. Counter affidavit has been filed on behalf of Block Development Officer and other respondents. In the counter affidavit it has been stated that an advertisement was published for appointment of 120 Prakhanda teachers at Hathua Block under 2006 Rules. Observing the process for selection as provided under rule, merit list was prepared. Petitioner Shiv Prakash Manjhi with 60.44% marks was at Sl. No. 36 of the merit list and his roster point was Scheduled caste so provisional appointment letter was given to him. Later on one Sudhir Kumar filed a complaint petition before the D.D.C. Gopalganj stating that he is a member of Scheduled Caste having 60.77% marks but his name do not find place in the merit list whereas Shiv Prakash Manjhi having less marks i.e. 60.44% has been selected and given appointment letter. The D.D.C. directed the Block Education Extension Officer, Hathua to produce all relevant records connected with the appointment for the purpose of enquiry. The Block Education Extension Officer appeared before the D.D.C. on 18.6.2007 and submitted show cause vide letter No. 1 dated 18.6.2007 stating that due to error in computer print, some mistake occurred in preparation of merit list. This mistake has now been corrected and a fresh merit list prepared on 26.5.2007. In the fresh merit list Shanta Kumari having more marks than Shiv Prakash Manjhi has been appointed in his place as per the decision of the panel preparation committee. The appointment of Shiv Prakash manjhi and Anil Baitha has been cancelled. There is no averment in counter affidavit that what decision was taken with regard to Sudhir Kumar, on whose complaints enquiry was done.

5. Considering the pleadings of the parties, it transpires that the counter affidavit has been prepared suppressing the real facts. Petitioner (in C.W.J.C. No. 13066 of 2008) has filed supplementary affidavit annexing documents which he procured by filing an application under Right of Information Act. It has been stated in the supplementary affidavit by the petitioner that irregularities have been committed by the Block Education Extension Officer Miss Punam Chaudhary in appointment of block teachers. Candidates who had applied against the reserved category of Scheduled Caste like petitioner was appointed in reserved category of Scheduled Tribe, though no one had applied for his appointment in Scheduled Tribe category. No person like Sudhir Kumar had filed any application making objection against appointment of the petitioner. In fact five persons who were appointed in the category of Scheduled Caste (M) were related to some

important persons or to the Block Education Extension officer. They were appointed on the basis of forged marksheet. When the complaints were made those five persons immediately resigned from the post by filing their resignations on 4.1.2008. These five persons were appointed against Scheduled caste vacancy jeopardizing the right of deserving candidate including petitioners, belonging to Scheduled Caste category. Petitioners were adjusted against Scheduled tribe category though they have not applied in that category. In order to screen all these irregularities, the respondent No. 7 submitted her reply that petitioner were appointed against Scheduled Tribe vacancies due to computer mistake. This mistake if at all was there then one more person such as pallavi Rani was also appointed against Scheduled Tribe vacancy, though she does not belong to that category and should have also been terminated. However, the new schedule which has been prepared and annexed as Annexure-C to the counter affidavit shows that Pallavi Rani has still been retained when petitioners Shiv Prakash Manjhi and Anil Baitha have been relieved from their posts. No reason has been shown in the counter affidavit for this discriminating yardstick applied by the respondents in case of petitioners and Pallavi Rani. Petitioners have stated that the reason behind this discrimination is that Pallavi Rani happens to be the daughter in law of the member of legislature. It has also been stated by the petitioner in paragraph 9 of his supplementary affidavit that the revised appointment list has been prepared only by the Block Education Extension Officer, Hathua and no other members of panel committee have signed on the revised list. The enquiry as per statement in the counter affidavit was initiated on the complaint filed by Sudhir Kumar, but name of Sudhir Kumar has not been shown in the revised list. One Shanta Kumari who happens to be the relative of Block Education Extension Officer has been brought in the panel. It has been stated that Shanta Kumari is said to have more marks than the petitioner i.e. 60.77%. Information which the petitioner had received under the Right of Information Act indicate that incomplete entries were made in the application form of Shanta Kumari. The name of the school from where she has studied is not mentioned in her application. In support of this contention application form of Shanta Kumari has been annexed as Annexure-17. Besides that it has also been stated by the petitioners counsel that five persons who were appointed on the basis of forged certificates, resigned on 4.1.2008 by submitting their resignation letter which is apparent from Annexure-13 to the supplementary affidavit. The panel preparing committee as per the statement made in the counter affidavit took a decision on 28.7.2008, even then names of those five persons were shown against those five seats belonging to Schedule caste category, though candidates so appointed had already resigned. Those five seats were not shown vacant, petitioners, having requisite marks, could have been appointed against those posts.

6. Petitioners have brought on record documents showing roster point to be observed in appointment of total 120 vacancies. Out of total 120 posts, 60 posts were general/unreserved category. Out of sixty general category unreserved

posts thirty posts were for male and 30 posts for female. Twenty two posts were for extremely backward classes, out of that eleven were for male and eleven were for female. Fourteen posts were reserved for backward classes. Seven posts in this category were for male and seven for female. In Scheduled caste category 18 posts were there. Out of that nine posts were for male and nine posts were for female. In Scheduled tribe category, one posts for male and one post for female was there and four posts were reserved for female. Initially in the general category eleven male and six female were appointed. In extremely backward class category, three male and 10 female were appointed. In backward class category eight male and five female were appointed. In Scheduled caste category five males and 9 females were appointed and four females were appointed in the reserved female category. No one was appointed in Scheduled tribe category. Out of total 120 posts 61 appointments were made in which 34 were female. In the Scheduled caste category only 7 posts were for female but nine females i.e. two more than reserved category were appointed. Seven posts were for male and out of that five persons were appointed and all of them have resigned on account of forged mark sheet. When fresh panel was prepared in that ignoring the fact that nine females in S.C. category have already been appointed against 7 reserved S.C.(F) category five posts in S.C.(M) category earlier filled by persons on the basis of forged mark sheet have already resigned again two females Shanta Kumari and Pallavi Rani were appointed. No male candidate was appointed against seven reserved posts in S.C.(M) category. Out of total 14 posts reserved for "S.C.(M) and S.C.(F) 11 posts were filled by female candidates and other posts were left vacant.

7. Counsel for the petitioner has submitted that such appointments are clearly in violation of reservation policy. The female candidates could have been appointed against reserved posts for male only if number of female candidate in the reserved category would have been less or the total appointed number of females would have been less. Here, out of 61, appointments, on 34 posts females were appointed. In the Scheduled castes, 14 posts were there out of that on nine posts females were already there. In case it was found that the petitioners were wrongly appointed in Scheduled Tribe category due to computer error, though belonged to S.C. category in that case petitioners either should have been absorbed against the posts which fell vacant on account of resignation of five candidates or they should have been appointed against the rest two posts on which again female candidates were appointed. Instead of appointing the petitioners one Shanta Kumari, and Pallavi Rani were appointed. Shanta Kumari's application form itself was defective as she did not disclose the name of school/institution from which she has passed. Ignoring all these, petitioners were terminated.

8. Counsel for the petitioners has submitted that it is a case of excessive reservation placing reliance on a on a decision in the case of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, . In this case the candidates for selection to the post of Munsif Magistrates in Rajasthan Judicial

Service was under consideration. The appellants have challenged the selection of female candidates in excess than the posts reserved for them. The writ application was filed for quashing the selection list to the extent of excess selection of women candidates and for consequential direction to fill up vacancies with male candidates. The Supreme Court had held that the Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women etc. under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for the respective Backward class. Therefore, if the number of B.C., SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs stood filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. But the said principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for SCs, the proper procedure is first to fill up the quota for SCs in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes.

9. In the present case vertical (social reservation) as well as horizontal reservation also, if observed, even in that case the number of female candidates exceeded the vertical (social) and horizontal (special reservation). Out of 14 vacancies in S.C. Class, seven were reserved for women, but nine female were selected, i.e. two posts more than the posts reserved for women. There was no need for further selection of women in this category as five males who were appointed had already resigned and in their place no one was appointed. The rest two posts were also filled by female candidates, it will mean that cent percent posts in the category of Scheduled Caste were filled by female candidates, ignoring deserving male candidates.

10. Counsels for the petitioners, have contended that instead of canceling petitioners appointment they should have been adjusted against those posts which fell vacant on account of resignation of five candidates appointed on the basis of forged mark sheet. Respondents along with the counter affidavit, have brought on record a decision of the government as Annexure-E, in order to show that there cannot be any appointment against vacancies which occurred on account of resignation of candidate. I find that Annexure-E, can have no

application in the present case as; vacancy on account of resignation occurred prior to the decision of the appointment committee. At this juncture these vacant posts could have been filled by other candidate belonging to that category, as they were deprived on account of irregularity.

11. Accordingly respondents are directed to reinstate petitioners in both writ applications, against the posts which fell vacant on account of resignation. This will cure the irregularity, relating to filling of total S.C. category posts by female candidates. Petitioners be allowed to discharge duty treating them in service in continuity of their earlier appointment.

12. The documents which have been annexed by the petitioners as well as the State respondents to the counter affidavit clearly indicate that the petitioners after their appointment gave joining on 21.4.2007 and continued to work till 28.7.2008, they are entitled for salary for this period as well as period during which they were restrained from discharging their duties, on account of cancellation of their appointment. Payments, should be made, within four weeks of the production/receipt of this order.

13. Accordingly, writ applications are allowed.