

**Pramod Kumar Sah and Another Vs. the State of Bihar and Others**

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**Court :** Patna

**Decided On :** Jun-05-2014

**Judge :** Mihir Kumar Jha

**Appeal No. :** Civil Writ Jurisdiction Case No. 15508 of 2013

**Appellant :** Pramod Kumar Sah and Another

**Respondent :** The State of Bihar and Others

**Judgement :**

1. Heard learned counsel for the petitioners and the learned counsel for the State.
2. In this writ petition, the two petitioners have prayed for the following relief: ".. to quash letter no. 178 dated 18.03.2013 issued by the District Programme Officer, Literacy, Supaul by which he held that the selection of the petitioner as Prerak has been done against the rule and directed to appoint Smt. Archana Kumari as Prerak against the unreserved categories and Sit Narayan Sah against the reserved category of Backward Class; and further for quashing the consequential decision of the Panchayat Selection Committee dated 30.04.2013 as contained in Resolution no. 2,3 and 4; and further for issuance of writ in the nature of mandamus and/or any other appropriate writ, order or direction commanding upon the respondents to re-instate the petitioners on their post of Prerak of Panchayat Lok Shiksha Samitee, Lalmania, Block- Maraua at Belhi, District- Supaul."

3. Learned counsel for the petitioners, in support of the aforementioned prayer, has basically concentrated on the aspect that the impugned resolution passed by the District Lok Shiksha Simiti, Supaul, terminating the services of the petitioners on the post of Prerak, is not only in violation of the principle of natural justice but is also based on dictation given by the District Programme Officer (Literacy), Supaul. He has also emphasized on the aspect that such dictation of the District Programme Officer (Literacy), Supaul is based on factually incorrect enquiry report of the Executive Magistrate, Nirmali submitted to the Sub Divisional Officer, Nirmali wherein he has failed to appreciate the reason behind the appointment of the petitioners after complying the requirement of reservation and roster against two posts of Prerak against which the petitioners were appointed.

4. On the other hand, learned counsel for the State has submitted that the appointment on the post of Prerak is not an employment in the Government service and, in fact, it is a contractual appointment on a fixed remuneration in a temporary literacy mission scheme which has to continue only till for a very limited period and as such the petitioners had been vested with no right when their engagement was made against two posts of Prerak on a purely contractual basis only till the continuation of scheme. He has also submitted that infact if the terms of advertisement is duly examined in the light of the merit list drawn, it would become clear that the decision to appoint both the petitioners was itself illegal and thus, if such illegality was noticed and found by the controlling district authorities, the suggestion for taking remedial steps by way of removal of the petitioners and engaging Respondents 7 and 8, the two best candidates of the merit list as per the reservation policy in terms of the advertisement, cannot be labelled as dictation.

5. Before this Court would advert to the aforementioned submission, it would be necessary to take into account the certain relevant facts. The literacy mission, undertaken by the Government of India, was sought to be implemented all over the State of Bihar for which necessary guidelines were issued by the Principal Secretary of the Human Resources Development Department, contained in his letter no. 402 dated 02.03.2011 (Annexure-1), authorizing all the Chairman of Zila Parishad and the Collectors of the different districts of the State of Bihar with the sole aim and objective that not a single person of this State should remain

illiterate. In such policy, the Lok Shiksha Simiti at the level of district, Prakhanda and Gram Panchayat were vested with the power for undertaking and complete the scheme of literacy mission. The scheme also envisaged that it could continue till March 2012 or terminated even earlier depending on the success of the scheme. There was also a concept of appointment of two Preraks at Panchayat level and such selection was to be made by Panchayat Lok Shiksha Simiti consisting of 16 members headed by the Mukhiya as the Chairman, Up-Mukhiya as the Vice-Chairman and 12 other members including the Headmaster of the Middle School at the headquarters of Panchayat as Member Secretary and other members of the Panchayat Lok Shiksha Simiti as also representative of the Scheduled Caste, Scheduled Tribe minorities and social worker including retired teacher or an employee. 6. It was with a view to implement the aforementioned policy of literacy mission, as per the directives of the State Government in its letter dated 02.03.2011, that the District Programme Officer, Literacy Mission, Supaul had invited application for different posts at the District, Prakhanda and Panchayat level. At the Panchayat level, only two Preraks were to be appointed and in the advertisement dated 01.09.2011 it was specifically mentioned that the qualification for the said post of Prerak would be Matriculation or equivalent as also experience in literacy. The advertisement had also made it clear that out of two posts of Prerak, one was to be compulsorily filled up by a female, in the prevailing roster in the Panchayat. The emoluments of such Prerak was Rs. 2000/- per month.

7. In terms of the aforementioned advertisement, the process of selection for the two posts of Prerak in different Panchayat including for Lalmanian Gram Panchayat was initiated on 24.11.2011 and a merit list of 24 applicants was drawn wherein the petitioner no. 1, on the basis of his total 72 merit points, was placed at Sl. No. 1 while respondent no. 7, Archana Kumari having 65.14 merits points, was placed at Sl. No. 2. Similarly, the respondent no. 8 was placed at Sl. No. 4 of the merit list with 53.44 merit points and the petitioner no. 2 was placed at Sl. No. 5 with 53.28 merit points. Let it be also noted for Lalmanian Gram Panchayat, the roster of the two vacancies of Prerak was one for a candidate of unreserved category while the second one was for a candidate of Backward male category.

8. Followed by preparation of the merit list, when counselling was held on 25.11.2011, only seven candidates including the present two petitioners and the respondent nos. 7 and 8 had appeared and the Committee, having found that there were, as per roaster, only two vacancies, one for unreserved category and the other for backward male category, had appointed the both these petitioners vide appointment letter dated 30.11.2011. The petitioner no. 1 was designated as senior (Variaya) Prerak and the petitioner no. 2 only as a Prerak.

9. These appointments of the petitioners were however made subject matter of a complaint filed before the District Magistrate, Supaul in a "Janta Darbar" on 12.01.2012 and the District Magistrate seems to have authorized the Sub Divisional Officer, Nirmali to examine the grievance of the respondent nos. 7 and 8 as with regard to illegality in the appointment of the petitioners. It appears that the Sub Divisional Officer, Nirmali had authorized an Executive Magistrate, Nirmali to hold enquiry and the Executive Magistrate, Nirmali thereafter, having visited the centre as also after examining the records of the Committee, had submitted his report on 07.03.2012 whereby and whereunder he had indicated that appointment of both the petitioners was wholly illegal and contrary to the reservation and roaster for the Panchayat in question. He had accordingly also recommended that upon removal of both the petitioners, the respondent nos. 7 and 8, by virtue of their being the best candidates for these two posts of Prerak as per roaster should be appointed. On receipt of this report, the District Programme Officer (Literacy), Supaul on 18.3.2013 had passed his order and communicated his decision both to the Mukhiya as also the Headmaster of the local middle school at Panchayat headquarters to terminate the appointment/engagement of the petitioners and substitute them by appointing respondent nos. 7 and 8.

10. Based on this letter of the District Programme Officer (Literacy), Supaul dated 18.03.2013, the impugned resolution was passed by the Panchayat Lok Shiksha Simiti on 30.04.2013 terminating the services of the petitioners as also engaging the respondent nos. 7 and 8 on the two posts of Prerak.

11. In the considered opinion of this Court though there is violation of the principle of natural justice but it would not like to interfere with the ultimate decision of the

District Programme Officer Literacy inasmuch as there is no escape from the fact that the appointment of both the petitioners were made contrary to the policy of the Government and prevailing roster of the Lalmaniyan Gram Panchayat.

12. Let it be noted that in the advertisement for two posts of Prerak, it was clearly mentioned that such appointment will be made strictly as per the prevalent reservation and roster in the Gram Panchayat in question. It would also not in dispute that in the Gram Panchayat in question, namely, Lalmaniyan Gram Panchayat of Supaul District, the two posts were to be filled up, one from the candidate of general category and the other from amongst the backward male category. The rider, however, in the advertisement was that one of the posts must be filled up by a female category. In other words, if the vacancy on the post of backward male category, as was prevailing in Lalmaniyan Gram Panchayat, was to be essentially filled up by a male candidate of backward category, the second vacancy of unreserved had to necessarily go to a female in order to comply the requirement of the advertisement.

13. It is in this backdrop that this Court would find that even though the petitioner no. 1 who actually had belonged to a backward category and was a male but as he admittedly did not produce his caste certificate which alone could have fitted him against the slot of one vacancy of backward male category. This fact is also not in doubt that in the counselling held, when the petitioner no. 1 did not produce his caste certificate for backward category, he could be considered only against the post of unreserved category but as noted, there was no possibility for appointment of any male against the unreserved category in order to fulfil the requirement of filling up the other post only from backward male category. In fact, it was the respondent no. 8, who on the basis of counselling was the best candidate for the backward male category inasmuch as he had produced the caste certificate and was having the best marks amongst the seven candidates in the backward male category who had appeared in counselling inasmuch as the only other candidate of backward male category being Mohan Lal Sah, had only 48.88 merit points as against the respondent no. 8 having 53.44 merit points.

14. It is here that the Committee at the Panchayat level had committed a gross error in firstly filling up the post of unreserved category by placing petitioner no. 1 as the best candidate ignoring the fact that firstly appointment was to be made against the earmarked post of backward male category in order to fulfil the requirement of one of the two posts being filled up by a female category in terms of the advertisement.

15. As a matter of fact, the Panchayat had further committed an error in selecting the petitioner no. 2 by projecting that she was a female of the backward category. The Committee infact had completely lost track of the requirement of the advertisement and the existence of the vacancy only for a backward male category. Thus, selection and appointment of the petitioner no. 2 who belonged to backward female category, could not have been appointed against the post of backward male category.

16. Once, this aspect becomes clear, there would be no difficulty in coming to the conclusion that since the respondent no. 7 was the best female candidate having 65.14 merit points, even though she belonged to most backward category, her appointment was to be made against the unreserved post in order to fulfil the requirement of advertisement of there being at least one female Prerak among the two. As to the other post of Prerak exclusively reserved for backward male category, there is no doubt that the respondent no. 7 was the best candidate among the female category.

17. Judged from this angle, this Court would find no error in the decision of either removing the petitioners from their contractual appointment or their replacement by the respondent nos. 7 and 8.

18. It is true that whatever findings were recorded by the Executive Magistrate in the enquiry report ought to have been made available to the petitioners before terminating their services for enabling them to file their show cause reply but then the principle of natural justice cannot be circumscribed in a straight jacket.

19. As noted above, these are out and out contractual appointment whose term and tenure itself was to exist till continuation of literacy mission as prescribed by

the State Government and therefore when an apparent and obvious illegality was committed by the Panchayat Level Committee in appointing the petitioners, the same being not even a Government employment did not attract the safeguard under proviso to Article 311 of the Constitution of India. Preraks are not a Government servant or civil servant or in fact they are only working as volunteers with a nominal stipend of Rs. 2000/- per month.

20. It is true that there is sufficient reason for heart burning of the petitioner no. 1 that he, despite being the best candidate on merit, cannot find place but then if the scheme of reservation sought to be implemented at Panchayat level has to be given true meaning in order to achieve the purpose of the Literacy Mission Scheme, the individual hardship will have to give a way to the greater social cause. This Court in exercise of its power under Article 226 of the Constitution of India cannot pass an order which would frustrate the very object of the Government policy of reservation and roster and, therefore it has no option but to also approve the engagement of the respondent nos. 7 and 8 who in terms of the advertisement were the best candidates to be appointed as Prerak in Lalmaniyan Gram Panchayat of Supaul District.

21. Thus, for the reasons indicated above, this writ petition must fail and is, accordingly, dismissed.

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