

**Dukhharan Sao Vs. Human Resource Development**

**Dukhharan Sao Vs. Human Resource Development**

**SooperKanoon Citation :** [sooperkanoon.com/69890](http://sooperkanoon.com/69890)

**Court :** Jharkhand

**Decided On :** Apr-20-2016

**Appellant :** Dukhharan Sao

**Respondent :** Human Resource Development

**Advocate for Pet/Ap. :** Mr. Rajiv Nandan Prasad

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6188 of 2012

1. Dukhharan Sao son of Late Ramdeo Sao, resident of Village-Barkute, P.O.-Saradhu, P.S.-Tandwa, District-Chatra.

2. Sanjay Kumar Prasad son of Sri Ram Kumar Prasad, resident of Village-Barkute, P.O.-Saradhu, P.S.-Tandwa, District-Chatra. .... Petitioners Versus 1. The State of Jharkhand through wilthe Secretary, Human Resource Development Department, Govt. of Jharkhand, Ranchi.

2. The State Project Director, Jharkhand Education Project.

3. The Deputy Commissioner-cum-Chairman, Jharkhand Education Project, District-Chatra.

4. The District Superintendent of Education-cum-District Programme Officer, Chatra.

5. The Block Education Extension Officer, Tandwa, District-Chatra.

6. Punam Devi @ Punam Kumari wife of Sri Dayanand Das, resident of Village-Soparam, P.O.-Saradhu, P.S.-Tandwa, District-Chatra. ... Respondents ---  
CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner :  
M/s Rajiv Nandan Prasad, Rakesh Kumar & Rakesh Ranjan, Advocates For the  
Respondents : Mrs. Richa Sanchita, S.C-V, & Mr. D. K. Dubey, J.C to S.C-V, For  
the Respondent No.2 : Mr. Saurabh Arun, Advocate For the Private Respondent :  
Mr. Manoj Tandon, Advocate ----- CAV on 17.02.2016 Pronounced on 20/04/ 2016  
Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for quashing the office order issued by the respondent no.4 vide memo dated 07.09.2012 declaring the appointment of the petitioner on the post of Para Teachers as irregular in pursuance to the order dated 05.07.2012 passed in W.P.(S) No.2502 of 2008 and for issuance of writ of mandamus commanding the respondents to allow the petitioners to continue in services with consequential benefits.

2. The facts as disclosed in the writ application in brief is that the respondent no.6 was appointed on 12.06.2003 as Para Teacher of newly 2 Upgraded Primary School, Barkutte and submitted representation dated 04.07.2005 for grant of leave for 3 months due to illness and the leave was sanctioned by the respondent no.5 on 05.07.2005. The respondent no.6 also submitted her representation before Deputy Commissioner for payment of honorarium for 6 months for which she has discharged her duties. In its meeting dated 18.10.2005, it was resolved to the effect since respondent no.6 is on leave and she is only matriculate, the petitioners who possessed the requisite qualification of Intermediate, were appointed on the post of Para Teacher and the petitioner no.1 was selected as a Secretary and accordingly then their names were recommended for approval. Thereafter, Gram Siksha Samittee submitted representation dated 05.12.2005 before the respondent no.3 for payment and approval of the petitioners. After being appointed, the petitioners were sent for training and they completed 2 years training from IGNOU in 2008. The respondent no.6 due to non-payment of

honorarium and other reliefs filed writ application bearing W.P.(S) No.2502 of 2008 and the said writ application was disposed of vide order dated 05.07.2012 with direction to respondent no.3 to take a decision on the representation of respondent no.6 dated 17.02.2004 at Annexure-6 and the writ petition was accordingly disposed of. In pursuance to the aforesaid order, the respondent no.4 through his letter dated 25.08.2012 asked the petitioner no.1 to appear on 29.08.2012 alongwith all the records and the petitioner no.1 being Secretary of the Gram Siksha Samittee produced the relevant records. It is also averred in the writ application that the Gram Siksha Samittee filed representation dated 31.08.2012 contending that the points raised by the respondent no.6 as false and fabricated and demanded enquiry about the validity of the appointment of respondent no.6 but respondent no.4 without going through relevant record and giving opportunity of hearing to the petitioners passed order dated 07.09.2012 declaring the appointment of the petitioners as irregular. Being aggrieved by the aforesaid order, the petitioners left with no other alternative, efficacious and speedy remedy have approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of their grievances.

3. Mr. Rajiv Nandan Prasad, learned counsel for the petitioners submits that the impugned order dated 07.09.2012 declaring the appointment of the petitioners as irregular without giving opportunity to them is violative of article 14 and 16 of the Constitution of India. Learned counsel for the petitioners further submits that the action of the respondents in allowing respondent no.6 to perform the duty of Para Teacher notwithstanding that her appointment was invalid and she was continuously absent from duty for more than six months which is nothing but a colourable exercise of power.

4. Per-contra, the counter-affidavit has been filed on behalf of respondents repelling the contentions made in the writ application. In the counter-affidavit, it has been submitted that in the meeting dated 18.12.2005 of Village Education Committee, N.P.S. Barkute, in which the petitioners have been selected as Para Teacher, but before the meeting or the selection, respondent no.6 has not been terminated from the post of Para Teacher. Hence without termination of the previous Para Teacher, the selection of the petitioners on the post of Para

Teacher is illegal and void and the proceedings of Village Education Committee meeting dated 18.10.2005 and the petition of respondent no.6 dated 17.02.2004 have been annexed and marked as Annexure C and D to the counter-affidavit. 4 5. A counter-affidavit has been filed by respondent no.6 controverting the averments made in the writ application.

6. A counter-affidavit has also been filed by respondent nos. 3 and 4 repudiating the claims of the petitioners in the counter-affidavit. Respondents have repudiated the claims of the petitioners on following grounds: (i) The impugned order has been passed in compliance of order made in the writ application bearing W.P.(S) No.2502 of 2008 dated 05.07.2012. (ii) The respondent no.6 was selected as a para teacher in N.P.S. Barkute in June 2003 in the light of the order contained in memo dated 04.08.2002 of Human Resource Development Department of Jharkhand, Ranchi under the heading of qualification. Where minimum qualification prescribed was matriculation. (iii) In the light of the direction contained in letter dated 07.05.2014 of the District Programme Co-ordinator, J.E.P. Chatra, it has been submitted that the minimum qualification of selected Para Teacher has been fixed intermediate. In this condition, it will be necessary for a para teacher whose academic qualification is only matric pass has to pass the intermediate examination from National Open Schools or any Recognized Institution within a period of 2 years. This facility was not given to the respondent no.6 by the Village Education Committee, N.P.S. Barkute. (iv) The Gazette of India, notification no.238 dated 04.09.2001 NCTE (Determination of Minimum qualifications for recruitment of teachers in schools) Regulations, 2001 has been issued containing circular and guidelines that minimum qualifications of Primary Teachers is Senior Secondary School certificate or Intermediate or its equivalent and Diploma or certificate in basic 5 teachers training of a duration of not less than two years or Bachelor of Elementary Education. (v) The Jharkhand Education Project Council, Ranchi has also issued guideline dated 30.01.2014. (vi) The respondent no.6 has availed leave for 3 months for own treatment which was sanctioned by the Block Education Extension Officer, Tandwa. After completion of leave period, respondent no.6 had gone to join under Village Education Committee could not accept her joining. It is proved that the behavior of the Village Education Committee was non-operative to the respondent no.6. (vii) In the meeting dated

18.10.2005 of Village Education Committee, N.P.S. Barkute, the petitioners have been selected as Para Teachers. But before this meeting of this selection respondent no.6 has not been terminated from the post of Para Teacher. Hence, without termination of the previous Para Teacher, the Selection of the petitioner on that post of Para Teacher is illegal and void. (viii) Before selection of the petitioner as Para Teacher in N.P.S. Barkute, Tandwa, Village Education Committee has not obtained any order or direction from the Block or District authority which was essential as evident from Annexures A to F to the counter-affidavit. (ix) Photo copy of the leave petition has been annexed with as Annexure-G to the counter-affidavit. It has further been submitted that in compliance of the order dated 05.07.2012, the respondent no.4 issued notice to the petitioner vide letter dated 25.08.2012 to appear with all documents before the D.S.E.-cum-D.P.O., J.E.P. Chatra as evident from Annexure-H to the counter-affidavit. 6 7. Mrs. Richa Sanchita, S.C-V, learned counsel for the State submits that the appointment of petitioners are illegal on the basis of forged resolution and moreover the appointments have not been approved by the Village Education Committee, Block Education Committee and District Selection Committee. Moreover the guidelines and procedure of Jharkhand Education Committee have not been followed.

8. Mr. Manoj Tandon, learned counsel appearing for the respondent no.6 has strenuously submitted that the respondent no.6 was on leave. The appointment of petitioner as Para Teacher is illegal moreover, the writ petition lacks fundamental facts to warrant interference by this Hon'ble Court. Another aspect which has raised by respondent no.6 that the petitioner no.1 as Secretary got himself appointed as para teacher which is not only illegal but a clear case of abuse of power.

9. Having heard learned counsel for the respective parties and looking to the facts it appears that:- (i) The impugned order dated 07.09.2012 has been passed on the ground of selection of petitioners as para teachers. Without termination of respondent no.6 is not only illegal but tantamounts to arbitrary exercise of power. The selection of the petitioners as para teachers ought to have been approved by the Village Education Committee. Since, the Block Education Committee is the approving authority so far as appointments made by the Village Education

Committee are concerned, these powers are conferred by the Jharkhand Education Project Council to the Block Education Committee. (ii) In the instant case, the appointment of the petitioners made by the Village Education Committee were never approved by the Block Education 7 Committee. Thus, there was no approval by the Government to the appointments of the Para Teachers. (iii) The petitioners have failed to demonstrate the approval of the appointments by the Block Education Committee and the resolution of Village Education Committee. Therefore, the impugned order which is a well reasoned one and has considered all the plea and grounds taken by the petitioners, does not appear to suffer from any non-application of mind or is illegal and perverse. In view of the reasons stated in the forgoing paragraphs and in such circumstances, in exercise of writ jurisdiction of this Court, on a review of the decision making process, it cannot be said that the order impugned is either irrational or is passed in a perverse manner. Accordingly, the impugned order dated 07.09.2012 does not warrant any interference by this Court. Hence, the writ petition sans merit is dismissed. (Pramath Patnaik, J.) RKM/- N.A.F.R.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**