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## **Prakash Mandal Vs State of Jharkhand**

**L.P.A. No. 40 of 2014**

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**Court:** Jharkhand High Court

**Date of Decision:** July 16, 2014

**Hon'ble Judges:** R. Banumathi, C.J; Amitav Kumar Gupta, J

**Bench:** Division Bench

**Advocate:** Bhanu Kumar, Advocate for the Appellant

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### **Judgement**

@JUDGMENTTAG-ORDER

1. This Letters Patent Appeal is preferred against the order dated 12.11.2013 passed in W.P.(S) No. 7680 of 2012, whereby the writ petition of

the appellant, seeking for direction for appointment as Para Teacher was dismissed.

2. The case of the appellant is that the appellant had applied for selection on the post of Para Teacher in the Upgraded Primary School, Benagoria

on 28.2.2012 along with all certificates. Pursuant to the letter No. 188 dated 22.2.2012 issued by the District Superintendent of Education,

Jamtara, a General Body meeting (AAM SABHA) was held on 29.2.2012 under the Chairmanship of Shri Kalipada Hembrom for selection of

Para Teacher in Upgraded Primary School, Benagoria. For the post of Para Teacher, total nine applicants had applied and out of which the

appellant was selected and recommended. Initially one Kumari Mithu Rani Mandal was to be selected but due to her unwillingness for being

appointed as Para Teacher, the appellant was selected. When the Village Education Committee recommended the name of the appellant for

approval on 1.8.2012, the appellant's name was not approved by the Block Education Committee. The appellant also made representation before

the Deputy Commissioner, Jamtara requesting for his selection for the post of Para Teacher. When no action was taken, the appellant filed W.P.

(S) No. 7680 of 2012 for his appointment to the post of Para Teacher. During the pendency of the writ petition, the Deputy Commissioner,

Jamtara vide order dated 6.9.2012 rejected the representation of the appellant, on the ground that there was over-writing on the proceeding

register of Village Education Committee and also in view of the fact that the procedure for appointment of Para Teacher has been changed. This

fact was brought on record by way of filing one I.A. and also challenged the order dated 06.09.2012. The writ petition was finally dismissed on

12.11.2013 observing that the documents relied upon by the appellant is doubtful. It was further observed that for appointment as Para Teacher,

there is requirement for passing Teacher Eligibility Test, which obviously the appellant has not passed.

3. Being aggrieved by the dismissal of the writ petition, the appellant has filed this Letters Patent Appeal. The learned counsel for the appellant

submitted that the learned Single Judge failed to appreciate that the selection of the appellant on the post of Para Teacher was made by duly

constituted Village Education Committee in its meeting held on 29.02.2012 and the said meeting was held in a transparent manner. It is further

submitted that in the said meeting of Village Education Committee one lady candidate Kumari Mithu Rani Mandal and the appellant was finally

selected and only due to the unwillingness of the lady candidate Kumari Mithu Rani Mandal, the name of the appellant was finally recommended.

The learned counsel further submitted that the appellant possesses higher educational qualification of M.A./M.Sc., B.Ed. and on that basis his

name was recommended by the Village Education Committee and while so the learned Single ought to have quashed the order dated 06.09.2012

passed by the Deputy Commissioner, Jamtara rejecting the representation of the appellant.

4. The learned counsel for the respondent-State of Jharkhand has submitted that even though the Village Education Committee was alleged to have

recommended the name of the appellant on 29.02.2012, the same was forwarded by the Village Education Committee only on 01.08.2012 which

was received in the office of the Block Education Committee only on 02.08.2012. It is further submitted that in the meanwhile the Ministry of

Human Resource Development Department of School Education and Literacy, Government of India has issued a letter contained in D.O. No. 3-

3/2012-EE-4 dated 07.05.2012 making it clear that only those persons who passed the Teacher Eligibility Test may be appointed as teachers for

Class I to VIII including contractual/para teachers. It was submitted that pursuant to the said notification, the Human Resource Development

Department, State of Jharkhand has also issued letter No. JEPC/SSA/12/102/2010/1253 dated 25.06.2012 making it crystal clear that the

selection of Para Teacher shall be pursuant to provisions of R.T.E. Act, 2009 and the applicant for Para Teacher must have passed Teacher

Eligibility Test. It is further submitted that since the recommendation of the appellant was forwarded for approval to the Block Education

Committee, Nala only on 02.08.2012 and the appellant having not passed Teacher Eligibility Test, the selection of the appellant was not approved

and the learned Single Judge rightly dismissed the writ petition.

5. Even though the Village Education Committee has recommended the name of the appellant on 29.02.2012, the same was forwarded for

approval to Block Education Committee only on 01.08.2012. In the meanwhile, the Ministry of Human Resource Development Department of

School Education and Literacy, Government of India vide letter contained in D.O. No. 3-3/2012-EE-4 dated 07.05.2012 made it clear that

recruitment of teachers including contractual/para teachers, who have not qualified the TET would violate the provisions under the Right of

Children of Free and Compulsory Education (RTE) Act, 2009. It was also clarified that it is a binding and mandatory requirement under the RTE

Act that only those persons who pass the TET may be appointed as teachers for Classes I to VIII. It was also mentioned in the said letter that

every State is statutorily required to comply with this requirement and violation of it may not stand the test of law. It also appears that in furtherance

of the direction of Government of India, the Principal Secretary, Human Resources Development Department-cum-State Project Director,

Jharkhand State Education Project Council, Ranchi issued letter No. JEPC/SSA/12/102/2010/1253 dated 25.06.2012 making it clear that

selection of Para Teacher shall be pursuant to the provisions of RTE Act, 2009 and the applicant must have passed Teacher Eligibility Test. Even

though the appellant is said to have higher qualification, since the appellant has not passed the Teacher Eligibility Test, which is the mandatory

requirement, the recommendation of the Village Education Committee was not approved by the Block Education Committee. In view of the

mandatory requirement of passing TET as per the notification issued by the Ministry of Human Resource Development Department of School

Education and Literacy, Government of India (07.05.2012) and the subsequent notification issued by the State of Jharkhand (25.06.2012), the

appellant cannot seek for a direction upon the respondents to consider him for appointment as para teacher.

6. We do not find any reason warranting interference in the order of the learned Single Judge and this Letters Patent Appeal is dismissed. If the

appellant has subsequently qualified in Teacher Eligibility Test, the appellant is at liberty to participate in the subsequent selection, if any, either as a

regular teacher or Para Teacher.