

(2010) 12 PAT CK 0070

Patna High Court

Case No: C.W.J.C. No. 14207 of 2010

Maksudan Paswan @
Madhusudan Paswan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 20, 2010

Judgement

@JUDGMENTTAG-ORDER

S.N. Hussain, J.

This writ petition has been filed challenging order dated 9.8.2010 (Annexure-1) passed by the Principal Secretary, Panchayati Raj Department, Government of Bihar, Ratna (Respondent No. 2) by which the Petitioner was removed from the post of Mukhiya of Raj Dumrawan Gram Panchayat (hereinafter referred to as "the Gram Panchayat" for the sake of brevity) in the district of Nalanda under the provision of Section 18(5) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act" for the sake of brevity) and for other ancillary reliefs.

2. I.A. No. 7600 of 2010 was filed on 19.8.2010 on behalf of the Petitioner for stay of the operation of the impugned order but the said interlocutory application was directed vide order dated 7.9.2010 to be considered alongwith the admission matter. However, by the said order Respondent No. 8 was added to the writ petition as he was not considered for appointment to the post of Panchayat Shikshak and on his representation the enquiry was conducted and the impugned order was passed against the Petitioner.

3. Learned Counsel for the Petitioner has submitted that he was duly elected as Mukhiya of the Gram Panchayat in the election of 2006 and since then he has been functioning as such. He further stated that in the year 2007 Panchayat Shikshak was to be appointed in the Gram Panchayat and for that purpose a Selection Committee of five members, including the Petitioner as ex-officio Mukhiya was appointed by the Government and after interview and verification of certificates and materials one Sudhir Kumar was selected for the post of Panchayat Shikshak.

4. Learned Counsel for the Petitioner averred that the said Sudhir Kumar did not suppress any fact and had mentioned that he passed his Intermediate Examination obtaining 63.35 per cent marks, whereafter for increasing his marks he also appeared in Madhyama Examination conducted by Hindi Sahitya Sammelan and obtained 75 per cent marks. In the said circumstances, a tentative merit list was prepared and published for inviting objections and accordingly the said Sudhir Kumar submitted his objection relying upon a decision of this High Court passed in C.W.J.C. No. 1074 of 2008 and C.W.J.C. No. 6353 of 2009 Reported in [Asha Kumari and Another Vs. The State of Bihar and Others](#), in which it was held that certificate of Hindi Sahitya Sammelan has to be considered for the purpose of selecting a person on the post of Panchayat Shikshak. Thereafter, a final gradation list was prepared and roster clearance was also done. Learned Counsel for the Petitioner also averred that there is no illegality in preparation of the said list.

5. Learned Counsel for the Petitioner further claimed that the impugned order of the Principal Secretary (Respondent No. 2) is mechanical in nature without considering the explanation of the Petitioner (Annexure-8) and the evidence produced by the Petitioner which were only enumerated without valid consideration. He also stated that there was no material before the Principal Secretary (Respondent No. 2) except the report of the District Magistrate which was also dependent upon the report of Superintendent of Police. The aforesaid two reports and the impugned order were all based on the only ground that two merit lists were prepared, but in none of those reports and order the authorities could find that any of those lists was illegal or any irregularity was committed in them.

6. It was also claimed by learned Counsel for the Petitioner that the Principal Secretary (Respondent No. 2) in his impugned order dated 9.8.2010 (Annexure-1) observed that Selection Committee should not have accepted the second mark sheet of Sudhir Kumar failing to appreciate that the second mark-sheet being legal and valid, there was no occasion for discarding the same, specially when he had every right to improve his qualification in 1993 from the qualification he had in 1992 and he has been working since 2007.

7. Learned Counsel for the Petitioner further argued that misconduct means continuance of conscious illegalities but in the instant case there is only a singular act and that too by a Selection Committee of five persons, including the Mukhiya (Petitioner), Panchayat Secretary (Government Officer), Member selected by D.S.E. (Government Officer), Teachers Representative and Ward Member, but in the instant case only the Petitioner and the Panchayat Secretary have been chosen to be punished which shows the arbitrariness and mala fide of the persons concerned. Thus, learned Counsel for the Petitioner claimed that the Petitioner being a democratically elected officer, his removal from the office, which is an extreme step, could have been resorted to only in grave and exceptional circumstances and not for any such minor irregularity.

8. On the other hand, learned Counsel for Respondent No. 8 vehemently contested the claim of the Petitioner and stated that he was also a candidate for Panchayat Shikshak as extremely backward class having 55 per cent marks, but was not considered in either of two lists by the Selection Committee, although he had appeared for counseling on 28.11.2006 and two other extremely backward class candidates, namely, Manoj Kumar Sharma and Vinay Kumar having lesser marks were included in the list. He also states that in the said circumstances, both the lists (Annexures-5 and 6 to the interlocutory application dated 6.8.2010 filed by Respondent No. 8) were illegal and hence direction was given for lodging an F.I.R. (Annexure-9), whereafter steps were taken by the authorities concerned which are clear from Annexures-10, 11, 12, 13, 14, 15 and 16 of the said interlocutory application.

9. Learned Counsel for Respondent No. 8 also averred that the impugned order was passed by the Principal Secretary (Respondent No. 2) after giving notice to the Petitioner, whereafter the Petitioner filed show-cause, which was considered. He further stated that the impugned order is quite justified as Sudhir Kumar, who was of a different Panchayat, was appointed and his appointment was annulled by the Member, Zila Shiksha Niyojan Pradhikar, Nalanda in Case No. 23 of 2008-09 on 10.1.2009 which was sent to Respondent No. 8 vide letter dated 22.7.2009 (Annexure-15). He relied upon a decision of this Court in the case of Bindeshwar Prasad v. The State of Bihar and Ors. reported in 2010 (4) P.L.J.R. 314.

10. Learned Counsel for the State of Bihar and its authorities (Respondent Nos. 1 to 7) supported the arguments made by learned Counsel for Respondent No. 8 and raised same points against the claim of the writ Petitioner.

11. Considering the arguments of learned Counsel for the parties as well as the materials on record, it is quite apparent that the impugned order was passed u/s 18(5) of the Act and the authorities concerned, namely, the Principal Secretary (Respondent No. 2) and the District Magistrate (Respondent No. 4) were the authorities to take necessary steps under the Act, but the question involved in this case is whether they have exercised their jurisdiction in accordance with law not violating any settled principles of law and whether there existed any grave and exceptional circumstances for which such an extreme step was necessary to be resorted to.

12. It is quite apparent from the impugned order of the Principal Secretary (Respondent No. 2) as well as from other orders of the authorities concerned that the only allegation against the Selection Committee, including the Petitioner was that two merit lists were prepared; one in the year 1992 in which Sudhir Kumar was shown to have obtained 63.35 per cent marks, whereas in the second list he had been shown to have secured 75 per cent marks and on the basis of the second list he was appointed on the post of Panchayat Shikshak, which, according to the Respondents, was against the legal procedure and was a gross irregularity.

13. So far genuineness of the said two lists are concerned, the first list was on the basis of 63.35 per cent marks obtained by Sudhir Kumar in his Intermediate Examination in the year 1992, but since subsequently he had improved his marks in the year 1993 by getting 75 per cent marks in the Madhyama Examination conducted by Hindi Sahitya Sammelan which was a recognized institution, the second merit list showed the said Sudhir Kumar having obtained 75 per cent marks. Neither Respondents authorities nor the private Respondent had ever raised any objection that the certificates of the said Sudhir Kumar were illegal or forged or it had no value in the eye of law. Hence, there is no falsehood in the facts given in the two merit lists.

14. So far the validity of the two merit lists are concerned, it has been specifically stated by the Petitioner that the said Sudhir Kumar did not suppress any fact and had mentioned that he passed his Intermediate Examination in the year 1992 having obtained 63.35 per cent marks, but subsequently for enhancing his qualification he appeared in Madhyama Examination of 1993 conducted by the Hindi Sahitya Sammelan obtaining 75 per cent marks. In the said circumstances a tentative list was prepared and published for inviting objections showing the said Sudhir Kumar to have obtained 63.35 per cent marks, whereafter the said Sudhir Kumar raised objections that the result in the Madhyama Examination was legal and valid and had to be considered and only thereafter the final gradation list was prepared showing the Petitioner to have obtained 75 per cent marks and accordingly, the roster clearance was done. This fact is fully proved by the Petitioner but the Respondents have failed to disprove the said fact by any material whatsoever, nor they could even show that the appearance of the Petitioner in the Madhyama Examination of Hindi Sahitya Sammelan after passing the Intermediate Examination in 1992 was illegal or it was not to be considered for appointment of a Panchayat Shikshak. Accordingly, the second list prepared by the Selection Committee was legal and valid and the ground on the basis of which the Petitioner was removed, is absolutely frivolous and misconceived.

15. So far the claim of Respondent No. 8 that he had appeared for counselling before the Selection Committee on 28.11.2006 is concerned, it is completely falsified by the materials produced by the Petitioner, which clearly showed that he had never appeared in the counselling held by the Selection Committee in which other candidates had appeared. In the said circumstances, only those candidates were included in the two lists who had appeared in the counselling held by the Selection Committee. In any view of the matter, admittedly Respondent No. 8 had obtained only 55 per cent marks in his Intermediate Examination, whereas there were at least three candidates who had obtained more marks than him, namely the Petitioner, Rubi Kumari (69.55 per cent marks) and Sushma Kumari (56.44 per cent marks), but the said two other candidates did not object to the Petitioner's appointment on the basis of his obtaining 75 per cent marks. If the candidature of the Petitioner was rejected it was only one of the aforesaid two other candidates, namely Rubi Kumari

or Sushma Kumari, who could have got the benefit, whereas Respondent No. 8 was nowhere in picture. Accordingly, Respondent No. 8 was not entitled at all to raise any objection against the appointment of Petitioner and the authorities concerned were not justified in entertaining objections/applications filed by him against the Petitioner.

16. Furthermore, Respondent No. 8 has also failed to prove by any valid material that the Petitioner was not entitled to be appointed as he belonged to a different Panchayat, whereas the Petitioner has been able to show that he also belonged to the same area within Ashthawan police station of the district of Nalanda. Respondent No. 8 has also relied upon a decision of this Court in the case of Bindeshwar Prasad v. The State of Bihar and Ors. reported in 2010 (4) P.L.J.R. 314, but in the said case very serious allegations were proved which was detrimental to the interest of the people of the Panchayat which he represented due to which it was found that the Petitioner of that case not only committed grave illegality but also eroded the confidence of people who had elected him as Mukhiya. Thus, the said case law is not applicable to the facts and circumstances of this case.

17. It is also an admitted fact that the appointment of Sudhir Kumar was made by Selection Committee which apart from the Mukhiya (Petitioner) included Panchayat Secretary (Government Officer), Member selected by D.S.E. (Government Officer), Teachers Representatives and Ward Member and hence there is nothing to show that the said appointment was made solely at the instance of the Petitioner. Hence, it cannot be legally said that the Petitioner has committed any grave illegality at his own instance favouring the said candidate Sudhir Kumar for which no reason could also be shown.

18. Apart from the aforesaid facts, the provisions of Section 18(5) of the Act confer power upon the State Government for removal of Mukhiya with no provision of appeal and in furtherance thereof such removal as per the Act casts a serious stigma on the personal and public life of the concerned person resulting in his permanent disqualification to hold such office in future. Hence, the power which is exercised by the authorities concerned under the aforesaid provision of law has serious civil consequences on the status of Mukhiya and his entire career.

19. Furthermore, in the said provision of law, namely Section 18(5) of the Act, no sufficient guidelines have been given as to the manner in which such power has to be exercised and hence the authorities of the State Government should invoke such power only in a very extreme case with strong reason and should not exercise it in case of minor irregularities in discharge of duties by the holder of the elected post, namely Mukhiya specially because he occupies the said post by election and he is deprived of the office by an executive order in a proceeding in which the electorate has no chance of participation. This view has been very clearly and specifically held by the Apex Court in the case of [Sharda Kailash Mittal Vs. State of M.P. and Others](#), as well as in the case of [Tarlochan Dev Sharma Vs. State of Punjab and Others](#),

20. In view of the aforesaid facts and circumstances as well as the law laid down by the Hon"ble Supreme Court, this Court is constrained to quash the impugned order of removal of Petitioner passed by the Principal Secretary, Panchayat Raj Department, Government of Bihar (Respondent No. 2) as contained in Memo No. 148 dated 9.8.2010 (Annexure-1) and also the consequential steps taken by the Respondents authorities. Accordingly, this writ petition is allowed.