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(2009) 11 JH CK 0001

Jharkhand High Court

Case No: None

Mohammad Badruddin	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 12, 226, 227

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred against the order dated 22.6.2009 passed by the learned Single Judge in W.P. (S) No. 3552/2008, by which the writ petition had been rejected since the learned Single Judge was of the view that the petitioner had raised disputed question of facts, which could not be gone into under writ jurisdiction.

2. The petitioner/appellant herein had filed a writ petition praying therein for quashing a part of the order dated 8.10.2007 passed by the Director, Secondary Education, holding that the petitioner was entitled to salary from the Minority Institution which is a Government aided School from January, 1999 to December, 1999 and also from February, 2003 to March, 2003 and the arrears were ordered to be paid to him but the petitioner''s further prayer for payment of arrears of salary for the period from December, 2004 till the date of filing of the writ petition was rejected, which was assailed before the learned Single Judge, which was dismissed as stated above, since the learned Single Judge noticed that it involved disputed question of facts.

3. From the facts disclosed, it could be noted that the petitioner had been discharging duties initially as an Assistant Teacher and subsequently as Headmaster in the Government aided Minority School known as Anjuman Islahul Muslameen. However, the school was admittedly not under the control of the State Government as it was being run

by a Co-Operative Society registered under the Societies Registration Act. The Society, which was running the School, was superseded by another Society and a dispute arose between the two Societies to control over the management of the School. As a result of this controversy, the salary of the petitioner was not paid and he filed a writ petition bearing W.P.(S) No. 3691/2006 claiming arrears of salary. The said writ petition was disposed of by the order dated 10.8.2006 where the learned Single Judge granted liberty to the petitioner to approach the Director, Secondary Education, Ranchi, by filing a detailed representation annexing all the relevant documents claiming arrears of salary. It further indicated that if such representation is filed, the Director, Secondary Education, shall consider the same and take a final decision in the matter of release of the arrears of salary within a period of two months from date of receipt of the representation.

4. In our considered opinion, when the petitioner had been discharging duties only in a Minority School, which was a private Institute run by a Co-Operative Society and only some grant was given to the School by the Government, the same could not have been treated to be a Government Institution and therefore, the Director, Secondary Education, had no role or occasion to decide as to why the payment of salary be not made to the petitioner. However, the respondent-State did not prefer any appeal against the order passed by the learned Single Judge to the effect that the matter could not have been decided by the Director, Secondary Education, Ranchi, as he had no authority to do so in regard to the private minority institute and hence, rightly or wrongly the Director, Secondary Education, Ranchi, decided the matter and held that the salary was payable to the petitioner from January, 1999 to December, 1999, and from February, 2003 to March, 2003. Strictly speaking, as already stated, this order could not have been passed by the Director, Secondary Education, Ranchi, in regard to a Teacher discharging duties in a private minority school. However, there is no State appeal against the same and hence, we do not propose to enter into this question, but in so far as the challenge of the petitioner in regard to denial of salary for the period from December, 2004 till the date of filing of the writ petition is concerned, the same has not been entertained by the learned Single Judge on the ground of disputed question of facts. But apart from this reason, we are also of the view that the writ petition itself was not maintainable before the learned Single Judge since the petitioner/appellant herein had been discharging duties admittedly in a Minority Institution which was privately run under the management and control of a Co-Operative Society.

5. As already indicated, the learned Single Judge in the earlier writ petition bearing W.P. (S) No. 3691/2006 could not have directed the Director, Secondary Education, Ranchi, to intervene and decide the matter. But the Director, Secondary Education, Ranchi, had acquiesced with the order and did not prefer any appeal against the same and hence, this plea cannot be entertained on the second occasion when the petitioner challenged the denial of salary from December, 2004 upto the filing of the writ petition, apart from the fact that it involved disputed question of facts. Hence the question whether the petitioner could have been paid salary by the Co-Operative Society or by the subsequent

Co-Operative Society as it duly took over the control over the School and whether the previous Co-Operative Society was rightly superseded or not could not have been the matter of adjudication in the writ petition.

6. Besides this, we have already stated that the writ petition could not have been entertained as the respondent institution could not have been treated as a "State" within the meaning of Article 12 of the Constitution merely because the some grants had been given to the School by the Government. The claim of the petitioner, therefore, cannot be entertained under Article 226 and 227 of the Constitution. The petitioner/appellant will, however, be at liberty to approach the Education Tribunal, if he can establish his case for payment of salary from December, 2004 upto the date of filing of the writ petition.

7. Subject to this liberty, this appeal is dismissed.