

(2009) 02 JH CK 0028
Jharkhand High Court
Case No: None

Santosh Kumar Mandal

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Feb. 9, 2009

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ajit Kumar Sinha, J.

This writ petition has been preferred for issuance of an appropriate writ, order or direction in the nature of Certiorari for quashing the office order contained in Memo No. 171 dated 5.7.2002(Annexure-1) issued under the signature of Regional Deputy Director of Education, Dumka without any application of mind. And for a further direction to approve the appointment of the petitioner w.e.f. 2.5.1993 i.e. the date on which he had been duly appointed by the Managing Committee, Project Girl's High School, Gopikandar being a land donator. His further prayer is for issuance of an appropriate writ/Rule commanding upon the respondents to make the payment of arrears of salary to the petitioner from 2.5.1993 till date which has not been paid to him though regular work has been taken from him without any break/leave.

2. The main contention raised by the Counsel for the petitioner is that she is entitled to arrears of salary from 2.5.1993 and the same was illegally denied. It has also been contended on behalf of the petitioner that District Superintendent of Education was competent authority and he vide his office order dated 23.3.2002 recommended the same and clearly held that pursuant to the notification issued vide letter dated 1240.1982 the School Managing Committee was empowered to appoint and accordingly it gave the approval/recommendation for the same. It has further been contended that para 19 of the notification dated 12.10.1982 clearly lays down that District Superintendent of Education was empowered to pass such order.

3. In reply, the Counsel for the respondent authority submitted that the contention raised by the Counsel for the petitioner is unsustainable in the eyes of law on the ground that the notification dated 12.10.1982 was not applicable for the Project School established in the year 1984-85 since it was applicable only for those Project School established in the year 1981-82. It has also been contended on behalf of the respondent State that the School Management Committee was not recognized and had no power to appoint any person. Thus, salary for disputed period starting from 2.5.1993 was unsustainable and liable to be rejected.

4. I have considered the rival arguments as well as the pleadings. The admitted fact remains that letter No. 705 dated 12.10.82 was not applicable for the Project School established in the year 1984-85. This letter is applicable to the Project School established in the year 1981-82. Even otherwise the appointment by the Managing Committee, which is not Recognized by the Government, cannot confer any legal right in favour of the petitioner and it was in this background that no payment of salary was made from the Government exchequer or Government Treasury.

5. The fact remains that unless the post is sanctioned and approved by the Government with financial concurrence, nobody has the authority to appoint. In the instant case even otherwise the District Education Officer's order dated 23.3.2002 was illegal and without jurisdiction since the Government had not sanctioned the post.

6. Considering the aforesaid facts and circumstances of the case, this writ petition being devoid of any merit is accordingly dismissed.