

(2004) 03 JH CK 0009

Jharkhand High Court

Case No: Civil Review No. 81 of 2002 and Cont. (Civil) Case No. 933 of 2002

State of Bihar and Others

APPELLANT

Vs

Smt. Alice Purty and Another

 Smt. Alice Purty Vs State of
Jharkhand and Another

RESPONDENT

Date of Decision: March 19, 2004

Citation: (2004) 2 JCR 601

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: I. Sen Chaudhary, SC-III and Ashok Jha, SC to SC-III in Civil Review No. 81 of 2002 and M.M. Pan Praveen Kumar, in Cont. Civil Case No. 933 of 2002, for the Appellant; SC-I in Cont. (Civil) Case No. 933 of 2002, for the Respondent

Final Decision: Dismissed

Judgement

Vikramaditya Prasad, J.

Both the applications arise out of the same case so both have been heard together.

2. The Civil Review Petition has been filed for reviewing the order dated 20.8.2002 passed in CWJC No. 2161 of 1999 (R) whereby and whereunder the Court allowed the writ petition considering the Annexure-7 appended to that writ and Annexure-10 an order passed by a learned Single Judge in MJC No. 243 of 1995 (R) and directed the respondent of the writ (who are the petitioners in the Review Petition) to pay the amounts due including "Leave Encashment", that portion of the impugned order which directs for the payment of Leave Encashment is sought to be reviewed on the ground that in the MJC (Annexure-10, Supra) the Court has granted this benefit of Leave Encashment to the petitioners of the MJC on the concession made by the learned counsel for the State which though was against the express provisions of Annexure-1 appended to writ petition and thus that concision could not have been used as a precedent in violation of the express provision as contained in Annexure-1 of the writ and Annexure-3 of this Review petition.

3. So the question is whether relying upon the decision in MJC (supra) and is not considering the express provision as contained in Annexure-1 of the writ an error apparent on the face of the record has occurred, calling for a Review. The consequence of Annexure-1 of the writ has not been discussed in the impugned order which apparent on its plain reading. In the Review Petition emphasis has been given on Annexure-1 to the Writ Petition and it has been stated that in paragraph 9 of the said letter (Annexure- 1) the instruction are clear that teacher"s of the Government recognized minority primary/middle schools would be entitled to.

1. Pension including family pension,

2. Gratuity.

3. General Provident Fund.

They, however, would not be entitled to :--

1. Group Insurance.

2. Unutilized leave salary

3. Ex-gratia.

And in this context the "Annexure-3 has been referred. On perusal of the impugned order it is found that while passing the order Annexure-7 which was issued by the Government in the year 1990 was considered. The Annexure-1 was issued in the year 1983 whereas Annexure-7, as stated above, in the year 1990.

The subject of Annexure-7 reads as follows :--

"Vishya :--Rajya Ke Manyata Prapt Gair Sarkari Alpsankhyak Prathmik/Madh/Madhyamik Vidyalayon, Prasvikrit Sanskrit Vidyalayon Ewm Prasvikrit Madarshon Ke Sikshak/Sikshketar Karmchariyon Ko Sarkari Sikshak/ Shishketar Karmchariyon Ki Tarah Vetan Bhatta Ewm Anya Vitiyan Suvidhayen Prdan Karne Ke Sambadh Me.

Extract 2.5.--Vibhin Alp Sankhayak Vidyaloyon, Prasvikrit Sanskrit Vidyalayon Ewam Prasvikrit Madarshon Ke Sikshak/Sikshketar Karmchariyon Ko Saman Savidhayen Uplabdh karane Ka Prashan Rajya Sarkar Ke Vicharadhin Tha. Sarkar Dwara Is Par Purn Soch Vichoroparant Nirnay Liya Gaya Hai Ki Rajya Ke Gair Sarkari Manayata Prapt Alpsankhyak Prathamik/Madh/Madhyamik Vidyalayon, Tatha Prasvikrit Gair Sarkari Sanskrit Vidyalayon Ewam Madarshon Ke Sikshak/Sikshketar Karmchariyon Ko Vetan Ke Atirikt We Sabhi Suvidhayen Di Jayn, Jo Sarkari Vidlayaon Ke Sikshak Ewm Sikshketar Karmchariyon Ko Uplabdh Hai Ewm Samay Samay par Jo Rajya Sarkar Dwara Uplabdh Karayi Jay"

4. There can be no denial that leave encashment is also available to teaching and non-teaching Government employee.

5. The Review petitioners in their review petition has not at all taken cognizance of this Annexure-7 and has not disputed that "Anya Vitiyen Suvidhayen" does not and will not include leave encashment. Therefore harping on Annexure-1 only and ignoring Annexure-7 is not proper. When viewed from that angle it cannot be said that Annexure-7 is not proper. When viewed from that angle it cannot be said that Annexure-7 and Annexure-1 to the writ are inconsistent. The ground that Annexure-1 was not properly considered and therefore it caused an error apparent on the record though not maintainable. The answer to the question is that as on consideration of Annexure-7 which is not inconsistent with Annexure-1 of the writ, the order was passed, therefore there is no error apparent on the fact of the record requiring review of the impugned order.

6. Thus, the Review petition is dismissed and the Cont. (Civil) Case No. 933 of 2002 that arise out of the aforesaid order is maintained and the opposite parties in that contempt case are directed to comply the order sought to be reviewed within a period of one month.

7. Thus while the Review Petition has been dismissed the contempt case shall stand on the Board and be listed after one month.