

(2008) 07 JH CK 0032**Jharkhand High Court****Case No:** None

Ambuj Kumar Shrivastava

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 30, 2008**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

The petitioner in this writ application has prayed for issuance of an writ of certiorari or for other appropriate writ for quashing the order dated 2.11.2002 (Annexure6) which was issued in the form of objection by the District Accounts Officer (respondent No. 5) holding that the petitioner's pay fixation was wrongly done and as such, recovery of excess paid amount should be made from the salary of the petitioner. A further prayer has been made for issuance of a direction to the respondents to pay due salary to the petitioner in the scale of Rs. 4500-7000 with effect from 1.1.1996 instead of 1998 and to release the arrears of salary

2. Facts of the case is that the petitioner who had passed his intermediate examination, was appointed on compassionate grounds as Assistant Teacher in the matric untrained scale of Rs. 1200-2040 against the post of matric untrained teachers in the Primary School at Primary School Madhya Gopali Circle, Dumri in the District of Giridih and Pursuant to an order of appointment dated 30.8.1991, he joined his post on 10.9.1991. By terms of the order dated 23.9.1995 his pay scale was fixed at Rs. 1200-2040. The aforesaid scale of pay as payable to the petitioner was even confirmed by the subsequent circulars issued by the Departmental Authorities on 3.9.1997 and again on 23.9.1997.

Claim of the petitioner is that he is entitled to revision of his salary in the pay scale of Rs. 4500-7000 with effect from 1.1.1996 from which date, revised pay scale was implemented. The revised pay scale was thus fixed and he was being given the salary on the scale of Rs. 4500-7000. While this was so, the District Accounts Officer, (Respondent No. 5) who draws the pay fixation chart in respect of the Government Servants, by his impugned letter (Annexure-6) issued by him, raised an objection in the pay fixation of the petitioner on the ground that the petitioner was wrongly paid the salary of trained scale as the petitioner has

3. Challenging the objection as raised by the respondent No. 5 as arbitrary and illegal, the petitioner has raised the following grounds;

1. That, before raising objection of wrong fixation of pay and consequent recovery of alleged excess payment, petitioner was never given any opportunity of being heard.

2. That, the objection of the respondent No. 5 is totally misconceived in view of the fact that as per the Government letter issued pursuant to the Government decision as reflected in the letter dated 3.9.1997 followed by another letter dated 23.9.1997, the petitioner was rightly given the trained teachers scale of pay since it was the scale applicable both to the trained teachers as well as to those who though being untrained, were appointed on compassionate grounds.

3. That, there was no misrepresentation or suppression of fact on the part of the petitioner and therefore, the proposal to recover the alleged excess payment of salary from the petitioner, is totally unwarranted and illegal.

4. Counter-affidavit on behalf of the respondents has been filed. The grounds of objection taken by the respondents are;

1. That, the petitioner was appointed on the post of untrained Matric teachers and was getting scale of pay as allotted to him at the time of his appointment.

2. That, the petitioner at the time of his joining services on 10.9.1991, had possessed qualification of intermediate and later in the year 1998, he had completed his graduation and thereafter, he had completed his training on 3.4.2002 and acquired the status of trained teachers after completing his training.

3. That, though the petitioner was given the initial pay scale of untrained teachers on the compassionate grounds, but under the Government letter dated 8.8.1991 (Annexure-A) petitioner was entitled to increment of pay annually after obtaining teachers training certificate. As such, since the petitioner had completed his training and obtained training certificate only on 3.4.2002, he was entitled to the increment in salary only thereafter.

4. That, since the District Superintendent of Education, Giridih by his order dated 23.9.1995 had inadvertently fixed the increment of the petitioner in contravention of

the Government decision as contained in Government letter dated 8.8.1991, the arrear of excess payment was applicable to only those teachers who were appointed against the post of trained teachers of primary/middle school having the higher qualification of bachelor's degree.

6. That, as per the Circular No. 14568 dated 5.7.2002 issued by the Government pursuant to the judgment of the Patna High Court passed in CWJC No. 495 of 2000 (R) and CWJC No. 1409 of 2000 (R), those teachers who were already in employment were to be given notional pay scale of Rs. 4500-7000 with effect from 1.1.1996 and the real payment with effect from 15.11.2000. Since the petitioner got trained on 3.4.2002, he cannot therefore, claim any such pay fixation.

5. From the facts pleaded by the respondents, it appears that most grounds on the basis of which the respondents have sought to revise the pay scale of the petitioner is based on the directive contained in the Government Circular dated 8.8.1991 (Annexure-A). This annexure is in respect of Government teachers who were appointed on compassionate grounds and under which, the condition that such appointees should possess teachers' training certificate, was relaxed, though with condition that scale of pay shall be equal to the scale of pay paid to the matriculate trained teachers but they shall be eligible to the increment of scale of pay only after they obtained teachers' training certificate. Admittedly, the petitioner had obtained his training certificate on 3.4.2002. However, by Circular dated 7.6.1995 (Annexure-3) issued by the Government, untrained teachers possessing graduate degree and those untrained teachers possessing intermediate degree who were appointed against the post of Matric trained teachers and allowed the pay scale of Rs. 1200-2040, were allowed to be given the same pay scale even if they obtained their training certificate. Apparently, direction contained in Annexure-3 would confirm that untrained teachers who possess graduate degree or intermediate degree and were appointed on compassionate grounds to the post of Matric trained teachers, were to be treated at par with the Matric trained teachers in the matter of fixation of their pay scale at Rs. 1200-2040 and such pay scale was to be continued even after such teachers obtained their training certificates. The inference, as a corollary to this proposition which may legitimately be taken, is that both category of teachers namely, the Matric trained teachers and those teachers who had possessed qualification above matriculation but were not trained but were appointed on compassionate grounds, were to be treated at par and they should be given equal treatment in respect of increments in their pay scale since, even after obtaining the training certificate, the same pay scale was to continue and the teachers appointed on compassionate grounds, were entitled to increments in their scale of pay on the same terms as Matric trained teachers. It appears that it was on the basis of the above inference that the District Superintendent of Education, Giridih, by letter dated Government had fixed the initial salary of the petitioner at Rs. 1200-2040 and had also fixed the annual increments @ Rs. 30/- per month from 19.9.1991 to 10.9.1995.

6. It is apparent from the above that the petitioner had a reasonable and genuine basis to believe that fixation of his pay was made by his Departmental Head in accordance with the Government Circulars and he was genuinely entitled for annual increments in his scale of pay. As acknowledged by the District Superintendent of Education, there is apparently no misrepresentation or suppression of fact on the part of the petitioner in the matter of fixation of his pay for addition of annual increments. If on the basis of such pay fixation, the petitioner has been paid annual increments in his salary, the same cannot be recovered from him on the ground that fixation of salary together with increment was erroneous and inconsistent with an earlier Government Circular (Annexure-A).

7. Admittedly, after implementation of 5th Pay Revision Committee Report, declared as per Government Circular dated 8.2.1999, the petitioner would also be entitled to the revised pay scale as laid down in the Circular (Annexure 4/A).

8. The petitioner has claimed that before raising objection in respect of his pay scale, and before implementation of the proposal to recover the alleged excess payment from the salary of the petitioner, he ought to have been given opportunity to be heard since he has sufficient and reasonable grounds to explain that there is no error in the fixation of his pay and that, he has not received any excess payment by way of salary and that, no money can be realized from him on the alleged ground of excess payment. There is basis for this argument. Apparently, before passing the impugned order, no notice or opportunity of hearing was given to the petitioner. The respondents have no authority to arbitrarily take decision for reduction of pay scale of the petitioner and to put him in disadvantageous position without giving him notice and opportunity of hearing.

9. For the reasons discussed above, the impugned order as contained in Annexure-6 being violative of the principle of natural justice is hereby quashed. The respondents are directed not to give effect to the proposal of the respondent No. 5 to recover any amount from the petitioner on the ground of excess payment.

However, if the respondents have any valid reason for revising or reviewing the pay fixation of the petitioner, they are at liberty to proceed with the same in accordance with the established procedure of law after giving adequate opportunity to the petitioner of being heard.

With the aforesaid observation, this writ application is disposed of.