

(2002) 12 JH CK 0044

Jharkhand High Court

Case No: Writ Petition (S) No. 522 of 2002

Paul Mangra Kujur

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Dec. 13, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.J. Mukhopadhyaya, J

Bench: Single Bench

Advocate: N.N. Tiwari, S. Srivastava, for Accountant General, for the Appellant; A.K. Mehta, SCI, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhyaya, J.

The petitioner retired from the service on 31st May. 1998 as Head Master of St. Michael's School for Blind, Ranchi, a Government aided school, initially having not paid the retiral. benefits, preferred a writ petition, CWJC No. 1551 of 1999 (R), wherein the District Superintendent of Education (D.S.E.), Ranchi was directed to decide his representation and to pay the admitted dues, vide Court's order dated 4th February, 2000. Subsequently, the total benefits having not paid, a contempt petition, M.J.C. No. 636 of 2000(R) was preferred by the petitioner, wherein this Court vide order dated 5th September, 2001 while did not choose to proceed, directed the State of Jharkhand to release and pay the admitted retirement benefits with statutory interest with liberty to recover the dues from the counter-part i.e. the State of Bihar,

2. In the present case, while the petitioner has given the details of payment already made, taken plea that he has not been paid the total Provident Fund amount nor paid 240 days of leave encashment.

The Respondents on their part took plea that the total GPF amount has already been paid and the petitioner is not entitled to get leave encashment having retired as a teacher of a Private School. Reliance has been placed on one or other Circular issued by the State, but the petitioner refuted such stand, by relying on another Circular.

3. In pursuance of Court's order, the D.S.E., Ranchi. Head Mistress and Secretary, St. Michael's School for Blind, Ranchi were present in Court on 29th November, 2002 and made specific statement relying on their affidavits that the total D.A. amount and the amount deducted towards Provident Fund with statutory interest has been paid.

So far as the chart, as contained in Annexure-6 is concerned, the Court did not choose to rely on it in absence of any forwarding memo number or date and having doubted the genuinity of the document as it shows petitioner's signature as Head Master made on 5th October, 1982 but in the chart, it is mentioned that certain amount received on 18th March. 1985, a later date. In this background, the petitioner's prayer for release of further amount towards Provident Fund being disputed question of fact, was rejected by this Court's order dated 29th November, 2002.

4. Now the question arises whether the teachers of Private Schools aided by Government, such as, petitioner are entitled for leave"encashment or not.

5. The counsel for the State has relied on a decision of the State of Bihar communicated by letter No. 23/B-1-42/82 C-68 dated 6th June, 1983/29th, June, 1983. Therein, in respect to Non-Government Aided and Minority Primary/Middle School teachers, while it was informed that they will get G.P.F., Pension (Including Family Pension) and Gratuity like the Government employees, at Paragraph 9, of the said letter. It was made clear that such teachers of Non-Government Aided Schools or Minority Primary/Middle Schools shall not get any other retiral benefits such as Group Insurance, leave encashment, Grant-in-Aid etc., except Pension (including Family Pension), Gratuity and G.P.F. amount.

6. The petitioner claims leave encashment on the basis of a Resolution No. 237 dated 20th February, 1990 issued by the Human Resources Development Department of the Government of Bihar, and certain orders passed by this Court. However, such submission cannot be accepted.

The Resolution No. 237 dated 20th February, 1990 relates to salary benefits i.e.. In service benefits of pay/salary which includes Dearness Allowance, Medical Allowance, House Rent Allowance, City Compensatory Allowance etc.

This Resolution NO. 237 dated 20th February, 1990, does not deal with the "retirement benefit"s, as distinct from In service pay benefits to which a teacher of Non-Government Aided School or Minority Primary/Middle School is entitled.

By this Circular, Government decision was communicated to pay same salary, allowances and additional financial benefits to the teaching and non-teaching employees of Non-Government Aided School; Minority Primary/Middle Schools; and recognized Non-Government Sanskrit Schools and Madarsas corresponding to similarly placed Government employees.

From the first paragraph of Resolution No. 237 dated 20th February, 1990, it will be evident that the "additional benefits" discussed therein related to In service pay benefits, such as dearness Allowance. Medical Allowance. House Rent Allowance, City Compensatory Allowance etc., but it do not include retirement benefits. The House Rent Allowance. City Compensatory Allowance etc. are not paid to a retired employee.

Further, it will be evident from the aforesaid Resolution that while one or other order or decision Circulated vide letter(s) and Resolution(s). in that regard, were superseded, the Government decision relating to payment of post retirement benefits to the teaching employees of Government Aided Schools and Minority Primary/Middle Schools as, circulated vide letter No. 23/B-1 42/82-Si dated 6th June, 1983/23rd June. 1983 has not been superseded.

7. So far as one or other order passed by this Court as relied by the counsel for the petitioner is concerned, the petitioner cannot derive advantage of such orders.

The order dated 29th June, 1996 in M.J.C. No. 243 of 1995(R) - Dularu Singh v. Sri Ram Briksha Mahto and Ors., was passed by this Court on the suggestion of the learned Government Pleader No. 1. No decision was given by this Court.

So far as order dated 23rd August, 2002 passed by this Court in CWJC No. 2162 of 1999(R) is concerned, it will be evident that no finding was given by the Court nor any ratio laid down. The Court merely took into consideration the petitioner's reply to the counter affidavit wherein reference of Government Resolution dated 20th February, 1990 was given. The benefit to the petitioner Smt. Alis Purti was allowed in view of order passed by this Court in M.J.C. No. 243 of 1995(R), as referred above. In this case also, the Court has not determined the ratio laid down vide Government Resolution No. 237 dated 20th February, 1990.

8. Thus, whatever the order passed by this Court on 20th August, 2002 in CWJC No. 2162 of 1999(R), is not a judgment in rem. but "judgment personam".

9. Therefore, the teaching and non-teaching employees of Non-Government Aided School or Minority Primary/Middle Schools being not entitled for leave encashment except the benefit of Pension (including Family Pension); Gratuity and Provident Fund, no relief can be granted.

10. There being no merit, the writ petition is dismissed.