

## Carmella Kerketta Vs State of Jharkhand and Others

**Court:** Jharkhand High Court

**Date of Decision:** July 30, 2008

**Acts Referred:** Constitution of India, 1950 " Article 14, 16

**Citation:** (2008) 4 JCR 93

**Hon'ble Judges:** Ajit Kumar Sinha, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

Present writ petition has been preferred to quash the order dated 22.3.2004 passed by the District Superintendent of

Education, Gumla vide which it has been held that the petitioner was not entitled for payment of her salary. The petitioner has accordingly prayed

that she is entitled for payment of her salary and also the arrears of salary with interest.

2. The case of the petitioner, as submitted, is set out as under:

An advertisement was issued on 24.12.1999 for appointment of an Assistant Teacher against a vacant post and after following the due process of

selection, as conducted by the Managing Committee of the School, the petitioner was, selected and recommended for appointment with effect

from 1.2.2000 in the pay scale of Rs. 1200-2400/-. The Managing Committee directed the Secretary of the Managing Committee to get the

aforesaid recommendation approved from the Department of Education and accordingly the petitioner was appointed with effect from 1.2.2000

and she joined the service and resumed her duty.

3. The District Superintendent of Education, Gumla approved the appointment of petitioner vide its order dated 9.9.2001 with effect from

1.2.2000 subject to the condition that the payment of salary was to be made only after getting the approval of the Director, Primary Education. It

is relevant to mention here that the Deputy Director, Primary Education vide its letter No. 1179/02-1504 dated 28.6.2003 gave approval for

payment of the salary to the petitioner and also fixed the pay scale pursuant to the approval. The petitioner, however, was denied the salary and,

accordingly, being constrained, preferred a writ petition (S) No. 489 of 2004 seeking a direction to pay the arrears of salary and the same was

disposed of with a direction to the District Superintendent of Education, Gumla to consider the claim of the petitioner within a period of six weeks

from , the date of receipt of the copy of the order.

4. In compliance of the aforesaid Hon"ble High Court's order respondent No. 3 vide its impugned order dated 22.3.2004 held that the petitioner

was not entitled for payment of salary and the reason assigned was that there are altogether 12 sanctioned posts in the Primary School out of

which 10 posts were for non-project post and two posts were from branch Secretariat out of which one post was transferred to Goya Urdu

Primary School and as such the petitioner was not working against a vacant/sanctioned post. Accordingly, it was held that she is not entitled to

salary. The petitioner, being constrained has filed the present writ petition challenging the aforesaid impugned order dated 22.3.2004. It has also

been contended by the counsel for the petitioner that the chart showing the strength of the school dated 29.10.2003 shows the petitioner as

functional. The petitioner further submits that a post fell vacant after the death of one Adela Minz who was working since 1.8.1993 and died on

2.11.1999 and only thereafter the advertisement was issued on 24.12.1999 for appointment of Assistant Teacher.

5. The learned Counsel for the respondents contended that the petitioner was working against unsanctioned and non-existing post and due to this

the monthly salary could not be allowed. It is also contended that the Managing Committee cannot appoint a teacher beyond the sanctioned

strength. It has also been contended that the aforesaid post was shifted" to Urdu Primary School, Goya and thus, there was no vacant post

available.

6. I have heard the arguments and perused the writ petition and reply thereto. This is a case of regular and legal appointment pursuant to an

advertisement followed by due process of selection which meets the constitutional mandate of Articles 14 and 16 of the Constitution of India. The

admitted position is that the petitioner was selected and issued an appointment letter by the Managing Committee of the school which was

conditional. Thereafter the District Superintendent of Education approved it and issued an office order as contained in memo No. 3185/Gumla

dated 9.9.2001 whereby the appointment of the petitioner was recommended with the condition that it was subject to approval of the Director,

Primary Education, Jharkhand and thereafter Deputy Director, Primary Education, Jharkhand vide its letter dated 28.6.2003 gave approval of

payment of salary and also fixed the pay scale. It is also clear that as per the status report of Human Resource Department, Government of

Jharkhand there are 12 sanctioned posts in the school out of which 10 posts are from the Mission side and two are from the Government side Le.,,

from the Secretariat side.

7. The respondent No. 3 in his counter affidavit at page 4 has stated on oath as under:

Additional Director of Education, Branch Secretariat, Ranchi, again sanctioned one additional post vide, his letter No. 416 dated 13.7.1990 and

on that post Adela Minz has been appointed on 1.8.1993. Meanwhile this sanctioned post was transferred to Goya Urdu Primary School, Anchal-

Ghagra by Additional Director of Education Branch Secretariat, Ranchi vide letter No. 124 dated 30.3.1993 due to non-utilization of the post.

Again at page 5 of the counter affidavit it is submitted as under:

That in pursuance of letter No. 124 dated 30.3.1993 the Managing Committee of Urdu Primary School Goya (Minority Govt. Aided School)

appointed one Majhar Imam on the post of Assistant Teacher on 1.7.2003.

8. It will be evident on reading of the aforesaid statement on oath that one Adela Minz was appointed on 1.8.1993 against sanctioned additional

post vide letter No. 416 dated 13.7.1990 and continued against the post till 1999 when he died and thereafter, the post was advertised and after

due selection process, the petitioner was selected and appointed. Thus, once Adela Minz was appointed against the sanctioned additional post on

1.8.1993, then the subsequent filling up of the post after ten years i.e., on 1.7.2003 is on the face of it illegal and unsustainable in the eyes of law,

more so when it was already occupied since 1.8.1993.

9. It will be pertinent to mention here that the Deputy Director (Primary Education) vide its letter No. 1179/02-1504 dated 28.6.2003 gave

approval for payment of the salary to the petitioner but even then the respondent No. 3 sat over the same and did not make payment to the

petitioner. The petitioner has been appointed against a vacant sanctioned post after due advertisement in accordance with law and has discharged

her duties to the satisfaction of all concerned with effect from 1.2.2000. Her Service Book was also opened and duly maintained as well as signed

but she is not being paid her salary by respondent No. 3, which is on the face of it illegal and arbitrary. The documents issued at the Government

level shows that there are 10+2 sanctioned posts in the school and the approval for payment of salary to the petitioner had already been given by

the Deputy Director (Primary Education) by letter dated 28.6.2003 but even then the respondent No. 3 sat over the same and did not pay the

salary but took work.

10. One fact does not stand to reason that if there were no posts available why was an advertisement made which was followed by due process of

selection by the Managing Committee and approved both by D.S.E. as well as Deputy Director of Primary Education. The fact remains that one

sanctioned post of Assistant Teacher fell vacant when one Adela Minz, who was working since 1.8.1993 and died on 22.11.1999 and

accordingly, a regular post fell vacant and an advertisement was published for appointment of Assistant Teacher against that already existing

vacant/sanctioned post and the petitioner was duly selected against that post. Even the contention raised by the respondent that the post was

transferred in the year 1993 is unsustainable and self-contradictory for the sole reason that if the post was transferred how Adela Minz was

appointed in 1993 and worked till 1999.

11. In the aforesaid background this writ petition is allowed and the impugned order dated 22.3.2004 passed by the respondent No. 3 District

Superintendent of Education, Gumla is quashed. The petitioner is accordingly entitled to all the consequential benefits and arrears of salary with

effect from 1.2.2000. There shall be no order as to costs.