
(2025) 12 JH CK 1834

In the Jharkhand High Court

Case No : Writ Petition (S) No. 752 Of 2015

Alphonse Topno, son of John Topno

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Citation : (2025) 12 JH CK 1834

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : A.K.Das, J.F.Toppo, Neil Abhijeet Toppo

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. Heard the learned counsel for the parties.

2. The Petitioners herein have filed the instant writ Petition, inter-alia, praying therein for quashing the order dated 11.11.2014 (Annexure-13); issued under Memo No. 2083 by the Secretary, Human Resources Development Department, whereby the petitioners' representation filed pursuant to this Court's order dated 06.01.2014 in W.P.(S) No. 7516 of 2012 has been rejected, and for a further direction upon the respondent-authorities to release the petitioners' arrears of salary for the periods February 1999 to May 2000 and February 2003 to October 2007, as well as to duly fix their pension and pay all consequential retiral dues, including pension, gratuity and leave encashment.

3. Brief Facts; -

(i) The Jayanti High School, Gangutoli, established by a minority community, was granted establishment permission vide Memo No. 4462-65 (Annexure-1) and was subsequently accorded permanent recognition on 04.04.1979 vide Memo No. 7753-58 (Annexure-2). Petitioner No. 1's pay scale was fixed vide order dated 14.07.1980 (Annexure-3), and the State Govt. decided to pay the salary of all

teaching and non-teaching employees of the school by way of grant-in-aid, and a Notification to that effect was issued by the District Education Officer, Simdega, vide order dated 07.06.1980 (Annexure-4). The Petitioner No. 1-4, and husband of Petitioner No. 5 were appointed in the year 1979, and since then they continuously received salary until January 2003, when it was stopped on the ground of absence of a formal minority-status notification. Thereafter, the State of Jharkhand, vide notification dated 28.09.2007 (Annexure-6), formally declared the School a minority institution, and salary resumed from October 2007.

(ii) Further facts reveals that the School has consistently functioned as a minority institution, and the State had been paying salaries to approved employees since 1980, except for February 1999–May 2000, prompting two staff members—Ramlakhan Ohdar and Lucas Kandulna—to file W.P.(S) No. 195 of 2006. Though their Writ Petition was dismissed, but their L.P.A. No. 267 of 2006 (Annexure-7) was allowed, and arrears up to 20.01.2006 were released. Likewise, three other employees, after dismissal of W.P.(S) No. 7078 of 2005, succeeded in L.P.A. No. 266 of 2006 (Annexure-8), and upon filing Contempt Case (Civil) No. 272 of 2011 (Annexure-9), their dues were fully paid vide letter dated 26.06.2007.

(iii) Despite multiple representations, no action was taken on the Petitioners' claims, leading to filing of W.P.(S) No. 7516 of 2012, which was disposed of on 06.01.2014 (Annexure-10) directing the Secretary, HRD Department, to decide the matter. Pursuant to the Petitioners' representation (Annexure-11), the DEO, Simdega, submitted a report dated 05.07.2014 (Annexure-12) confirming that similarly situated employees had received arrears pursuant to the LPA orders and detailing the dues payable to the Petitioners, who had continuously served until superannuation.

However, the Secretary, HRD Department, vide order dated 11.11.2014 under Memo No. 2083 (Annexure-13), rejected the Petitioners' claim relying solely on W.P.(S) No. 215 of 2010 concerning GEL High School, Kochidigha—despite the facts being entirely distinct. The Petitioners, unlike that case, had been receiving salary regularly since permanent recognition, and only the period February 2003–September 2007 reflects non-payment due to post-reorganization objections.

4. The 4th Respondent has filed it's Counter-Affidavit stating about the Impugned order dated 11.11.2014 that the same is a detailed and reasoned one, warranting no interference by this Court.

Furthermore, in Paragraph No. 17 of the said Counter-Affidavit, the Respondent Authorities have conceded to the fact that the said school was given minority status w.e.f. 28.09.2007, therefore the claim of the petitioners seeking salary before the said period is not tenable in the eyes of law, and as such no consequential benefits can be paid to the Petitioners.

Thereafter, the 4th Respondent filed a Supplementary Counter Affidavit dated 27.01.2020, wherein at Paragraph No. 7 of the said Affidavit the Respondents have given the details regarding the arrears of salary paid to the respective

Petitioners, during the pendency of the instant writ Petition, which the Petitioners have acknowledged by filing it's Rejoinder dated 04.02.2020 to the Respondent No.4's Suppl. Counter Affidavit dated 27.01.2020.

Thereafter, the Respondent No. 4 in compliance of the order passed by this Court on 22.03.2023, filed a Counter Affidavit dated 14.06.2023, stating in Paragraph No. 7 and 8 that the pension, gratuity and other retiral dues accrued in favor of the Petitioners have not been paid, as the said school had been granted Minority Status for the very first time in the year 2007, and as such services rendered by the Petitioners prior to the said period, could not be considered for calculation for the purpose of pension and gratuity.

5. The Petitioners in reply to the said Suppl. Affidavit of the Respondent No. 4 vide it's Rejoinder dated 13.07.2023 stated that once the Respondent Authorities in their affidavit have recognized Petitioners as regular employees and paid them the arrears of salary for their entire service period, therefore at this juncture the State cannot deny the retiral benefits accrued in favor of the Petitioners.

In reply to the same, the 4th Respondent again filed a Counter Affidavit dated 04.04.2024 stating that Petitioners were not appointed by the approval of Secondary Education, Patna or by the Director Secondary Education, Ranchi, Jharkhand, thus the State Govt. is under no responsibility to pay salaries to such teachers.

The 4th Respondent again filed a Specific Counter-Affidavit dated 14.06.2024, reiterating the same fact as stated in its earlier affidavit dated 04.04.2024, i.e. the appointment of the Petitioners were made by the management of the said school, not by the State, therefore Respondent-State is not liable to either make payment towards salary or any retiral benefits accrued in favor of the Petitioners.

6. It was submitted by Ld. Counsel for the Petitioner that the Order No. 07, dated 20.01.2020 would make it evident that during the pendency of the instant writ Petition, the Respondent-State has already paid the arrears of salary from 2000 to 2008, and in support of the same a Suppl. Counter Affidavit has been filed by the Respondent No. 4 on 27.01.2020.

He further submits that the Respondent No. 4 vide it's Counter Affidavit dated 02.05.2016, in Paragraph No. 14 of its Affidavit have acknowledged the fact made in Para4-6 of the Writ Petition that the Petitioners were in regular service of the School and were possessing the minimum requisite qualification of BA/ B.Ed., thereby there exists no ground on the part of the Respondent Authorities to deny the retiral benefit, i.e. pension, gratuity and Leave encashment accrued in favor of the Petitioners.

7. Having heard learned counsel for the parties and after going through the documents available on record, it is imperative to mention herein that the State Government has, from the very beginning, treated the School as a Government-aided minority institution, fixing and paying the Petitioners' salaries from their

initial appointments, as evident from Letter No. 5000 dated 07.06.1980 (Annexure-4 to the writ Petition).

Except for an intervening period, later regularized, pursuant to the order passed in W.P.(S) No. 215 of 2010, the Petitioners continuously received salary until their superannuation, based on duly approved appointments and sanctioned pay scales. Having accepted the School's minority status in practice and consistently disbursed salary from the outset; even without a formal grant of such status until Letter No. 367 dated 28.09.2007, the Respondents cannot now deny consequential service benefits like pension and gratuity. Such denial is arbitrary and unsustainable, rendering the rejection contained in Memo No. 2083 dated 11.11.2014 liable to be quashed.

8. During the pendency of the instant writ Petition, the Petitioners have filed a Suppl. Affidavit dated 27.09.2023, wherein it was submitted that several schools similar to that of the Petitioners had been granted permanent recognition, and their teachers—including the petitioners—regularly received salary from the State of Bihar, and thereafter from the State of Jharkhand, up to 2003. The salary payments were then stopped, but resumed once the School was again declared a minority institution.

9. It further transpires that employees of another such school approached this Court in W.P.(S) No. 4928 of 2012 (Sunil Mel Prakash Tigga & Ors. vs. State of Jharkhand & Ors.), -Annexure-14 which was disposed of on 04.02.2013 in the following terms:

"Considering the said submissions, this writ petition is disposed of giving liberty to the petitioners to file a fresh representation regarding their claims before the Director (Secondary Education) Human Resources Development Department, Government of Jharkhand (Respondent No. 3). On receipt of representation, the said respondent shall consider the same and pass appropriate order in accordance with law within six weeks from the date of receipt of representation. If the petitioner(s) is/are found entitled to get the benefit(s)/arrear, the admitted amount(s) shall be paid to the petitioner(s) within six weeks thereafter with statutory interest. If the amount(s) found payable is/are not paid within the said period, petitioner(s) shall be entitled to get additional compensatory interest @10% per annum on the arrears of amount from the date the same are found payable till the date of final payment."

In compliance of the aforementioned, the Respondent authorities paid the entire retiral dues of the Petitioners of the said case and the Petitioners of the said case started receiving their pension (Annexure-15).

From bare perusal of the aforementioned paragraphs, would substantiate that in an identical situation, the ex-employees of minority schools/institutions have been granted the entire retiral benefit along with fixation of pension; therefore, the Respondent authorities under no circumstance can arbitrarily deny such benefits to the Petitioners as their case stands at a similar footing with the

Petitioners of W.P.(S) No. 4928 of 2012 (Sunil Mel Prakash Tigga & Ors. vs. State of Jharkhand & Ors.

10. Now the law is no more res integra with regards to payment of Pensionary benefits. In the case of Deokinandan Prasad v. State of Bihar (1971) 2 SCC 330, it was held that pension is a right and not a bounty, flowing from statutory Rules. (Refer-PARA-31-34).

Further, in the case of D.S. Nakara v. Union of India (1983) 1 SCC 305, the Hon'ble Apex Court expanded the concept of pension as a measure of socio-economic justice and part of the right to livelihood. (Refer-PARA-20,29, 31,36).

In the case of State of Jharkhand v. Jitendra Kumar Srivastava (2013) 12 SCC 210, the Hon'ble Apex Court has held that pension cannot be withheld in the absence of statutory authority, and executive instructions cannot override statutory rules (Refer-PARA-8,9,14-16).

11. Furthermore, the stand by the Respondent-State in its Affidavit(s) dated 04.04.2024 and 14.06.2024; is not tenable in the eyes of law as because Petitioners received full salary for the entire service period during the pendency of the instant writ Petition. At this stage, after 16 years of retirement, the Respondents cannot deny their retiral benefits on untenable grounds when the State itself has consistently recognized their services and duly paid their full salary.

The stand of Respondent No. 4 is wholly erroneous and unsustainable, as the Sub-Divisional Education Officer was the competent authority to approve the petitioner's services. Further, by Letter No. 5000 dated 07.06.1980 (Annexure-4), the District Education Officer authorized payment of salary to all teaching and non-teaching staff of the School from the State Exchequer after approving their services. Having paid full salary and arrears, the Respondents cannot now take a contradictory stand in 2024.

12. Having regards to the above, the Directorate's Order contained in Memo No. 2354 dated 23.08.2007, is thus, illegal, as the authority cannot reopen an issue conclusively settled by the Secondary Education Board, Patna, which had already granted permanent recognition to the School vide Memo No. 7753-58 dated 04.04.1979 (Annexure-2). The Respondents' repeated contradictory positions regarding the Petitioner's entitlement are arbitrary and impermissible. Accordingly, the impugned order issued under Memo No. 2083 dated 11.11.2014, by the Secretary, Human Resources Development Department, whereby the petitioners' representation filed pursuant to this Court's order dated 06.01.2014 in W.P.(S) No. 7516 of 2012 has been rejected (Annexure-13); is hereby, quashed and set-aside.

As stated hereinabove, the School received permanent recognition on 04.04.1979, and the Petitioner No. 1 served there until his superannuation in February 2008. His services were duly recognized and approved by the

authorities, leading to full salary and arrear payments. After 16 years of his retirement, the Respondents' attempt to deny him the lawful relief is certainly unjustified and cannot be sustained.

13. In view of the discussions made hereinabove, this Court holds that the Petitioners are entitled to the reliefs as has been sought for in the instant case, i.e. payment of all Consequential benefits, i.e. the retiral dues including gratuity, pension and leave encashment; more particularly, when the Respondent-State have not denied the services of the Petitioners and have paid the entire arrears of salary to the Petitioners during the pendency of the instant writ Petition.

14. As a result, the instant writ application stands allowed. Pending I.A.s, if any, also stands disposed of.