
(2014) 02 JH CK 0021
In the Jharkhand High Court
Case No : C.W.J.C. No. 1695 of 2001

Arjun Tiwari and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 02 JH CK 0021

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V.P. Singh, A.K. Sinha, Rashmi Kumar and Amrita Kumari, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. These petitioners are teachers posted in different Government High Schools situated in the State of Jharkhand. The details of the individual petitioners relating to their appointment, recognition by the Government and promotion in Selection Grade are indicated in para 4 of the writ petition. These petitioners were the beneficiaries of the resolution No. 3/PAR-01-3/89-6022F(2) Finance Department dated 18.12.1989 whereby the scale of pay of the teachers of the school taken over by the Government was revised. These petitioners got the benefit of pay fixation in the revised scale as per the resolution dated 18.12.1989. The aforesaid pay revision includes the increment granted by the said resolution dated 18.12.1989, on application of Rule FR 22(C). The said resolution was however modified by a resolution of 20.2.1993 as it was noticed by the State Government that FR 22(C) have been deleted by the notification dated 30.8.1989 itself. Consequent thereto the State Government issued a direction on 16.11.2000 upon the concerned authorities including the Secretary, Primary and Adult Education, Secretary, Secondary Education and the Subordinate authorities to direct the respective Principals of the Government schools where such pay fixation under Rule FR 22(C) was granted to the eligible teachers earlier in view of the circular dated

18.12.1989 to inter-alia (a) refix their pay scale under Rule FR 22(i) a (2); (b) to recover the amount already paid because of wrong fixation under Rule FR 22(C) in view of the resolution dated 18.12.1989. The petitioners are aggrieved by the said notification and have prayed in the present writ application not to reduce their pay scale and also not to make any recovery of the amount which was actually paid to them pursuant to their pay fixation in terms of the resolution dated 18.12.1989.

2. The very circular dated 18.12.1989, the modification made under resolution dated 20.2.1993 as also the direction issued on 16.11.2000 which are under consideration in the present case were the subject matter of the litigation which was finally decided by the Hon''ble Supreme Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, . After discussing the rival contention of the parties and after taking into account the judgment under appeal before the Apex Court, the Hon''ble Supreme Court has held that:-

Para 52. Ordinarily, we would have held that the amended provisions of FR 22-C would apply to the appellant teachers w.e.f. 16-9-1989 i.e. the date from which the amended provisions of FR 22-C were notified. But, in the peculiar facts and circumstances of this case and having regard to the fact that the State Government did not move this Court against the decision of the Division Bench whereby letters patent appeal preferred by the State Government challenging judgment of the learned Single Judge holding that the Resolution dated 20-2-1993 amending sub-clause (ii) of Clause 13 of the Resolution would apply to the class of teachers referred to in the said sub-clause prospectively i.e. w.e.f. the date of issuance of the Resolution dated 20-2-1993, was dismissed, we hold that FR 22(I)(a)(2) shall apply to the teachers of secondary schools also w.e.f. 20-2-1993.

Para 61. In the result, the appeals are allowed in part; the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellant teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR 22-C would apply to the appellant teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of secondary schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.

3. The ratio of the Hon''ble Supreme Court as laid down in the aforesaid judgment on the import of the direction contained in letter dated 16.11.2000 in respect of the applicability of the modification notification dated 20.2.1993 is therefore clear. The modification carried out by the resolution dated 20.2.1993 has been held to apply prospectively from the date of issuance of said

notification and not retrospectively from the date of earlier resolution i.e. 18.12.1989 of the Finance Department whereby the pay fixation was erroneously made under rule FR 22(C). The aforesaid ratio would govern the case of petitioners as well.

4. So far as the question of recovery is concerned, the opinion of the Hon"ble Supreme Court at para 61 containing the ratio on that aspect is also very clear. It held that no recovery of the excess amount paid to the teachers of the Secondary school be made irrespective of the fact whether they have moved the Apex Court or not.

5. In the circumstances, therefore it is ordered that, as per the judgment rendered by the Hon"ble Supreme Court in the case of Syed Abdul Qadir (Supra), no recovery of the amount already paid to the petitioners upon fixation of the pay scale in terms of the resolution dated 18.12.1989 would be made from the petitioners. The writ petition is therefore disposed of in the aforesaid terms.