
(2020) 09 JH CK 0099

In the Jharkhand High Court

Case No : Cont. Case (Civil) No. 298, 300, 307, 308, 323, 336, 378 Of 2017

Basant Kumar Bilung & Ors

APPELLANT

Vs

Dr. Mrs. Manju Sharma & Ors

RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Constitution Of India, 1950 — Section 14, 15, 16, 21, 29, 30, 300A

Citation : (2020) 09 JH CK 0099

Hon'ble Judges : H. C. Mishra, J

Bench : Single Bench

Advocate : A.K. Das, Abhinesh Kumar, Apporva Singh, Chandrajit Mukherjee, Rohit Ranjan Sinha, Nehala Sharmin, Shree Krishna Pandey, Dhananjay Kr. Dubey, Ashutosh Kr. Singh, Prabhat Kr. Sinha, Anil Kumar, Vikas Kumar, Jasvinder Mazumdar, Rajesh Kumar, Binod Singh, Krishna Shankar, P.A.S.Pati

Final Decision : Allowed

Judgement

1. Heard learned counsels for the petitioners and the learned counsels for the State.
2. The writ applications filed by the petitioners were disposed of by the Judgment dated 12.08.2016, giving relief of pensionary benefits to the petitioners, but the petitioners are still running from pillar to post for getting their actual reliefs and this Court is informed that some of the petitioners have also died, in the meantime, without getting their legitimate dues granted by order dated 12.08.2016 itself.
3. The brief facts in all the writ applications are that the petitioners were the teaching and non-teaching staffs of different Government Aided Minority Colleges in the State of Jharkhand, who have retired from their service prior to 19.12.2012. They were denied their due pension, due to the fact that there was a statute by the State Government as contained in Notification dated 19.12.2012, issued by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, according to which

only those teaching and non-teaching staffs of different Government Aided Minority Colleges in the State of Jharkhand, were entitled to the pensionary benefits who were in service on 19.12.2012. The Writ Court in paragraph 14 its Judgment took note of this fact in the following terms:-

"14. In the present case, it is to be seen as to whether there is any basis for making any cut off date between those who retired before 19.12.2012 and those who shall retire after the date of Notification i.e. 19.12.2012. But, on perusal of the impugned notification dated 19.12.2012 issued by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, creates two class amongst the similar situated persons by making cut off date, which is discriminatory and violative of Articles 14, 15, 16, 21, 29, 30 and 300A of the Constitution of India."

4. The Writ Court disposed of the writ applications by Judgement dated 12.8.2016, holding and directing as follows:-

"20. The classification in between teaching / non-teaching staffs, who retired prior to and after 19.12.2012 is not legally permissible, being hit by Article 14 of the Constitution of India, since it is an unreasonable classification. In the present case, there is no such impossibility or detriment to the public interest involved if all those who retired even prior to 19.12.2012, are extended the benefit of pension in Government Aided Minority Colleges.

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23. On cumulative effect of the facts, reasons and judicial pronouncements, the writ petition is disposed of with direction to the respondents to reconsider and take a decision afresh, in accordance with law in issuing a corrigendum, so that the notification dated 19.12.2012 shall apply in the same and similar manner with regard to the teaching / non-teaching staffs, who have been appointed on or before 01.12.2004 and retired prior to the issuance of notification dated 19.12.2012, within a period of sixteen weeks from the date of receipt of a copy of the order."

24. With the aforesaid direction, these writ petitions stand disposed of."

5. Since the aforesaid order was not complied with, the petitioners were compelled to approach this Court in these contempt applications. During the pendency of these petitions, on 11 th August 2017, this Court was informed that steps have been taken for issuing the corrigendum of Notification dated 19.12.2012. However, it appears that a through a fresh Notification dated 26.04.2017, as contained in Annexure-4 to the Cont. Case (Civil) No. 378 of 2017, the statute had already been notified, wherein again, it appears that same wrong was committed, which is apparent from the following provision in the new statute:-

"2. Application of Statutes- This statutes shall apply to whole time employees belonging to such teaching or non-teaching staff of the 8 degree level deficit

grant Minority colleges who were in service on 19.12.12 against the sanctioned post with finance and already in receipt of deficit grant for his/her salary from the State Government of Jharkhand.

Provided that such teaching and non-teaching employees appointed on or after 01.12.2004 shall be governed by the New Pension Scheme of the State of Jharkhand."

6. When these contempt matters were again taken up on 03.11.2017, this Court was informed that the State had preferred L.P.A. against the Judgment of the Writ Court, and taking note of the filing of the L.P.A., this Court adjourned the matters, and by order dated 20.07.2017, these matters were directed to be listed after the disposal of the LPA.

7. Thereafter, the order dated 06.09.2019 passed by this Court shows that the L.P.A had been dismissed by the Division Bench of this Court, but it was submitted that the State was contemplating to file S.L.P in the Hon'ble Supreme Court of India against the Judgment passed by the Division Bench in LPA. Accordingly, these matters were adjourned, giving a direction that if there was no stay by the Hon'ble Apex Court, the order passed by the Writ Court should be complied with by the next date fixed by the Court, i.e., 22.11.2019.

8. The matters were again taken up on 06.12.2019, when it was informed by the learned counsel for the State that actually, no SLP had been filed till date, and the State was still contemplating for filing the SLP in the Hon'ble Apex Court. This Court entertained even that plea of the State Government, but directed as follows:-

"Let the matter be listed in the third week of March 2020, and it is made clear that if by that time, the order passed by the Writ Court is not complied with, in spite of there being no stay order from the Hon'ble Apex Court, the Principal Secretary, Higher and Technical Education and Skill Development Department, shall be personally present in the Court to explain the non-compliance of the order."

9. Today, this Court is informed that in spite of the aforesaid order passed by the Writ Court, the order passed by the Writ Court has not yet been complied with. In the mean time even though the State Government had filed S.L.P (Civil) No.6147 of 2020 in the Hon'ble Apex Court, but the same was summarily dismissed by order dated 06.03.2020.

10. Today, learned counsel for the State prays for further six weeks' time for compliance of the order passed by the Writ Court, submitting that there was some difficulty in these Covid-19 pandemic days in complying of the order.

11. This Court is not satisfied with the explanation given by the learned counsel for the State for non-compliance of the order passed by the Writ Court till date. The footfall of the pandemic is more the reason in favour of the poor petitioners and the dependents of the deceased petitioners for expeditiously getting their

legitimate dues, which is their very livelihood and much needed money for their survival in these difficult days.

12. I find from the record that in spite of the order passed by the Writ Court, the action of the State Government had not been fair, inasmuch as, the State Government had again come out with a fresh statute, prescribing the same cutoff date for making the persons entitled to the pensionary reliefs. Even in the fresh statute, as contained in Annexure-4 to the Cont. Case (Civil) No. 378 of 2017, the teaching and non-teaching staff who were in service on 19.12.12 in the Government Aided Minority colleges, have only been made entitled to the pensionary benefits. This action speaks a lot about the intention of the State Government, and the fact remains that the petitioners are still running from pillar to post from the year 2016 itself for getting their pensionary benefits and some of them even died.

13. In the aforesaid facts of the case, the time, as prayed for, by learned counsel for the State is allowed to the State Government for compliance of the order. However at the same time, taking into consideration the indifferent attitude of the State Government and the harassment to which the petitioners have been put to and still not getting their legitimate dues, the cost of Rs.50,000/- (Fifty Thousand) to be paid individually to each of the petitioner / dependent of the deceased petitioner, is hereby imposed upon the O.P. State Government for willful non-compliance of the order dated 12.08.1016 passed by the Writ Court till date. While complying the order passed by the Writ Court, the said amount of Rs.50,000/- as cost must also be disbursed to each of the petitioner / dependent of the deceased petitioner individually.

14. As prayed for by learned counsel for the State, put up these matters again on 27th November 2020, by which date, this Court expects that the order passed by the Writ Court, as also today's order, shall be fully complied with, failing which, this Court may be constrained to take further punitive actions against the erring opposite parties.

15. Let a copy of this order be made available to learned counsel for the State for the needful.