
(2017) 04 JH CK 0027
In the Jharkhand High Court
Case No : 1268 of 2008

Bholanath Hansda @ Bhola Hansda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Bihar Nationalized Elementary School Teachers Promotion Rules, 1993](#), Rule 2(12)

Citation : (2017) 04 JH CK 0027

Hon'ble Judges : Dr. S.N. Pathak

Bench : SINGLE BENCH

Advocate : Ritu Kumar, ?Ravi Kumar Singh, Bhawesh Kumar

Final Decision : Dismissed

Judgement

1. In this writ petition, the petitioner has prayed for direction to respondents to show cause as to how and under what circumstances pay scale of the petitioner has been fixed in the scale of Rs.4500-7000 instead of Rs.5000-8000 in pursuance to the circular dated 08.02.1999 and further to fix the pay of the petitioner in the scale of Rs.5000-8000 and to pay its arrears w.e.f. 01.04.1997 with annual increments till date. FACTUAL MATRIX

2. The petitioner was appointed on the post of Music Teacher which is equivalent to I.A. Trained by office order contained in Memo No.2272-2303 dated 04.03.1974 in the pay scale of Rs.296-8-360-9-423. The petitioner immediately gave her joining on 18.03.1974 in pursuance to the office order dated 04.03.1974 and worked to the satisfaction of all concerned and no complaint of any kind was ever made against him from any corner. It is further stated that the petitioner being equivalent to I.A. Trained teacher was given benefit of her first time bound promotion w.e.f. 01.04.1984 by the order of School Inspectress-Deputy Director Education, Bihar, Patna by office order contained in Memo No.2371-24 dated 15.06.1986 and was placed in the pay scale of Rs.910 w.e.f. 01.04.1984. In pursuance to the pay revision by letter

no.6021 dated 18.12.1989 issued by Finance Department, Government of Bihar the pay scale of the petitioner was revised to Rs.1400-40-1660-50-2300-60-2600 w.e.f.

01.01.1989 which was duly recorded in the Service Book of the petitioner and would be evident from the Statement "A" dated 09.12.1999. The petitioner was given pay scale of Rs.1400-2600 with regular annual increment without any hindrance. The resolution dated 08.02.1999 contained in memo no.3M-2-5-VE-P.U.-01/99/660/(F-2) issued by the Finance Department, Government of Bihar, Patna shows that the pay scale of the petitioner ought to have been fixed in the pay scale of Rs.5000- 8000. Since the petitioner was not given her annual increments w.e.f. 2003 as such she filed several representations before the respondents for redressal of her grievances and the same was duly forwarded by the District Education Officer, Sahibganj to the District Superintendent of Education-cum-District School Inspectress, Sahibganj by letter no.72 dated 03.12.2007 but no heed was paid on the same. Hence, this writ petition.

3. Ms. Ritu Kumar, learned counsel assisted by one Mr. Ravi Kumar Singh appearing for the petitioner submits that though the petitioner is entitled for pay scale of Rs.5000-8000 but the respondents have illegally and arbitrarily denied the same. Learned counsel further submits that after implementation of the resolution dated 08.02.1999 the pay of the petitioner ought to have been fixed in the pay scale of Rs.5000- 8000 but in most arbitrary manner the same was fixed in the reduced scale of Rs.4500-7000 which was the replaced pay scale of Rs.1200-2040. Learned counsel submits that without any notice to the petitioner in complete violation of principle of natural justice, the respondents have fixed her pay scale in the reduced pay scale of Rs.4500-7000. The petitioner filed several representations but grievances have not been redressed neither her annual increment on the reduced pay scale of Rs.4500-7000 have been paid since 2003. Learned counsel further submits that in view of Bihar Nationalized Elementary School Teachers Promotion Rules, 1993 she is entitled for pay scale of Rs.5000-8000.

4. On the other hand, counter affidavit has been filed. Learned counsel for the respondents vehemently opposes the prayer of the petitioner and submits that pay scale of the petitioner has rightly been fixed in the pay scale of Rs.4500-7000 which is the replaced pay scale of Rs.1200-2040 and in view of the fact that though the pay scale of Music

teacher has been separately fixed by Human Resource Development Department, Bihar and on that basis the petitioner is not entitled to the pay scale of Rs.5000-8000. Learned counsel for the respondent draws the attention of this Court towards Annexure-A of the counter affidavit at Page 24 which shows the pay scale of Music Teacher, Government Girl's Middle School for Bachelor in Music was Rs.400-660 and revised pay scale was 785-1210. In order to strengthen his argument learned counsel for the respondent relied on the judgment of Arun Kumar Kashyap Versus State of Jharkhand & Ors. reported in

2008(4) JCR 98 Jhr which reads as follows:- "Mistake committed in passing an administrative order, the same may be rectified without giving any opportunity of hearing to the aggrieved party."

Learned counsel for the State also submits that in the supplementary counter affidavit filed by the respondents it has been specifically stated that the replaced pay scale applicable to only Trained Teacher of Government Schools based on terms and conditions of the Fitment Committee, the petitioner is not a trained teacher as defined in Rule 2(12) of the Bihar Nationalized Elementary School Teachers Promotion Rules, 1993 and as such the petitioner is not entitled to get pay scale of Rs.5000-8000 as claimed by her.

5. Be that as it may, having gone through the rival submissions of the parties, I am of the considered view that the respondent authorities have rightly fixed the pay scale of petitioner in the revised pay scale of Rs.4500-7000. The petitioner was appointed on the post of Music Teacher vide memo no.2292-2303 dated 04.03.1974 and she was Bachelor in Music granted pay scale of Rs.296-8-360-9-423/- by the School Inspector- cum-Deputy Director of Education, Bihar. The Government of Bihar granted replacement pay scale of Rs.296-8-360-9-423/- and thereafter the Government of Bihar by its notification no.6021/B dated 18.12.1989 separated the grade of pay scale of Music Teacher in Female branch in three categories (Bihar Rajya Prarambhik Shiksha Vidhi & Vidhan, 3rd Edition, 2006) which is annexed with the counter affidavit as Annexure-A. Therefore, she was entitled for the aforesaid pay scale of Rs.4500-7000 which has rightly been fixed. It is now well settled that any benefit given

to a person by mistake is recoverable when the mistake is detected and as such wrong benefit given to a person by mistake cannot confer any right on the recipient or act as an estoppel against the person who by mistake was granted such wrong benefit. In the aforesaid facts and circumstances, the pay scale of the petitioner cannot be replaced by pay scale applicable with the pay scale of Trained Teacher of Government Schools based on terms and conditions of the Fitment Committee and in view of the fact that the petitioner is not a trained teacher as defined in Rule 2(12) of the Bihar Nationalized Elementary School Teachers Promotion Rules, 1993 and as such the petitioner is not entitled to get pay scale of Rs.5000-8000 as claimed by her.

6. As a cumulative effect of the aforesaid fact, rules, guidelines and settled principles of law, the prayer made in the writ petition is not tenable and is fit to be dismissed. Accordingly, the writ petition stands dismissed.

However, as regards annual increment on the reduced pay scale of Rs.4500-7000 since 2003 is concerned, liberty is given to the petitioner to file a fresh representation before the respondents and if the amount is payable, the same may be extended to her within a period of 12 weeks from the date of receipt of copy of this order along with representation.