

(2012) 01 JH CK 0009
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1330 of 2005

Bijay Basanta Ostad and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Government of India Rules — Rule 22(A)

Citation : (2012) 2 JCR 99

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Sudarshan Srivastava, for the Appellant; G.P. IV, SC-I and SC-III, for the Respondent

Judgement

Mrs. Poonam Srivastav, J.—The four connected writ petitions are decided by a common judgment, as similar issues are involved in all these cases and common submissions were made by the parties. Counter and rejoinder affidavits have been exchanged and as agreed between the respective counsel, the writ petitions are finally decided on merits at the stage of admission itself. Shri Sudarshan Srivastava, Advocate, on behalf of the petitioners submits that the petitioners are validly appointed Teachers in the Matric Trained Scale of Rs. 230-340/- in the year 1976-77. After completion of 10, years of their service, the petitioners were granted first time bound promotion after completion of the requisite period from their respective date of appointment. Pay was fixed at Rs. 785/- in the senior Scale of Rs. 680-965/- after putting in 12 years of successful service, and the payments were made on that basis. Thus, the petitioners were accorded benefit of promotion for the purpose of fixation of their pay in the Revised scale as per Clause 13(iii) of Finance Department Resolution No. 6022 dated 18.12.1989 (Annexure- A to the counter affidavit) and accordingly the pay was fixed at Rs. 1520/- (corresponding to unrevised pay of Rs. 785/-) in the Scale of Rs. 1400-2600/- (corresponding to unrevised Scale of Rs. 680- 965/-) after according benefit of promotion.

2. Further submission is that subsequently, the petitioners were granted revised pay scale of Rs. 580-860/- in 1981-82 which was further revised by IVth Pay Revision Commission to Rs. 1200- 2040/-. Similarly, the Senior Selection Scale of Rs. 680-965/- to Rs. 1400-2600/- with effect from 1.01.1986 was allowed. This was further revised by Vth Pay Revision Commission to the Scale of Rs. 5000-8000/- from 1.01.1996 and by VIth Pay Revision Commission, it was again revised to the Scale of Rs. 9300-34800/- with effect from 1.01.2006. Later, the Director Primary Education issued a general direction to all the Drawing & Disbursing Officers to take steps for recovery of the amount from those teachers who were appointed between 1976-77. This order was passed on the ground that the pay fixation was done in violation of Finance Resolution No. 6022 dated 18.12.1989 and Government of India Basic Rules 22(A).

3. The petitioners challenged the order in a number of writ petitions. This Court held that as the petitioners have completed 12 years of service, they are entitled to the Senior Scale of Rs. 1400-2600/- and it was also held that if the petitioners have been given senior selection grade scale after completion of 12 years of services then there would be no reason why action for recovery of excess amount shall be taken by the respondents. The Director, Primary Education, Government of Jharkhand was directed to reconsider the grievance of the petitioners and to take a decision within a stipulated time. The judgment is annexed as Annexure-1 to the writ petition.

4. Accordingly, the Director after hearing the parties and after considering the records took a decision on 21.11.2002 that the revision should be made after granting benefits of promotion as per Clause 13(iii) of the Government Resolution. Therefore, the pay of the petitioners was again fixed as per the decision of the Director and accordingly the pay fixation statements were prepared by the competent authority and the petitioners started getting their salary according to the entitlement fixed previously. However, the arrears were not made to the petitioners due to paucity of funds which led to institution of the instant writ petition. The petitioners are, though getting their salaries on the basis of the said revised fixation of pay, but the arrears for the intervening period during which the increment in their salary granted earlier was stopped in the year 1989. has not yet been paid only on account of the reason that similarly placed teacher, namely, Ajit Kumar Mahto has preferred a SLP which is pending disposal before the Apex Court. The petitioners claim in the instant writ petition, arrears of salary per the admissible pay-scale to the petitioners for the period during which it was stopped and also claim interest on the arrears, besides, prayer in the Instant writ petition is for a direction to the Government to release sufficient fund so that the arrears of salary can be paid to the petitioners.

5. The stand taken by the respondents is that since the SLP is pending, besides, the petitioners can only get their pay-scale fixed for the period for which the claim is made in the instant writ petition at par with similarly situated teachers and further, the respondents object intervention of the Court. Submission is that

this Court should stay its hand from giving any direction since an administrative order can be rectified at any time during their service tenure. The respondents' stand is that there is no occasion to grant an opportunity of hearing if the Government is making a rectification of its mistake and recovery of the excess payment. However, the petitioners were given an opportunity of hearing and, therefore, no interference whatsoever in the instant writ petitions.

6. I have gone through the entire submissions and the record, it is evidently a case where the respondents have admitted the entitlement of the petitioners, but no payment of arrears is made, firstly, for the reason that wrong fixation was made and the benefit of time bound promotion was ceased with effect from 1.03.1981. This contention cannot be accepted for the reason that the said controversy stood resolved by this Court in the previous writ petition. Consequent to the direction, the respondents stopped the curtailment of salary and accepted that petitioners were entitled to the revised scale after completing the requisite period. The judgment is part of the record and a specific direction was given for grant of senior selection grade after completion of 12 years service and, therefore, the action of recovery of the alleged excess amount was depreciated. The respondents were asked to re-examine the matter and consider the grievance of the petitioner. A final decision pursuant to the direction in the writ petition, is already taken and the respondents arrived at a conclusion that the order ceasing the benefit was inappropriate and, therefore, they were once again granted the same benefit.

7. In the circumstances, in my opinion, the stand taken by the respondents in the counter affidavit has no legs to stand. Evidently, the petitioners are entitled for the salary in confirmation with Clause 13(111) and 13(vi) of the Finance Resolution No. 6022.

8. Accepting the respondents' submission that one administrative order can be rectified by another administrative order, in case, it is found to be incorrect at any stage. This objection of the respondents only fortifies its action adopted by the Director, Primary Education, after the direction by the High Court to reconsider the petitioners claim after affording an opportunity.

9. In the circumstances, I am in agreement with the stand taken by the respondents and confirmed that the previous order curtailing the revised pay-scale in favour of the petitioners was rectified subsequently and there was no specific order fixing the revised pay-scale, but the original revised pay-scale was granted by the Director, Primary Education itself. The petitioners' entitlement and claim is fully justified and, therefore, I conclude that the petitioners should be allowed their claim of arrears which was curtailed for the intervening period on account of an error which was rectified and committed at a subsequent stage.

10. So far the second objection regarding pendency of the SLP is concerned, in the case of Ajit Kumar Mahto & Ors., in my view, the facts of the case of Ajit Kumar Mahto & Ors., stand on altogether a different footing. The judgment in

C.W.J.C. No. 1063 of 2000, Ajit Kumar Mahto v. State of Bihar, is also on record of the writ petition. Perusal of the judgment dated 2.01.2002 by the Jharkhand High Court, it is apparent that Ajit Kumar Mahto was appointed on 23.12.1976 on payment of stipend of Rs. 1050. The finding recorded is that there is no material to show that Ajit Kumar Mahto was appointed on a regular basis in the year 1976 in the Matric Trained Scale and, therefore, he was found to be entitled to get the benefit only with effect from 1.4.1989.

11. In the circumstances, even if the S.L.R is pending, it cannot be said to be a reason for withholding the arrears of revised pay-scale to the petitioners. The payment was stopped on a wrong assumption and after the direction of the Hon"ble Court in a bunch of writ petitions, the respondents themselves reverted to the original decision and started disbursing the salary in the revised pay-scale. Thus, the assertions made in the counter affidavit as well as the supplementary counter affidavit on behalf of the respondents, is unacceptable. In fact, it is a case where the admitted position is that the teachers (petitioners), who have completed 12 years of service are entitled to the revised pay-scale and in the event the scale was not paid in accordance with the said fixation and some curtailment was made, the petitioners are entitled for the said amount. The Government is also duty bound to release funds so that the arrears of salary can be paid to the petitioners in accordance with the order passed by the Director, Primary Education, pursuant to the order of the writ petitions. Non-payment of arrears by the respondents is in fact a high handed act which cannot be appreciated by this Court. So far the claim of interest is concerned, I cannot overlook the fact that due to non-payment/deduction of the revised pay-scale for a definite period, it has resulted in deduction of provident fund and also caused loss in overall interest. I have noticed that in the event of payment of arrears, the petitioners will have to pay income tax at the existing rate. As such, the financial loss on account of a mistake of the respondents cannot be overlooked and brushed aside.

12. In my view, the respondents are bound to pay arrears of salary as per admissible pay-scale and the State Government shall also release funds forthwith so that no further loss is caused. Besides, the respondents are also liable for interest. No doubt, the mistake committed by the State Government was rectified subsequently after a direction by this Court, but the period for which the petitioners were deprived of the revised pay-scale and curtailment of other benefits accrued to them are liable for reimbursement and compensation. The arrears are still with the respondents and the petitioners could not get the benefit of their revised scale for a definite period till date. The petitioners can only be compensated by granting interest @ 6% per annum, till the date of payment. This interest is payable from the date on which the salary was withheld or recovered by the Respondent No. 2- Director, Primary Education i.e. with effect from 27.10.1999. The writ petitions are finally disposed of with the following directions :-

(a) The petitioners shall be paid arrears of difference of salary with effect from 1.04.1997 to 30.06.2003. The payment shall be made within a period of four months from today.

(b) The salary in the revised pay-scale which was stopped for the intervening period. The respondents shall pay 6% interest on the arrears till the date of payment.

(c) The State Government is directed to ensure that the amount is disbursed so that the compliance of this order is made within the prescribed period.