

(2020) 03 JH CK 0016

In the Jharkhand High Court

Case No : Cont. Case (Civil) No.787 Of 2011

Bishnu Kumar Das And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 JH CK 0016

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

Bench : Single Bench

Advocate : Shreeprakash Jha, Aishwarya Prakash

Judgement

1. The writ application filed by the petitioners in the year 2004 was allowed by the Writ Court by order dated 12.07.2011 in WP(S) No.5188 of 2004 in

the following terms:-

â??In the facts and circumstances, I am of the considered view that the petitioners who have been contesting for their claim of promotion

since a very long time, they have also been deprived of their due only on the pretext that the Cabinet has not taken any decision so far,

cannot be accepted. It is noteworthy that inaction on the part of the Government cannot be allowed at the cost of sufferings of the primary

teachers, who were entitled for their promotion in the Graduate Trained Scale long back.

In view of what has been stated above, the State Government is directed to take appropriate decision within a period of six weeks from

today and pass the promotion order with effect from the actual date when the promotion accrued in their favour computing their period of

service from the initial date of appointment as directed by the Apex Court. The

consequential benefits and their remuneration shall also be calculated accordingly, and disbursement shall be made within a period of four months. No further delay shall be made, otherwise the Government will be liable for a special cost. Since the petitioners have been running from pillar to post, from one Court to the other without getting their claim though they are primary teachers and in the present economic setup, they cannot be allowed to suffer any further.

It is also brought to my notice that there are vacancies for 50 teachers continuously existing and, therefore, it is obvious that the State will have no problem and no additional effort for sanctioning or creating the post is required.

The order has been passed in presence of the counsel for the State. She has given an undertaking that she will intimate the Government. A copy of this order be given to the counsel for the State free of cost. The petitioners will also approach the Government along with a certified copy of this order.â?? (Emphasis supplied).

2. It is an admitted fact that the Letters Patent Appeal filed against the said order has been dismissed by the LPA Court, and the State has not moved against the dismissal of the Letters Patent Appeal before the Apex Court. As such, for all practical purposes, the order dated 12.07.2011 passed in WP(S) No.5188 of 2004 has attained finality.

3. The present application was filed in the year 2011 itself, for noncompliance of the order passed and is still continuing due to noncompliance of the order. The case of the writ petitioners is that they were entitled to promotion in Grade-IV, w.e.f. 04.01.1996 onwards.

4. When the order of the writ Court was not complied with in spite of several efforts taken by this Court, by order dated 13.09.2019, this Court had directed that if the order is not fully complied with till the Diwali Holidays of the year 2019, the Secretary, School Education and Literacy Department shall be personally present in the Court to explain the noncompliance of the order. On the next date, i.e., on 6.12.2019, some order was produced before this Court, but the same prima facie was not the compliance of the Writ Courtâ??s order in full. This Court directed the said order to be brought on record after serving the copy of the same to the counsel for the petitioners. It was made clear that if it is found that the order of the Writ

Court is not fully complied with, necessary punitive action shall be taken.

5. The orders have been brought on record by way of affidavit, which shows that the Principal Secretary of the State Government in the Department

of Education and Literacy Department, on 5.02.2020 directed the Deputy Commissioner, Sahibganj, who is the Chairman of the District Education

Establishment Committee, by quoting the order dated 12.07.2011 passed by the Writ Court, and giving a clear direction that the this order be complied

with, giving top priority. The corrected office order, pursuant thereto by the District Education Committee, Sahibganj, passed on 5.02.2020 has been

brought on record to show that the petitioners have been given promotion in Grade-IV, provisionally, w.e.f. 4.01.2016 and onwards. It is also an

admitted fact that during the pendency of this contempt application since 2011, some of the petitioners have died or have retired from service in

anticipation of getting their due promotion.

6. The order, which shows that the promotions have been given to the petitioners w.e.f. 4.01.2016 and onwards, is still in teeth of the order dated

12.07.2011 passed in W.P.(S) No.5188 of 2004, when it was made clear that even in 2011, the claim of the petitioners for promotion was pending

since very long time and the Court had clearly stated that the petitioners have been deprived of the due only on the pretext that the Cabinet had not

taken any decision so far. If the promotions were long due to the petitioners in the year 2011 at the time of disposal of the writ application itself, by no

stretch of imagination, it can be said that the order passed by the District Superintendent of Education, Sahibganj, giving promotion to them w.e.f.

04.01.2016 onwards, is in full compliance of the order dated 12.07.2011.

7. In the order dated 12.07.2011 passed in WP(S) No.5188 of 2004 itself, it was made clear that any delay made in compliance of the order, shall

otherwise make liable the State Government for special cost. In the present case, some of the writ petitioners have died and some of them have

already superannuated in anticipation of getting the dues, which prima facie they have not been given as yet, and the State authorities are still in no

mood to fully comply the order.

8. It is accordingly, directed that the State Government shall pay, apart from the admitted dues to the petitioners, the cost of Rs.1,00,000/- to each and

every petitioners, or their dependents, who are governed by the order dated

12.07.2011 passed in WP(S) No.5188 of 2004, and the State Government shall be entitled to recover of the said amount from the salary of the erring officials, who are responsible for defying the order of the Writ Court till date.

9. Apart from the above order, we direct the District Superintendent of Education, Sahibganj, to be personally present in the Court on 17.04.2020, and be ready for any punitive action for the noncompliance of the order passed by the Writ Court, in absence of the compliance thereof.

10. It is made clear that the cost imposed today, to be paid to each and every petitioners, or their dependents, shall be paid positively within the period of two months from today.

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