
(2003) 01 JH CK 0065

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2448 of 2001

Devendra Nath Manjhi and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Citation : (2003) 1 JCR 585

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : D.K. Chakraverty, for the Appellant; B.S. Lall, A.A.G, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. D.K. Chak-raverty, learned counsel for the petitioner and Mr. B.S. Lall, learned A.G.G.

2. The writ petitioners, in this case are aggrieved by the letter dated 2.5.2001 as contained at Annexure 5/1 and also the subsequent notice dated 7.6.2001 by which it was indicated that House rent and City allowance will be deducted from the salary of petitioners. By an interim order passed by this Court however, the respondents were restrained from making any deductions.

3. The petitioner No. 1 is a teacher, working at Jaipur, Kongey Middle School at Kanke and by office order dated 26.9.1998, he was allowed the House rent allowance.

4. The petitioner No. 1 has stated at paragraph 7 that the School at Jaipur, Kongey in the Kanke Block, is situated within 5 kms. from the Ranchi Municipal Corporation.

5. Similarly the petitioner No. 2 was also getting house rent allowance in pursuance of office order No. 1061 dated 26.9.1998. His School, i.e. the Primary School Garu, Kankey, Ranchi is situated within 4 kms from the Municipal Corporation, Ranchi.

6. Learned counsel for the petitioners has produced for perusal of this Court a letter dated 26.4.1986 issued by the Secretary, Education, Government of Bihar and addressed to Director (Secondary Education-cum-Joint Secretary as also Special Secretary-cum-Director (Primary School) Government of Bihar. Upon perusal of the said letter, it appears that it had already been decided to give House rent allowance to those employees whose work centers were situated within 8 kms. from the concerned Municipality/Municipal Corporation/Cantonment Area.

7. The paragraphs where the petitioners have specifically stated that their Schools are located within 5 kms. and 4 kms. respectively are paragraphs 7 and 9 of the writ application and these paragraphs have been replied in the counter affidavit at paragraphs 8 and 10 and they read as follows :

"8. That with regard to the statement made in paragraph 7 of the writ application needs no comment.

10. That with regard to the statement made in paragraph 9 of the writ application needs no comment."

8. Thus from a perusal of the nature of reply given in the counter affidavit, it would be deemed that the respondents have therefore admitted that these Schools of the petitioners are situated within 5 kms. and 4 kms. respectively.

9. The only reason which appears to have been assigned in the counter affidavit for issuance of the impugned orders/letter is contained at para 7 therein which says that no approval had been taken from the Deputy Development Commissioner. This is also apparent from Annexure 5/1 to the writ application. According to the respondents therefore, the sanction given by the District Superintendent of Education was not proper.

10. However, at the paragraph 7 of the counter affidavit, the respondents have stated that for sanctioning House Rent Allowance to the teachers of Primary and Middle Schools, a procedure has been prescribed and if that procedure is not followed and sanction is given by unauthorized persons, then they are not proper and therefore the respondents have rightly issued the impugned orders.

11. The procedure referred to above, obviously relates to a procedure to be followed by the authorities. In the instant case, it is apparent that the District Superintendent of Education had allowed house rent allowance but only because the Deputy Development Commissioner had not approved the same, the respondents proceeded to pass the impugned order. This case appears therefore to be one of those where only because or procedural lapse, the respondent proceeded to deduct salary from the petitioners for no fault on their part.

12. In that view of the matter the impugned order is hereby set aside and quashed. The matter is remanded to the Deputy Development Commissioner (respondent No. 3) who will act now strictly in accordance with law and strictly as per the letter dated 26.4.1986 which was produced in Court, provided of

course, the same is still in force. If the said letter is still in force, then the matter should not be delayed any further and appropriate orders in accordance with law must be passed within a period of 10 days from the date of receipt of a copy of this order. It goes without saying that if any arrears towards this account is found payable to the petitioners, the same should also be taken care of.

13. With the aforementioned observations and directions this writ application stands disposed off.