
(2012) 01 JH CK 0100
In the Jharkhand High Court
Case No : W.P (S) No. 2580 of 2006

Dr. Benjamin Kerketta and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 01 JH CK 0100

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Counsel for the petitioners submitted that the reason, which is advanced for not paying the salary, in para 8-9 of the counter affidavit filed by the State authorities, runs counter to Notification dated 23 October, 2009 whereby earlier notification dated 8th June, 1981 has been withdrawn. It is further submitted that though it is alleged by the State Government that the school in which the petitioners were serving was taken over by the Government in the light of the notification dated 8th June, 1981, but the school, being a religious minority institution, can not be taken over by the Government without the express consent of the Managing Committee of the said school and ultimately wisdom prevailed over the State Government after several years and earlier notification dated 8th June, 1981 was withdrawn vide another notification dated 23rd October, 2009. The petitioners have been appointed as teachers in the said school, which is a religious, minority, aided school and has its own power to appoint teachers. In the light of the second notification dated 23 October, 2009, the reasons given in the counter affidavit, especially in para 8 and 9 of the counter affidavit, is not in consonance with law and hence the matter may be remanded to respondent no. 3 for taking a fresh decision on the prayer made in the memo of the petition, especially keeping in mind the second notification dated 23rd October, 2009, at Annexure 7 to the rejoinder affidavit filed to the counter affidavit. Counsel for the State submitted that petitioners have been appointed after the school was taken over by the State Government in the year 1981 and therefore, their appointment is illegal and hence no grant in-aid is

permission for payment of their salary.

2. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that taking over of the management of the school in question, which is a religious minority school, vide notification dated 8th June, 1981 was not in consonance with law and therefore, another notification dated 23 October, 2009 was issued whereby earlier notification dated 8th June, 1981 has been withdrawn, it appears that the management of a minority school can not be taken over without express consent of the Managing Committee of the school in question and the State Government itself made an enquiry, through a high power committee, which submitted report with respect to the school in question that the school was established and is being run, in spite of the notification of taking over, by the roman catholic mission and all the appointments have been made by the Managing Committee of the said school and therefore, recommendation was made for declaration of the said school as a minority school. Thus, the second notification dated 23rd October, 2009 has been issued vide which earlier notification dated 8th June, 1981 has been withdrawn.

3. I, therefore, direct respondent no.3 to take a fresh decision regarding payment of salary to the petitioners. The ground agitated in the paragraph no. 8-9 of the memo of the counter affidavit runs counter to the notification dated 23rd October, 2009. Reason advanced in para 8-9 of the counter affidavit not to make payment does not survive now in the light of the second notification dated 23rd October, 2009 and therefore, matter is remanded to respondent no. 3 to take fresh decision regarding the claims made in the memo of the petition taking into consideration notification dated 23rd October, 2009. This decision will be taken in accordance with law, rules, regulations, policies and Government enforceable orders, applicable to the petitioner as expeditiously as possible and practicable, preferably within a period of eight weeks from the date of receipt of a copy of an order of this Court after giving an adequate opportunity of being heard to the petitioners or to their representative.

4. After the decision is taken in the manner aforesaid, the benefit, if any, will be extended to the petitioners within a further period of four weeks. In view of the above directions, this writ petition is disposed of.