

(2009) 03 JH CK 0119
In the Jharkhand High Court

Dr. (Mrs) Chhaya Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0119

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the issuance of an appropriate writ, order or direction in the nature of mandamus commanding upon the respondents to immediately recalculate and pay the pension money and all the retiral dues after counting the entire period of service from 21.8.1968 i.e. the initial date of appointment of the petitioner along with statutory interest, as other similarly situated employees had already been provided and to quash the order dated 21.5.2007 vide memo No. 93 (2) passed by the respondent No. 2.

2. The short point in issue for consideration is as to whether petitioner is entitled to the retiral dues for the entire period of service which, according to him is from 21.8.1968 till date of retirement. The fact remains that the Management was taken over in the year, 1979 and the retiral dues was paid on the basis of calculation from the date of its taking over.

3. The counsel for the petitioner submits that similarly situated persons concerning the same college, several orders were passed by this Court which is annexed at page 31, dated 15.6.2002 in which contrary view was taken and order was passed to pay the entire retiral dues from the date when the petitioner therein were appointed in the erstwhile management.

4. Be that as it may, the law in this regard is well settled and this issue is no more res-integra. The counsel for the petitioner referred to and relied upon the

judgment passed in the case of State of Bihar Vs. S.A. Hassan and Another, . The observation as made by the Hon"ble Apex Court is quoted below:

13. We are, therefore, of the opinion that the respondents are not entitled to claim the benefit of the period of their service while they were under the employment of the erstwhile management for the purpose of calculation of their pension and pensionary benefits. Consequently, we hold that the findings of the High Court are not sustainable in law. Accordingly, appeals are allowed by setting aside the impugned judgment. The judgment rendered by us will come into effect prospectively i.e. apply to the cases of employees who retire on superannuation after the date of this judgment. The State Government shall not be entitled to claim refund of any pension or pensionary benefits already granted to any employee and also to the respondents. We are giving this direction especially for the reason that the State Government allowed a number of judgments adverse to it to become final and there was consequent uncertainty in legal position.

5. The fact remains that the only indulgence given by the Supreme Court was by issuing direction not to refund the amount already calculated since they were complied with by the State under order or direction of learned single judge and even such orders were specifically set aside.

6. The facts remain that the entitlement to the claim of the benefit for the period of service while the petitioner was under the employment of erstwhile management for the purpose of calculation of pension and pensionary benefit was clearly settled in the judgment of Hon"ble Supreme Court (supra) and as per the ratio of the judgment it was payable from the date of take over and not prior to that.

7. Considering the aforesaid facts and circumstances of the case, I find no merit in this writ petition and the same is accordingly dismissed.