

(2021) 04 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition(S) No. 1023 Of 2021

Dr. Sumanta Kumar Sengupta And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Bihar State Universities Act, 1976 — Section 35(1)(a), 35(1)(b)

Citation : (2021) 04 JH CK 0036

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Indranil Bhaduri

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

Petitioner No. 1 has approached this Court with a prayer for a direction upon the respondents to give the arrears of 6th Pay of Lecturer (Senior Scale) and implementation of 7th Pay Scale as per 6th and 7th Pay Revision Committee whereas, the petitioner No.2 has approached this Court for a direction upon the respondents to grant arrear of 6th Pay and implementation of 7th Pay to petitioner No.2 as per 6th and 7th Pay Revision Committee. Further prayer has been made by them for a direction upon the respondents to grant all consequential benefits arising out of 6th and 7th Pay Revision with arrears of salary and to extend all benefits to them in view of Judgment an direction of this Court in CWJC No. 3495 of 1992 (R) and affirmed in LPA No. 158 of 2000 (R).

Mr. Anil Kumar Sinha, learned Senior Counsel appearing for the petitioners submits that the issues involved in this case is now no more res-integra and has already been decided in the case of State of Bihar & Others. Vs. Syed Asad Raza & Ors. reported in AIR 1997 SC 2425 wherein at paragraph no. 5, the Hon'ble Apex Court has held as under:

"5. A reading of the above clearly indicates that after coming into force of the

Bihar State University Act, 1976 w.e.f. May 16, 1976, it is enjoined that for appointment of a teacher prior approval of the State Government is necessary. However, exception have been engrafted in respect of (a) the institution run by the State Government and (b) institution established by a religious or linguistic minority. Even the non-obstante clause in sub-section (2) also makes exceptions to the clauses (a) and (b) of sub-section (1) of Section 35 of the Act. Thus, it could be seen that for the creation of a post in a minority institution for the appointment thereof, prior approval of the University Vice- Chancellor or the State Government is not a pre-condition. The question, therefore, is; whether such an appointee, the first respondent is entitled to the payment of the grant-in-aid. By operation of Clause 91) of Article 30, all minorities, whether based on religion or language, shall have the right to establish an educational institutions of their own choice. Under clause (2) of Article 30, the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether, based on religion or language."

Learned Senior Counsel further submits that similarly situated persons namely Dr. Jitendra Prasad Sinha and Smt. Manju Khalkho filed a writ application before this Court for similar reliefs being C.W.J.C. No. 3495 of 1992 (R) and this Court, after relying Judgment passed in the case of Syed Asad Raza (Supra) passed the following order:

"9. In view of the aforesaid decision of the Supreme Court, I hold that the competent authority (State) is bound to sanction/ grant-in-aid in respect of the post in question, subject to such regulation as may be available under the law for use of grant etc.

10. The petitioners are entitled for a salary out of such grant-in- aid. Accordingly, I direct the respondents to release appropriate grant in favour of the College in question for payment of salary to the incumbents who are holding the post sanctioned vide letter no. 335 dated 1st May, 1967 within a period of six months, at least from the date the posts were so sanctioned i.e. 1 st May, 1987. On receipt of such amount, the college authorities are liable to pay salary to the incumbents who are holding such sanctioned post including the arrears of salary from 1 st May, 1987."

Learned counsel further submits that relying upon the aforesaid Judgments, writ petition filed by Arbind Kumar Lal and others in W.P.(S) No. 2620 of 2015 has been disposed of by a Bench of this Court and as such, similar benefits may be extended to these petitioners also.

Learned counsel appearing for the respondents do not dispute the admitted position and submits that if case of the petitioners will be found on similar footing, similar benefits would be granted to them what has been granted to Dr. Jitendra Prasad Sinha and Smt. Manju Khalkho.

Having heard learned counsel for the parties and after going through the

materials available on record, it appears that Hon'ble Apex Court in the case of Syed Asad Raza (Supra) has already held that the competent authority is bound to sanction grant-in-aid subject to such regulations as may be available under the law to regulate the recruitment of the service administration. The Hon'ble Apex Court further held in the said Judgment that by statutory operation the claimants are entitled to the payment of the grant-in-aid. From records, it also appear that after relying the aforesaid Judgment, this Court in the case of Dr. Jitendra Prasad (supra) held that the State is bound to sanction/ grant-in-aid in respect of the post in question, subject to such regulation as may be available under the law for use of grant etc. Respectfully relying the aforesaid Judgments, the instant application is allowed and petitioners are entitled for salary out of such grant-in-aid.

Accordingly, this Court directs the concerned respondents to release appropriate sanction/ grant-in-aid in favour of the college in question for payment of salary to the incumbents who are holding the sanctioned post within a period of four months and on receipt of such amount the college authorities are directed to pay salary to the petitioners who are holding such sanctioned post including the arrears of salary for which they are legally entitled within a further period of two months. Time and again pleas has been taken by the University that State is not releasing the funds. I hereby direct the State to release appropriate funds for its disbursement, as directed above, to the petitioners as per entitlement. Let the entire exercise be completed within a period of twelve weeks from the date of receipt/ production of a copy of this order.

With the aforesaid observations and direction, the instant writ application stands disposed of.