

(2004) 01 JH CK 0066
In the Jharkhand High Court
Case No : CWJC No. 3778 of 1997

Jagabandhu Mahata

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 272

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Indrani Sen Chowdhury, SC-II and Kundan Kumar Ambastha, JC to SC-II, for the Respondent

Judgement

Amareshwar Sahay, J.—The petitioner, being Science Graduate obtained B.Ed. degree, was initially appointed as Assistant Teacher on 16.4.1974 in Manohar Lal High School, Chakulia in the District of Singhbhum (East). After completion of 10 years continuous service he was granted time bound promotion on 16.4.1984. Subsequently, in view of the Resolution dated 18.12.1989 of the Finance Department, Government of Bihar extending the benefit of revision of scale of pay to the teachers of those schools taken over and under the Administrative control of the Department of Human Resources Development, the petitioner was given benefit as per the aforesaid Resolution of the Government and his pay was fixed accordingly by the Headmaster of the concerned school on 20.4.1990.

2. Subsequently by issuance of letter No. 1354 dated 9.7.1997 as contained in Annexure-3 to the present writ application, the District Education Officer, Singhbhum (West) Chaibasa, wrote a letter to the Headmaster of the school of the petitioner, stating therein that the petitioner was given time bound promotion on 16.4.1984 in the pay scale of Rs. 940-1660/- and his pay was fixed after giving him benefit of 12% interest and accordingly on 1.1.1986 his pay was fixed at Rs. 2360/-. It was further stated in the said letter that the petitioner was wrongly given one increment in the pay scale and therefore, the payment made to him in

excess, be realized in one lump sum and his pay should be re-fixed.

3. The petitioner has challenged the issuance of such order in the said letter (Annexure-3) issued by the District Education Officer.

4. It has been submitted on behalf of the petitioner that even if it is taken to be true for the sake of arguments that the pay of the petitioner was wrongly fixed but the order for realization of the amount paid in excess to him after the period of seven years was absolutely bad in law. It was next submitted that the pay of the petitioner was not fixed at his instance or on his misrepresentation, and therefore, the order for realization of excess amount is arbitrary and illegal. It was further submitted that no such order could have been passed without issuing a prior notice to the petitioner giving him a chance to explain or a chance of being heard and therefore, the same was violative of principle of natural justice.

5. On the other hand Mrs. I. Sen Choudhury learned counsel appearing for the respondents submitted that the pay of the petitioner was fixed in revised pay scale prescribed for a graduate trained teacher. According to the resolution No. 6022, dated 18.12.1989 of the Finance Department, the pay of the petitioner was fixed in basic grade in revised pay scale of Rs. 1640-2900/- and again when he had completed 12 years of service his pay was fixed in the scale of Rs. 2000-3500 giving him extra benefit of one increment which was wrong. It was further submitted that the each Government employee submitted declaration during the course of pay fixation that if it is found that he is drawing any sum in excess to which he is entitled to, then he will have no objection, if the amount so paid in excess is recovered from his arrear of pay bill or from future dues or from pension and gratuity. Therefore, there is no illegality in the order as contained in Annexure-3 whereby recovery of the amount paid to the petitioner in excess has been directed by the District Education Officer.

6. After hearing the learned counsel for the respective parties I am of the view that before taking, any action against the petitioner for recovery of the amount from his salary a notice to show cause should have been given, giving a reasonable opportunity to the petitioner to explain his position and a chance of being heard.

7. Admittedly no notice of any kind was issued to the petitioner by any of the authority. It is a settled law that no adverse order can be passed against the person without giving him a notice to show cause or without following the principles of natural justice.

8. Accordingly I hold that the order as contained in Annexure-3 to the present writ application is against the principle of natural justice since no notice of any kind was issued against the petitioner before issuance of Annexure-3. Consequently this writ application is allowed and the letter No. 1354 dated 9.7.1997 i.e., Annexure-3 is hereby quashed. However, the respondents are given liberty to pass a fresh order in accordance with law after issuing a notice to the petitioner and complying the rules of natural justice. In the facts and

circumstances of the case, shall be no order as to costs.