
(2009) 02 JH CK 0027
In the Jharkhand High Court

Jitendra Kumar and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 3

Citation : (2009) 02 JH CK 0027

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition the petitioners pray for issuance of appropriate writ in the nature of mandamus commanding upon the respondents to extend the same and similar benefits to the petitioners as has been allowed to the writ petitioners of CWJC No. 3267 of 2000 (R) whose services have been taken over by the Human Resource Development Department, Government of Jharkhand which was followed by the Government notification No. 1616 dated 8.12.2002.

2. The facts, in brief, are set out as under:

The petitioners state that in the year 1962 the Notified Area Committee, Sindri which is a local body discharging municipal and allied functions in the area of Sindri, P.S. Sindri in the district of Dhanbad established N.A.C. Middle School, Rangamatia, Sindri. The petitioners further state that all teaching and non-teaching employees were appointed by the Notified Area Committee, Sindri and appointment of 10 teachers were made. The petitioners further state that by process of time the teaching staff started retiring, and there was acute deficiency of teaching staff in N.A.C. Middle School, Rangamatia, Sindri. It is stated that in view of the less number of teaching staff available, the petitioner Nos. 1 to 3 were deputed in the said school for teaching work vide Office Order No. 571 dated 11.3.1994. The petitioners further state that as the petitioner Nos. 1 to 3

were hesitant in joining the school for teaching work, the Executive Officer of N.A.C, Sindri vide his office order contained in Memo No. 589 dated 18.3.1994 directed the said petitioners to join the school in question within 24 hours failing which they would be deemed to have been placed under suspension. It appears that thereafter the petitioners were directed to join the school vide separate order dated 15.9.1998 and the petitioner Nos. 1 to 3 were asked to discharge from teaching duties in N.A.C. Middle School Rangamatia whereas the petitioner Nos. 4 & 5 were working as Peon. It has further been submitted that they were paid the salary upto the month of October, 1999 and no payment of salary has been made thereafter.

3. It appears that the Headmaster and four teachers of N.A.C. Middle School, Rangamatia, Sindri file writ petition bearing CWJC No. 3267 of 2000 (R) for a direction to pay them salary which was due since October, 1998 and further for revision of pay in terms of the recommendation of 5th Pay Commission. Similarly the grievance of the petitioners herein, who have also been denied the salary since 1999 the Hon'ble High Court also directed the State of Jharkhand to take a decision in accordance with Section 3 of Bihar Non-Government Elementary School (Taking over and Control) Act, 1976 and if it was taken over by the State Government with effect from 01.01.1971 to release appropriate fund for payment of salary to the teachers within the time frame fixed therein.

4. A notification No. 1616 dated 8.12.2002 was issued by the state. The said notification indicates that persons working in the school and as such teaching/non-teaching employees retiring after 01.01.1999 would be entitled to the pay scale. The main contention raised by the petitioner is that the petitioner Nos. 1 to 3 have been working as teachers uninterruptedly at Rangamatia Middle School, Sindri pursuant to the orders contained in annexure 1 and 2 to this writ petition. Petitioner Nos. 4 & 5 have been discharging their non-teaching duties as Peon since 15.9.1998 and 13.5.1998 respectively. It is accordingly stated that they are squarely covered by the Government notification No. 1616 dated 8.12.2002 and are entitled to receive salary and allowances as per the said notification. It has also been contended by the petitioners that as the respondents were discriminating the petitioners and their services were not being taken over pursuant to the notification of the State Government dated 8.12.2002, the petitioners have made a detailed representation dated 21.2.2003 which has been duly received by the respondent Nos. 3, 4, 6 and other officers.

5. The respondents, in their counter affidavit have admitted the fact of notification dated 8.12.2002 and also the fact that payment has already been made in terms of the notification by the District Education Authorities of Dhanbad to all the teachers who are parties to the petition in CWJC No. 3267 of 2000 (R). In the additional affidavit filed by respondent Nos. 2 to 4 at paragraph 10 the fact about the petitioners working on deputation has also been admitted and the same is quoted as under:

That in reply to paragraph 15 to 17 it is stated that according to the petitioners

they were deputed in Rangamati Middle School by the Executive Officer, Notified Area Committee, Sindri and therefore they were never employees of the said school hence their service were never token over and they are not entitled for salary from the Government fund.

6. Considering the aforesaid facts, and circumstances of the case the respondents are directed to consider the representation dated 21.2.2003 of the petitioners in the light of their own decision and the orders passed by this Hon''ble Court within a period of two months from this date of receipt of this order.

This writ petition is accordingly allowed with no order as to costs.