

(2012) 05 JH CK 0074
In the Jharkhand High Court
Case No : A.C. (SB) No. 06 of 2011

John Murmu

APPELLANT

Vs

The District Education Officer, Sahibganj and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 3 JCR 688

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Bhanu Kumar and A.K. Toppo, for in Both Cases, for the Appellant;

Final Decision : Dismissed

Judgement

P.P. Bhatt, J.—Since the present two appeals arise out of a common order in both the appeals, they are disposed of by this common order. Heard the Learned Counsel for the appellants.

2. Perused the papers.

3. The present appeals arise out of the judgment and order dated 17.09.2010 passed in Case No. 70 of 2009 (JET) and Case No. 71 of 2009 (JET) by which the Jharkhand Education Tribunal has not allowed the prayer made by the appellants for quashing the order issued by the District Education Officer, Sahibganj as communicated by the Secretary of St. John Berchmans High School (respondent No. 2) as contained in letter No. 47 of 2009 dated 4.11.2009 by which the appellants were directed to be retired with effect from the date on which the appellants have attained 58 years of age. It is further prayed for quashing of the letter No. 1501 dated 03.11.2009 by which the District Education Officer, Sahibganj had directed the Headmaster and Secretary of St. John Berchmans High School to retire the staff of the School, who have attained 58 years of age, because of the above-mentioned impugned letters issued by the Secretary of the School (respondent No. 2) and the District Education Officer (respondent No. 1) are against the Resolution No. 2863 dated 01.12.2008 issued by the Joint

Secretary. Human Resource Development Department (Secondary Education Directorate). Government of Jharkhand.

4. The Learned Counsel appearing for the appellants submitted that the learned Tribunal has committed error while appreciating the Government Resolution dated 01.12.2008. The Learned Counsel for the appellants by referring the Government Resolution dated 01.12.2008 submitted that in the said Circular, the effective date for all the purposes mentioned therein, is 01.04.2007 and therefore, so far as the superannuation of the staffs of the said School is concerned, the effective date is required to be considered as 01.04.2007 and the said Circular should not be effected prospectively. It is further submitted that harmonious consideration should be made of that Government Circular dated 01.12.2008 and while interpreting the said Circular, the approach of the Court is also required to be considered in the context with any inconvenience and hardship, which is likely to be caused to the employees and the beneficial interpretation should be required to be made. It is lastly submitted that the learned Tribunal while discussing the said issue, has committed error and failed to appreciate this aspect while considering the case of the appellants.

5. Upon hearing the Learned Counsel for the appellants and on perusal of the judgment and order dated 17.09.2010, passed by the learned Jharkhand Education Tribunal rendered in Case No. 70 of 2009 (JET) and the Case No. 71 of 2009 (JET), it appears that the learned Education Tribunal has, after careful consideration of the issues involved in the matter, passed the judgment and order and thereby partially rejected the prayer of the appellants to give retrospective effect of the Government Circular dated 01.12.2008. However, the Tribunal appropriately dealt with the issue with regard to the recovery part and thereby allowed the claim of the appellants by assigning reasons in Paragraph 10 of the judgment. The argument advanced by the Learned Counsel for the appellants in respect of Annexure-3 i.e. Government Resolution dated 01.12.2008 is concerned, this Court is of the view that the Government Resolution is very clear and no ambiguity is there in the Government Circular. Clause 6 of the said Resolution is in respect of the final decision taken by the Government and In sub-clauses (i) and (ii) of Clause 6, the Government has specifically mentioned the effective date of the decision. So far as superannuation of the teachers is concerned, there is no such effective date prescribed in the said Resolution, whereas, so far as A.C.P. and the Dearness Allowance and other allowances are concerned, the Resolution clearly mentions about the effective date i.e. 01.04.2007 and no such specific date has been mentioned in the said Government Resolution and therefore, the Government Resolution is required to be implemented prospectively in respect of the enhancement of age of superannuation of the employees. Therefore, the teachers, who have retired prior to 01.12.2008 will not get the benefit of the Resolution dated 01.12.2008 and it will have prospective effect. In my opinion, the Tribunal has rightly and appropriately dealt with this issue and reached to the conclusion as stated in paragraphs 9 and 10 of the judgment and no error

whatsoever has been committed by the learned Jharkhand Education Tribunal in reaching to the said conclusion. So far as another argument advanced by the Learned Counsel for the appellants that in the said Government Resolution, there is no mention whatsoever that the said Circular will be made effective prospectively or not so far as the enhancement of age limit in superannuation is concerned, but this clarification is not required in Government Circular, because it is a common practice and procedure to follow this type of Circular prospectively. The Government Circulars and decisions cannot be made effective retrospectively unless and until, it has been specifically provided therein. Therefore, this argument of the Learned Counsel for the appellants cannot be accepted. The order passed by the learned Jharkhand Education Tribunal is legal and valid and no interference is called for by this Court. No material irregularity or illegality has been committed by the learned Tribunal while passing the said order. Accordingly, both these appeals are dismissed. So far as recovery for the period during which the appellants have rendered their services, the observations made and directions issued by the learned Tribunal in Para 10 is not required to be disturbed, as it appears that the respondents have not challenged the said part of the order.