

(2003) 01 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 2395, 2362 and 3995 of 2001

Kali Pada Dutta and Others, Basant Saha and Anant Kumar
and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 51 BLJR 479 : (2003) 2 JCR 3

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; R.S. Mazumdar, G.A. and P.N. Mishra, J.C. to G.A., for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—Heard both sides.

2. All these writs are taken together as common questions are involved in these writs and are being disposed of by a common order at the stage of admission itself.

3. The first question to be answered in these writs is whether if the petitioners, who were appointed in the year 1982-83 and were given time bound promotion, subsequently on detection that this time bound promotion scale was given wrongly can there be order of recovery of excess withdrawal? The second question whether the time bound promotion given to the petitioners was, in fact, contrary to the provisions of the Government circular?

4. The questions aforesaid arose out of the facts that in all the writs the petitioners were appointed on the basis of the advertisement issued in the daily newspaper on 31.3.1981 for appointment of Assistant teachers. Consequently, all the thirteen petitioners of W.P.(S) No. 2395 of 2001 were appointed as Assistant teachers with effect from different dates in the year 1982 by Annexure-2 series.

Then it appears that subsequent thereto all the petitioners of this writ were granted time bound promotion by Annexure-5 series. The time bound promotion was given to all the petitioners on the basis of a resolution adopted by the District Establishment Committee in the light of the resolution No. 10770 dated 30.12.1981 of the Finance Department. Similarly the petitioner of W.P.(S) No. 2362 of 2001, namely, Basant Saha was also appointed in the year 1982 by Annexure-2 and he was given time bound promotion by Annexure-4 in the aforesaid manner. Whereas all the petitioners of W.P.(S) No. 3995 of 2001, namely, Anant Kumar, Dinbandhu Bhattacharya and Banke Bihari Mishra were also appointed in the year 1982 by Annexure-1 series, and subsequently they were given time bound promotion by Annexure-8 series in the aforesaid manner. Then their pay was fixed in that higher scale but subsequently, vide memo No. 2231 dated 26.9.2000, (Annexure-7 of W.P.(S) No. 2395 of 2001, Annexure-9 of W.P.(S) No. 2362 of 2001 and Annexure-11 6fW.P.(S) of No. 3995 of 2001) the time bound promotion given to all the petitioners was cancelled and further direction has been issued to recover the amount from the petitioners paid to them in excess due to such time bound promotion.

5. The petitioners have filed these writs for quashing the impugned notification issued vide memo No. 22312, dated 26.9.2000 (Annexures 7, 9 and 11 respectively).

6. So far the question of excess payment and its recovery is concerned, nothing has been shown by the respondents in the counter affidavit that the pay of the petitioners was fixed because of misrepresentation on the part of the petitioners. If any wrong order is passed in fixing of pay or giving time bound promotion, it was due to the lapses on the part of the concerned authority. Therefore, in view of the decision of the Supreme Court reported in Sahib Ram Vs. State of Haryana and Others, , recovery cannot be held to be valid. In that view of the matter, first question is answered accordingly and the impugned Annexures 7, 9 and 11 respectively in the writs, which relate to recovery are quashed.

7. So far as the second question is concerned, it is admitted position that the petitioners were appointed in Government School and were government servant.

8. The respondents have appeared and filed counter affidavit in all the writs annexing Annexures A to C. Annexure-A Hindi version of resolution No. 3/P.A.R. 01-3/89-6022/V (2), dated 18th December, 1989, which relates to revision of pay scale of teachers of Rajkiya Prarambhik, Middle and Secondary Schools, which is applicable to the schools, taken over by the Government. Annexure-B is the Primary Schools Teachers Promotion Rules, 1993. Clause 13 deals with untrained teachers, which reads as follows :

"13. Aprashtkshit Shikshak.--(1) Aprashikshit Shikshak Grade I se Grade 8 tak ke kisi bhi grade men pronnati ke yogya nahi hoga.

(2) Aprashikshit Shikshak ko kal-badha pronnatiyan rajya sarkar ke anya karmachariyon ki bhanti sarkar dwara samay-samay par nirgat yadeshon ke

anusaar di ja sakegi.

(3) Aprashikshit Shikshak jis tithi ko prashikshit ho jata hai, us tithi se use grade diyajayega.

Thus, if the petitioners have completed 10 years of service then in view of the circular of the Finance Department they became entitled to their first time bound promotion because undisputedly all the petitioners were untrained teachers working in government schools and as such were government servants. Thus, in my opinion, the 4th Pay Revision Committee report is applicable to them. Consequently, cancellation of time bound promotion given to the petitioners of all the writs by the (sic) impugned notification dated 26.9.2000 is also against the provisions of the 1993 Rules. Accordingly, it is set aside,

9. The writs are allowed at the stage of admission itself.