
(2009) 11 JH CK 0129
In the Jharkhand High Court

Lakhi Ram Murmu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0129

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The petitioner, who is an Assistant Teacher, is aggrieved by the order i.e. Annexure-2 to this Writ Petition contained in Memo No. 1387 dated 01.09.1999 issued by office of the District Superintendent of Education, Singhbhum (East) Jamshedpur canceling the B.Sc. Trained Scale given to him w.e.f. 01.07.1992 as also directing recovery of the excess amount paid to the petitioner in the B.Sc. Trained Scale.

3. The case of the petitioner is that he was appointed as a Science Teacher against the B.Sc. Untrained Scale of Rs. 535 -765 on 30.06.1988. He completed his training on 18.06.1992 and thereafter, he was given the B.Sc. Trained Scale by issue of the office order dated 17.12.1994 as contained in Annexure-1 to this writ petition in pursuance of the decision taken by the District Establishment Committee.

4. The grievance of the petitioner is that an utter violation of the principles of natural justice without giving any notice to show cause or chance of being heard, the respondents have issued office order as contained in Annexure-2 dated 01.09.1999 whereby, in a most arbitrary manner, the promotion given to the petitioner in B.Sc. Trained Scale has been cancelled and order has been made for recovery of the excess amount paid to him.

5. It is submitted on behalf of the petitioner that the petitioner was not given the B.Sc. Trained Scale either on his misrepresentation or misstatement or by any

act of fraud committed by him and, therefore, the respondent could not have passed the order for recovery of any amount said to be paid to the petitioner in excess. It is also submitted that the petitioner was rightly given promotion in B.Sc. Trained Scale from the date he completed the Training and, there was no illegality on it.

6. On the other hand, the stand of the respondents, as it appears from the counter affidavit, is that the petitioner was appointed on 30.06.1988 against the Matric Trained Post as B.Sc. Untrained in the pay scale of Rs. 535 - 765 and as per the Bihar Taken Over Elementary Teacher Promotion Rule, 1993, which was made effective after 01.01.1986, an untrained teacher was not under any Grade and as per the aforesaid promotion Rule of 1993, as soon as a teacher completes the training, he is given Grade - I. This petitioner completed his training on 18.06.1992 and hence from that date, he should have been given Grade-I. Thereafter, on completion of eight years, he could have been given Grade-IV from 18.06.2000. But he was wrongly given the scale of B.Sc. Trained w.e.f. 18.06.1992 which was according to promotion rule vide letter No. 171 dated 20.02.1981 and vide letter no 3629 dated 20.11.1982 which was effective prior to 01.01.1986. Had the petitioner completed his training on or before 01.12.1985, the Rule of 1981 and 1982 would have been made applicable in his case.

In this view of the situation, the B.Sc. Trained Scale given to the petitioner has rightly been cancelled and direction for recovery of the excess amount paid to him have been made.

7. Nothing has been alleged in the counter affidavit that such promotion to the B.Sc. Trained Scale was given to the petitioner on his misstatement or misrepresentation or by commission of any act of fraud on his part. Therefore, this part of the impugned order regarding recovery of the amount said to have been paid in excess to the petitioner, cannot be sustained in view of the Judgment of Full Bench of this Court passed in the case of Smt. Normi Topno Vs. The State of Jharkhand and Others, and W.P.(S) No. 2163 of 2003 with W.P.(S) No. 2907 of 2003 with W.P.(S) No. 2309 of 2003 disposed of on 13.10.2009.

8. Accordingly, that part of the impugned order dated 01.09.1999 contained in Annexure-2, whereby the order for recovery of the excess amount has been made, is hereby quashed.

9. Thus, the writ petition is partly allowed to the extent indicated above. There shall be no order as to costs.