

(2022) 03 JH CK 0085

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3059 Of 2021

Maresh Chandra Mahto

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 30

Bihar State University Act, 1976 — Section 35(1)(a), 35(1)(b), 3(2)

Citation : (2022) 03 JH CK 0085

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Abhisekh Sinha, Anoop Kumar Mehta

Final Decision : Disposed Of

Judgement

Dr. S.N. Pathak, J

The petitioner has approached this Court for direction upon the respondents to grant retiral benefits to the petitioner in terms of statute for grant of retirement benefits to the employees of 8 Degree Level Deficit Grant Minority Colleges. Further prayer has been made to fix pension of petitioner and to give pay scale of Reader in terms of 6th Pay Revision and to grant all consequential benefits in view of 6th Pay Revision in terms of judgment of this Hon'ble Court passed in C.W.J.C. No.3495 of 1992 (R) which was affirmed in L.P.A. No.158 of 2000(R).

Mr. Abhishek Sinha learned Counsel appearing for the petitioner submits that the issues involved in this case is now no more res-intergra and has already been decided in the case of "State of Bihar & Others vs. Syed Asad Raza & Ors., reported in AIR 1997 SC 2425 wherein at paragraph no.5, the Hon'ble Apex Court has held as under:-

"5. A reading of the above clearly indicates that after coming into force of the Bihar State University Act, 1976 w.e.f. May 16, 1976, it is enjoined that for appointment of a teacher prior approval of the State Government is necessary.

However, exception have been engrafted in respect of (a) the institution run by the State Government and (b) institution established by a religious or linguistic minority. Even the non-obstante clause in sub-section (2) also makes exceptions to the clauses (a) and (b) of sub-section (1) of Section 35 of the Act. Thus, it could be seen that for the creation of a post in a minority institution for the appointment thereof, prior approval of the University Vice-Chancellor or the State Government is not a pre-condition. The question, therefore, is; whether such an appointee, the first respondent is entitled to the payment of the grant-in-aid. By operation of Clause 91) of Article 30, all minorities, whether based on religion or language, shall have the right to establish an educational institutions of their own choice. Under clause (2) of Article 30, the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether, based on religion or language."

Learned Counsel further submits that similarly situated persons namely Dr. Jitendra Prasad Sinha and Smt. Manju Khalkho filed a writ application before this Court for similar reliefs being C.W.J.C. No. 3495 of 1992 (R) and this Court, after relying Judgment passed in the case of Syed Asad Raza (Supra) passed the following order:

"9. In view of the aforesaid decision of the Supreme Court, I hold that the competent authority (State) is bound to sanction/ grant-in-aid in respect of the post in question, subject to such regulation as may be available under the law for use of grant etc.

10. The petitioners are entitled for a salary out of such grant-in-aid. Accordingly, I direct the respondents to release appropriate grant in favour of the College in question for payment of salary to the incumbents who are holding the post sanctioned vide letter no. 335 dated 1stMay, 1967 within a period of six months, at least from the date the posts were so sanctioned i.e. 1stMay, 1987. On receipt of such amount, the college authorities are liable to pay salary to the incumbents who are holding such sanctioned post including the arrears of salary from 1stMay, 1987."

Learned counsel further submits that relying upon the aforesaid Judgments, writ petition filed by Arbind Kumar Lal and others in W.P.(S) No. 2620 of 2015 has been disposed of by a Bench of this Court and as such, similar benefits may be extended to this petitioner also.

Learned counsel appearing for the respondents does not dispute the admitted position and submits that if case of the petitioner will be found on similar footing, similar benefits would be granted to him what has been granted to Dr. Jitendra Prasad Sinha and Smt. Manju Khalkho.

Having heard learned counsel for the parties and after going through the materials available on record, it appears that Hon'ble Apex Court in the case of Syed Asad Raza (Supra) has already held that the competent authority is bound

to sanction grant-in-aid subject to such regulations as may be available under the law to regulate the recruitment of the service administration. The Hon'ble Apex Court further held in the said Judgment that by statutory operation the claimants are entitled to the payment of the grant-in-aid. From records, it also appears that after relying the aforesaid Judgment, this Court in the case of Dr. Jitendra Prasad (supra) held that the State is bound to sanction/ grant-in-aid in respect of the post in question, subject to such regulation as may be available under the law for use of grant etc. Respectfully relying the aforesaid Judgments, the instant application is allowed and petitioner is entitled for salary out of such grant-in-aid.

Accordingly, this Court directs the concerned respondents to release appropriate sanction/ grant-in-aid in favour of the college in question for payment of salary to the incumbents who are holding the sanctioned post within a period of four months and on receipt of such amount the college authorities are directed to pay salary to the petitioner who is holding such sanctioned post including the arrears of salary for which he is legally entitled within a further period of two months. Time and again pleas has been taken by the University that State is not releasing the funds. I hereby direct the State to release appropriate funds for its disbursement, as directed above, to the petitioner as per his entitlement. Let the entire exercise be completed within a period of twelve weeks from the date of receipt/ production of a copy of this order.

With the aforesaid observations and direction, the instant writ application stands disposed of.