

(2011) 08 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1267 of 2008

Md. Nayeem Ahmad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Citation : (2011) 08 JH CK 0097

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Learned Counsel appearing for the petitioner submits that by filing this Interlocutory Application bearing I.A. No.1995 of 2010, prayer has been made to allow him to incorporate the prayer in the main writ application which has been made in this I.A. that the authority be directed to make payment of the arrears of salary, which is due to be paid for the period from 11.12.2004 to 31.01.2006.

2. Prayer made in the interlocutory application is hereby allowed and it be treated as part of the main writ application.

3. I.A. No.1995 of 2010 stands disposed of.

W.P. (S) No.1267 of 2008

4. Heard the parties.

5. Learned Counsel appearing for the petitioner submits that the petitioner got retired from the post of Assistant Teacher, Middle School, Kankzole, Barharwa, District- Sahibganj on 31.01.2006. After the retirement, when retiral benefits were not given to the petitioner, the petitioner filed this writ application praying therein to direct the authority to make payment of the retiral dues to him. During pendency of this writ application, post retiral dues were paid to him, but when payment for the period from 11.12.2004 to 31.01.2006 was not made, the

petitioner filed an interlocutory application for directing the authority to make payment of the salary for the same period, as during those periods, the petitioner was not allowed by the villagers to discharge his duties as Assistant Teacher, in the School situated at Kankzole Barharwa, District- Sahibganj. Keeping in view the protest of the villagers, the petitioner made a request to District Superintendent of Education, Sahibganj to transfer him to other school. On the request of the petitioner, the petitioner was deputed in Middle School, Phulbhanga Anchal, Barait on 10.09.2004, but that deputation was only for three months i.e. up to 10.12.2004. After 10.12.2004, the petitioner made an application before the District Superintendent of Education, Sahibganj making request either to allow him to remain in the school at Barait or to transfer him back to School at Kankzole, Barharwa, District- Sahibganj, but on that application, no decision was taken till the petitioner got retired on 31.01.2006 and hence, under these circumstances, the petitioner is entitled to have salary for the period from 11.12.2004 to 31.01.2006.

6. A counter affidavit has been filed wherein statement has been made that since the petitioner was absent unauthorizedly from 11.12.2004 to 31.01.2006, the petitioner is not entitled to have salary for the said period.

7. The said statement made in the counter affidavit under the circumstances, as stated above, does not appear to be correct. This has not been disputed on behalf of the State that when the villagers did not allow the petitioner to work in the School at Kankzole, Barharwa, the petitioner made request to the authority to transfer him to other school and considering the request made by the petitioner, the petitioner was deputed at Middle School, Phulbhanga Anchal, Barait on 10.09.2004, but that deputation was only for three months i.e. up to 10.12.2004. After expiry of that period, the petitioner made an application making request to the authority either to allow him to remain in the school at Barait or to transfer him back to the School at Kankzole, Barharwa, but no order in this respect was passed.

8. This factual aspect has also not been controverted on behalf of the State. Thus, it is evidently clear that it was never the fault on the part of the petitioner on account of which, he did not discharge his duties for the period from 11.12.2004 to 31.01.2006 and hence, the petitioner is entitled to have salary for the aforesaid period.

9. Accordingly, the District Superintendent of Education, Sahibganj is, hereby, directed to make payment of the arrears of salary for the period from 11.12.2004 to 31.01.2006, within a period of two months from the date of receipt/production of a copy of this order.

10. Hence, this writ application is allowed.