
(2009) 05 JH CK 0151
In the Jharkhand High Court
Case No : C.W.J.C. No. 3353 of 2000 (R)

Md. Sawood Alam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2009) 05 JH CK 0151

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; G.P.-I, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.

C.W.J.C. No. 3353 of 2000 (R)

1. In the instant writ petition the petitioner prays for issuance of an appropriate writ, order or direction in the nature of certiorari for quashing the Office Order as contained in Letter No. 1159 dated 31.7.1999 by which the I.A. trained scale given to the petitioner with effect from 1.1.1978 and B.A. trained scale with effect from 1.4.1981 has been cancelled; and the respondents-authorities further directed to recover the excess paid salary on account of giving promotion into I.A. trained as well as B.A. trained scale. The petitioner further prays for quashing the aforesaid entries made/recorded in the Service Book with respect to the cancellation of I.A. trained and B.A. trained scale earlier given to the petitioner with effect from 1.1.1978 and 1.4.1981 respectively; and the petitioner further prays for issuance of a writ in the nature of mandamus commanding upon the respondents to provide I.A. trained scale to the petitioner with effect from 1.1.1978 as well as B.A. trained scale with effect from 1.4.1981 with all consequential benefits and for issuance of direction to the respondents to immediately and forthwith promote to the petitioner to the post of Headmaster

with effect from the date on which the person junior to him were promoted and are presently working as Headmaster.

C.W.J.C. No. 3355 of 2000 (R)

In the instant writ petition the petitioners pray for issuance of an appropriate writ, order or direction or a writ in the nature of certiorari for quashing the Office Orders as contained in Letter No. 1159 dated 31.7.1999 by which the I.A. Trained scale given to the petitioners with effect from 1.1.1978 and B.A. Trained scale with effect from 1.4.1981 has been cancelled and the respondents further directed to recover the excess paid salary on account of giving promotion into I.A. as well as B.A. Trained scale and the petitioner No. 1 also prays for quashing the entries made/recorded in his service book with respect to cancellation of I.A. And B.A. Trained scale earlier given to him w.e.f. 1.1.1978 and 1.4.1981 respectively and the petitioner further prays for issuance of a writ in the nature of mandamus commanding upon the respondents to provide I.A. trained scale to the petitioners with effect from 1.1.1978 as well as B.A. trained scale with effect from 1.4.1981 along with all consequential benefits. The petitioners further pray for a direction to the respondents to immediately and forthwith promote the petitioners to the post of Headmaster with effect from the date on which persons junior to the petitioners like Ramadhar Singh and others were promoted and are presently working.

2. Both the writ petitions are being disposed of by this common order since the facts and the issues involved are identical.

3. The facts, in brief, are set out as under:

The petitioners were initially appointed as teacher and were given matric trained scale. However, vide order dated 6.12.1993 the petitioners along with others were given I.A. trained scale with effect from 1.1.78 and further as per the decision of the Establishment Committee the petitioners were given B.A. trained scale with effect from 1.4.81 vide letter dated 16.5.1994. A memo No. 7949 dated 26.12.97 was issued by the respondents shifting the I.A. trained scale from 1.1.78 to 1.1.93 and B.A. trained scale from 1.4.81 to 1.12.85 with a further direction to recover the excess amount paid to the petitioners. The petitioners being constrained preferred the Writ Petition C.W.J.C. No. 1313 of 1998 (R) and the same was disposed of by the High Court vide order dated 12.11.1998 setting aside the aforesaid order dated 26.12.1997 and the respondents were directed to place the matter before the Establishment Committee for final decision. The petitioners further represented before the respondent to be considered for promotion to the post of Headmaster as directed in Ramadhar Singh case. They also claimed to be promoted to the post of Headmaster since Ramadhar Singh was promoted. However, vide impugned letter No. 1159 dated 31.7.1999 the Establishment Committee considered the case and cancelled the order of I.A. trained scale with effect from 1.1.78 and B.A. trained scale with effect from 1.4.81 and further directed to recover the

excess payment of salary during that period and the same is sought to be challenged in the present writ petition.

4. The main contention raised by the learned Counsel for the petitioners is that pursuant to the order of remand the authority passed an order without assigning any reason. It has been further submitted on behalf of the petitioners that the action of the respondent authority is on the face of it illegal, arbitrary and without jurisdiction since the impugned order dated 31.7.1999 was passed without even giving a copy and without even affording any opportunity to show cause. It has further been submitted that the same was issued after nearly 20 years and the authorities ignored the order and direction issued by this Court in C.W.J.C. No. 2028 of 1991 (R) and thus the impugned order of cancellation was on the face of it illegal and unsustainable in the eyes of law. It has further been submitted that the persons juniors to the petitioners have already been given benefit of promotions.

5. The contention raised by the respondents that the present writ petition is barred by resjudicata, is not sustainable for the sole reason that the direction issued by Hon'ble High Court in C.W.J.C. No. 1313 of 1998 R dated 12.11.98 was for the Establishment Committee to consider the representation to be filed by the petitioners and other similarly situated candidates and the District Establishment Committee was directed to re-consider the matter in the light of the direction and it was in this background that the District Establishment Committee reconsidered the issue and vide its impugned order dated 31.7.1999 cancelled the earlier direction and ordered for recovery. Thus the order of cancellation was a fresh cause of action which can certainly be challenged and the principles of resjudicata will not apply. The impugned order is annexed at page 61 is a non-speaking order without assigning even a single reason and is in fact a communication dated 27.12.2000 about the decision taken by Establishment Committee on 31.07.1999 which was not even communicated.

6. The impugned order retrospectively takes away the right of the petitioner which is on the face of it punitive in nature and involves civil consequences. The matter was remitted back only on this account that opportunity of hearing should be given and order should be passed. There is no dispute about the fact that the issue was raised nearly after a lapse of 20 years for recovery and it has not been disputed that the vacancy existed from 1.1.78 for I.A. trained teachers and the petitioners became entitled to that scale of pay in terms of the combined gradation list and they were duly recommended by the appropriate authority and this issue has already been decided in C.W.J.C. No. 2028 of 1991 vide order dated 30.4.1992. The respondents cannot be permitted to adopt double standard and discriminate between similarly situated employees.

7. The admitted position once again remains that the petitioner has neither misrepresented nor committed any fraud and it was the default of the authorities and under the settled law the authorities cannot take the benefit of their own default, more so, when it was given in 1978 and 1981 and has been cancelled in

1999.

8. A Full Bench of this Court in 2007 (4) JLJR 459 (Laxman Prasad Gupta v. State of Jharkhand) specifically held at paragraph 20 as under:

20. In view of the above discussion, we come to the following conclusion. To sum up:

In the light of the absence of any material to show that the excess amount was received by the petitioner on mis-representation, collusion, fraud or negligence, the said excess amount cannot be recovered out of the retiral dues, after retirement, without following the procedure contemplated under Rule 43(b) of the Bihar Pension Rules. In this case, the said procedure, which is mandatory, has not been followed. Therefore, the action of the respondents for recovery of the amount from the retiral dues is not valid in law.

9. The Hon"ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, also held that if any excess payment during the service tenure was made the same shall not be recovered since it was not because of any mis-representation or fraud on the part of the teachers and they had no knowledge about the amount that was paid was, more than what they were entitled to and thus finally the recovery was set aside and directions were issued to refund the amount.

10. Considering the aforesaid facts and circumstances of the case, it would be in the interest of justice to direct the respondents not to make any recovery for the amount in question and in case if recovery has already been made, the said amount shall be refunded.

11. These writ petitions are accordingly allowed only to the extent indicated herein above and the prayer for claiming promotion to the post of Headmaster is rejected.