

(2003) 08 JH CK 0103
In the Jharkhand High Court
Case No : L.P.A. No. 68 of 2001

Md. Waliullah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Citation : (2004) 1 JCR 273

Hon'ble Judges : Gurusharan Sharma, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : K.P. Mitra, for the Appellant; A.K. Mehta, SC I for respondents 1 to 3 and A. Allam, for the Respondent

Judgement

1. Admittedly, the appellant was working as assistant teacher in a minority institution, namely, Central Karimia High School, Jamshedpur and on completion of 58 years of age, he retired on 31.1.1993.

2. In the meantime, on 20.6.1991, an administrative order of the State Government in the Department of Human Resource Development was issued by Memo No. 378, by the Deputy Education Director, Secondary Education, Bihar that pursuant to polity decision that the teachers of minority secondary school are to be provided all those amenities and benefits, which were available to the teachers of nationalized Secondary Schools, those teachers, who were to superannuate on 31.10.1989 or thereafter after attaining 58 years of age be not made to retire and after formal order regarding enhancement of their superannuation from 58 years to 60 years, like those Nationalized School teachers was issued, only thereafter payment of their salary for the period for which they worked in the meantime, shall be made.

3. Pursuant to the said administrative order of the State Government, the appellant was allowed to work as assistant teacher of the school by the authorities concerned even after he completed 58 years of his age. On 18.7.1994 the State Government took final decision and enhanced the age of

superannuation of the teachers working in the minority secondary school from 58 to 60 years and in this regard the Additional Secretary to the Government of Bihar, Department of Secondary, Primary and Adult issued formal orders by communication No. 12/316-012/18.

4. However, the appellant claims to have continued to work up to 31.1.1995 and in terms of Government administrative order dated 20.6.1991, claimed his salary for the period from 1.2.1993 to 31.1.1995 to be paid to him, although in terms of the Government resolution dated 18.7.1994, he was not entitled to get benefit of the aforesaid enhancement of the date of superannuation of the teachers working in minority secondary schools.

5. In this regard appellant filed CWJC , No. 235 of 2001 in this Court, which was disposed of by impugned order dated 17.1.2001 by the learned Single Judge, holding that the writ-petitioner was not entitled to claim salary for the period, he has worked beyond the period of his superannuation on 31.1.1993.

6. In the present appeal, filed against the said order, the District Education Officer, Jamshedpur-respondent No. 3 as well as Secretary and Headmaster of the minority secondary school have filed two separate counter affidavits and have specifically admitted that the appellant has already been paid his salary, after his superannuation on 31.1.1993, as per the Government order dated 20.6.1991, for the period 1.2.1993 to 5.9.1993. According to the Government resolution dated 18.7.1994, the effective date for enhancement of age of superannuation from 58 to 60 years was given as 5.9.1993.

7. In our view, pursuant to the administrative order dated 20.6.1991 of the State Government the teachers of such minority secondary schools, who were allowed to work after their date of superannuation, on completing 58 years, awaiting formal order of the State Government to be issued regarding enhancement of the date of superannuation to 60 years, were to be paid salary for the period they were allowed to work. The appellant, who was also one of such person, was entitled to get his salary up to the age of 60 years or up to the date of the Government resolution dated 18.7.1994, whichever was earlier.

8. Admittedly in the present case the appellant was to complete 60 years on 31.1.1995 and before that on 18.7.1994 the Government resolution was issued, and therefore there is no justification in saying that he was entitled to get his salary only up to 5.9.1993.

9. It cannot be disputed that the aforesaid notional cut-off date for applicability of enhanced date of superannuation with effect from 5.9.1993 was not known to anybody, including the appellant or to the school authority and, therefore, the appellant was rightly allowed to work up to the date of the Government resolution dated 18.7.1994.

10. We, therefore, direct the respondents concerned to pay the balance amount of appellant's salary for the period 5.9.1993 to 17.4.1994, if he had actually

worked during the said period.

11. With the aforesaid direction, this appeal is disposed of.