

(2013) 09 JH CK 0083

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3036 of 2011

Megh Nath Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 4 AJR 318

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant;

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has approached this Court for directing the respondents to pay salary for the period 21.09.2001 to 31.01.2009 when he continued as Project Officer, Narayanpur office of the Department of Adult Education/Non-Formal Education.

2. The petitioner originally claims to be an Assistant Teacher appointed at Rajkiya Sanskrit High School at Sultanganj, Deoghar vide Memo No. 519 dated 30.03.1974. The petitioner is said to be belonging to Directorate of Secondary Education. However, when the Non-Formal Scheme was closed by the Central Government in the year 2001, vide Memo No. 2317 office order dated 20.09.2001 issued by the Directorate of Adult Education, Government of Bihar, the services of the petitioner are said to have been repatriated to the parent department i.e. the Directorate of Secondary Education, Bihar at Patna. It is the submission of the petitioner that he was never relieved from the post of Project Officer at Narayanpur as at the relevant point of time parent State of Bihar had already been bifurcated and his Controlling Authority i.e. the District Superintendent of Education-cum District Mass Education Officer, Giridih sought direction from the Directorate of Primary cum Mass Education, Jharkhand as to what course of action would be taken with regard to release of the petitioner from the said department to his parent department. The said guidance was, however, never given. In the circumstances, the petitioner had approached this

Court in W.P. (S) No. 3676 of 2003 with a number of reliefs inter alia also for directing the respondent to revert his services as Assistant Teacher at Sanskrit School, Deoghar after relieving him from the post of Project Officer in the Adult Education-cum-Non Formed Education, Narayanpur, Jharkhand. He further prayed for direction upon the respondents to immediately and forthwith make payment of the entire amount of the salary to the petitioner for certain period prior to October, 2000 and thereafter, till the filing of the writ petition. He also sought benefits of fixation of his pay in the revised scale. In the said writ petition, he also made additional prayer by way of I.A. No. 3578 of 2008 to direct the respondent for payment of arrears of salary enclosing the letter, issued by the District Education, Giridih addressed to the Deputy Director, Primary Education for making recommendation of payment of the outstanding dues including computation of break up. Learned Single Bench of this Court vide order dated 03.02.2009 after taking into account the prayer made in the said writ petition, disposed of the writ petition in the following manner, which is quoted hereinbelow:-

It will be in the interest of justice that respondent Nos. 3 and 8 i.e. the Director, Secondary Education, Project Building, Ranchi and the Director, Primary and Adult Education Department, Jharkhand, Ranchi take a decision in accordance with law within a period of one months from the date of receipt of this order in the light of the recommendation made by the District Superintendent of Education, Giridih vide its letter dated 27.09.2008 and the same should be communicated to the petitioner. It goes without saying that the admissible dues and the outstanding should be paid without any further delay.

Accordingly, this writ petition is disposed of with the aforesaid direction.

3. Thereafter, order dated 13.05.2009 was passed by the then Director, Primary Education, Jharkhand which inter alia held that the petitioner was relieved on 20.09.2001 and since there were no evidence relating to execution of his work after that date at the relevant place of his posting, the salary for the said period could not be made. The petitioner, therefore, once again approached this Court in the present writ petition. During the pendency of the writ petition, on the submission of the concerned authorities that they were holding meeting to consider the petitioner's claim for arrears of salary and for the payment of retiral dues and they would take a decision shortly, this Court allowed further time to take a final decision in the matter of payment of admitted dues of the petitioner. After few adjournments, the order has been passed by the present Director, Primary Education once again, which is enclosed as Annexure-E to the supplementary counter affidavit filed on 26.08.2013. In the instant order after noticing that the Government of India, Ministry of Personnel, Public Grievance and Pension Department had issued a final notification of allocation of such teachers of Secondary, Primary & Adult Education vide notification dated 06 May 2005, which included the petitioner's name at serial No. 1 as well, it proceeded to hold that such allocation of the petitioner to the successor State of Jharkhand

was irregular and suffered from infirmity. The Director, Primary Education in the instant order rendered the findings that once the petitioner was relieved on 20.09.2001 to join at parent Directorate of Secondary Education, State of Bihar, in such circumstances, the order of allocation of members of Adult and Non-Formal Education issued by the Ministry of Personnel, Government of India on 06.05.2005 could not have contained the name of the present petitioner. In the circumstances, once again the claim for payment of salary for the period 21.09.2001 to 31.01.2009, by the petitioner, has been denied. It has, further, been observed in the said order that the petitioner may seek for payment of post retirement dues from his parent department. The petitioner is said to have retired on 31.01.2009. The aforesaid details have deliberately been referred to in the order to show that on the direction of this Court passed in the earlier writ petition being W.P. (S) No. 3676 of 2003, the Director, Primary Education, who examined the matter on merits vide impugned order dated 13.05.2009, made different observations on the question of payment of salary by holding that there was no evidence of discharging of duty by the petitioner. However, in the instant case, when the matter is pending before this Court, indulgence was sought for by the respondents themselves for examination of the claim of the petitioner for arrears of salary and other post retirement dues. Thereafter, a wholly new plea has been taken by the Director, Primary Education, Government of Jharkhand that his allocation in the successor State of Jharkhand itself is flawed and not proper. The perusal of the order of allocation of cadre dated 06.05.2006 (annexed to the supplementary affidavit filed on 05.08.2013 by the petitioner) along with extracts of the name of petitioner and others shows that it was not only with respect to the Adult and Non-Formal Department but also in relation to Secondary and Primary Education Department also. It, however, does not appear that concerned Director has applied her mind on the merit of the case of the petitioner as to what has been noted in the order dated 04.07.2013 passed by this Court. Therefore, the relevant part of the order dated 04.07.2013 is also worthy to be quoted hereinbelow:-

It has been submitted that the concerned authorities have been holding meeting to consider the petitioner's claim of arrears of salary and payment of arrears of retiral dues. They shall take decision shortly, without further delay. For that purpose, they pray for further three weeks' time.

Learned counsel submitted that while taking the decision, the authorities shall consider all relevant records including the report of the District Superintendent of Education, Giridih dated 21.10.2008 (Annexure-15). If the authorities find that the amount claimed by the petitioner is payable, admitted amount shall be paid to him without any delay.

Learned counsel for the petitioner submitted that sufficient time was given to the respondents earlier but no order has been passed. The respondents are adopting dilatory approach and they have not even cared the order of this Court. However, on the assurance of the respondents to pass order, one more opportunity is given

to the respondents by way of last chance to take final decision and make payment of the admitted dues to the petitioner.

4. The Director, Primary Education, Government of Jharkhand was supposed to take into account all the relevant records along with the order of District Education of Giridih dated 21.10.2003, Annexure-15 and thereafter take a decision. It, however, appears that the relevant material facts, which also included such evidence of discharge of duty of the present petitioner at his place of posting at Narayanpur as Project Officer, under the Adult-cum-Non Formal Education Department for the period in question should have thoroughly been examined which is essential for determination of the question as to whether the petitioner has remained at the said place after being relieved or as a matter of fact has discharged duties at the said place of his posting. The determination of these facts are dependent upon the scrutiny of the relevant records of the petitioner as well as other relevant facts. Perusal of the instant order dated 21.08.2013, however, does not throw much light on the aforesaid issue. On the last occasion when this Court had directed both the Directors to sit together and arrive at a conscious decision, this Court was conscious of the facts that the services of the present petitioner are hanging between the Directorate of Primary Education and Directorate of Secondary Education, Government of Jharkhand. The exercise undertaken, however, does not seem to have reached any proper and definite conclusion. In the circumstances, this Court is constrained once again to direct respondent No. 6, the Secretary, Human Resources Development Department, Ranchi, who is the Secretary of both Directorates i.e. the Primary and Secondary Education under the respondent- State of Jharkhand, to take an informed decision in the matter after taking into account all relevant facts and circumstances including giving at least one opportunity to the petitioner to produce all relevant facts and documents in support of his claim.

5. In the circumstances, this writ petition is disposed of with a direction to the respondent No. 6, the Secretary, Human Resources Development Department, Ranchi to take a decision in accordance with law in respect of the aforesaid claim of the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

6. Needless to say that if the respondent authorities arrive at a decision in favour of the petitioner, the necessary payments for arrears of salary, claimed by the petitioner, as also post retirement dues, shall be disbursed to him within a period of 10 weeks thereafter. Accordingly, this writ petition is disposed of in the aforesaid manner.