

(2011) 06 JH CK 0157
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3881 of 2003

Najmussabah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 4 JCR 54

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mrs. Poonam Srivastav. J

1. By the Court-Heard counsel for the petitioner and also counsel for the State.
2. Counter, supplementary counter, rejoinder as well as supplementary rejoinder have been filed. Since the pleadings are complete and the respective counsel have agreed that the writ petition be decided finally at the stage of admission itself, I proceed to decide the writ petition.
3. By means of the instant writ petition, the petitioner has prayed for quashing the order dated 3.3.2003 (Annexure-11) issued by District Superintendent of Education, "Hazaribagh. whereby certain excess amount paid to the petitioner in the pay-scale of Rs. 1200-2640/- in place of the pay-scale of Rs. 975-1540/-, is sought to be recovered. The amount in excess was paid from the date of joining Le. 7.9.1993. This Court had passed an interim order staying the recovery.
4. The contention of the learned counsel is that certain amount paid to the petitioner was recovered. The petitioner was appointed on a compassionate ground in a Minority Institution and was working as an assistant teacher. It is also contended that in terms of the Government Rules, the petitioner was granted formal approval by the Education Department and she was being paid salary for the duties discharged by her. After the interim order was passed, no

further recovery was made from the petitioner, but thereafter she was receiving her salary in the grade of Rs. 975-1540/-.

5. Prayer in the writ petition is also for fixing her salary in the higher grade for which she is entitled. Learned counsel has placed a number of documents, including Annexure-13 to the writ petition, which is the salary slip of the petitioner and perusal of the same shows that she is getting her salary in the pay-scale of Rs. 975-1540/-. There is also an endorsement of the District Superintendent of Education, Hazaribagh. vide memo No. 1447 dated 27.6.1995. whereby he has recorded that the petitioner is entitled for a salary in the scale of Rs. 1200-2040/-, but the salary is not fixed in that grade. It is mentioned only Rs. 975-1540/- and therefore, learned counsel has also challenged the fixation of salary and claimed higher grade.

6. A supplementary affidavit has been filed bringing on record two Circulars issued by the Education Department, Annexure-B dated 20.2.1990, wherein the minority institution and other madrasa etc. were also included in the category of such employees appointed by the Government on compassionate ground and Annexure- A was circular vide letter No. 9/M4-110/97-2387 dated 3.9.1997, whereby it was provided that all those teachers appointed on compassionate ground, are entitled to the grade of salary of Rs. 1200-2040/-. These documents are not disputed by the counsel for the State. However, he has tried to apprise and dispute the arguments of the learned counsel that she was appointed without any approval, but he has also admitted that the appointment was granted on compassionate ground, which was issued by the department and there is no challenge till date to her appointment and she has continuously been working on the post since the date of her appointment without any complaint.

7. In view of all these assertions by the learned counsel on behalf of the petitioner and there being no other document or contention to support the recovery of alleged excess amount to the petitioner on behalf of the State Counsel, I am of the considered view that the recovery was illegal and without any reason. It is based only on account of misreading of certain Circulars and documents and, therefore, cannot be allowed to stand.

8. In view of what has been stated above, the writ petition is allowed. The order for recovery of the amount from the petitioner as excess payment is hereby quashed- The amount recovered shall be disbursed to the petitioner forthwith. Besides, her salary is liable to be fixed in the pay-scale of Rs. 1200-2040/- and the same is also liable to be calculated and be disbursed to the petitioner, within a period of three months from the date, a certified copy of this order produced before the concerned authority