

(2003) 07 JH CK 0023

In the Jharkhand High Court

Case No : Cont. Case (C) No's. 413, 636, 664 and 818 of 2002

Nawwangi Bhut Mahavidhyalaya Shikshak Sangh, Dip
Narayan Jayaswal, Hans Kumar and Amaresh Kumar

APPELLANT

Vs

N.N. Pandey, Commissioner-cum-Secretary, Higher
Education, Human Resources Deptt. and Others

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Citation : (2003) 4 JCR 69

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Chandrashekhar and Rana Randhir Singh, 636/02, Rajiv Ranjan and Abhay Kumar Mishra, 413 and 818/02, for the Appellant; Ritu Kumar, for opposite party Nos. 1 and 2, Anoop Kumar Mehta, for opposite party Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—All these contempt cases arise out of one or other order passed by this Court relating to payment of salary to teaching and non-teaching employees of 4th phase taken over colleges.

2. At the outset, it may be mentioned that almost similar question is pending consideration before the Supreme Court in the case of State of Bihar and Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh, wherein certain interim order passed by the Supreme Court while referred the matter to Hon'ble Mr. Justice S.C. Agarwal (Retired Supreme Court Judge) to enquire into the legality and propriety of appointment of one or other teaching and non-teaching employees, reported in 2002 (1) PLJR 85 (SC) .

3. In one of the cases, namely, Shiv Kumar Prasad and Others etc. Vs. State of Jharkhand and Others etc., wherein the question relating to payment of salary was raised. The Court in the said case observed that there are two issues required to be determined before giving any finding whether one or other

employee is entitled for salary or not, as per interim order of the Supreme Court in Civil Appeal No. 6098 of 1997 (Refer 2002 (1) PLJR 85 SC) namely :

(a) Whether the appointments of petitioners are legal and were made after following the procedure for appointment as laid down under the Bihar Universities Act, 1976 or not; and

(b) Whether the petitioners were actually appointed prior to the date the colleges were made constituent for grant of relief as per interim order of the Supreme Court aforesaid or not.

4. The Court held that the first issue relating to legality and propriety of appointment of teaching and non-teaching employees of 4th Phase Colleges cannot be looked into as the matter is pending before the Hon'ble Mr. Justice S.C. Agrawal Commission having referred by the Supreme Court.

5. With regard to the second issue, the Secretary, Higher Education, Government of Jharkhand was directed to complete the identification of teaching and non-teaching employees of 4th Phase Colleges for screening by the Hon'ble Mr. Justice S.C. Agrawal Commission and forward the list of such teaching and non-teaching employees to the Commission, as also to the Universities within the State of Jharkhand. The State Government was directed to release grant for payment of salary in favour of such teaching and non-teaching employees of the 4th Phase colleges who are found to be working since prior to the date of take over of the Colleges.

6. In the present cases, the stand taken by the State of Jharkhand is that they are taking decision to release salary with regard to teaching and non-teaching employees found to be working prior to the date of take over of the Colleges. This Court also accepts that the interim order passed in the case of State of Bihar and Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh, reported in 2002 (1) PLJR 85 (SC) the teaching and non-teaching employees found to be working prior to the date of take over of the Colleges are entitled to get salary, irrespective of the fact that whether they are working against the sanctioned posts or recommended posts or unsanctioned posts. It is only those who were not found to be working prior to date of take over of the Colleges and their names are not in the list as working, according to the list of the States are not entitled to claim salary for the present.

7. Counsel for the petitioners submitted that this Court in one or other case directed the Universities to enquire which teaching and non-teaching employees of 4th Phase Colleges are working since prior to the date of take over. Further, according to them, as per law, it is the University which can enquire whether one or other employee is working since prior to the date of take over or not. If the name of one or other employee has been reflected in the list prepared by the University to be working since prior to the date of take over and forwarded to the Hon'ble Mr. Justice. S.C. Agrawal Commission, even if the name of one or other such employee is not shown to be working in the list submitted by the State of

Jharkhand, the list prepared by the University should be accepted for payment of salary.

8. Having heard the counsel for the parties, I find that these are not the cases in which it can be alleged that there is a deliberate, willful disobedience of the Court's orders. According to this Court, there is a genuine dispute whether one or other employee is working since prior to the date of take over or not.

9. In these circumstances, this Court is not inclined to initiate proceeding for contempt against any of the opposite parties.

10. However, taking into consideration the fact that many of the teaching and non-teaching employees have been accepted by the State to be working since prior to the date of take over of the Colleges, the State Government is directed to release fund in favour of such employees/ petitioners, if any, for payment of salary as per interim order of the Supreme Court, irrespective of the fact whether they are working against the sanctioned posts or the posts for which recommendations have been made or against unsanctioned posts.

11. So far as teaching and non-teaching employees in respect to which there is a dispute raised by the State, but their names have been shown in the list submitted by the Universities and forwarded to the Hon''ble Mr. Justice S.C. Agrawal Commission, they can claim benefit of the interim order, if the Hon''ble Mr. Justice S.C. Agrawal Commission accepts one or other such employee is working since prior to the date of take over.

12. The Court appreciates the assistance given by Mr. Amit Khare, Secretary, Higher Education, Government of Jharkhand.

13. All the contempt applications stand disposed of. Petition disposed off.