
(2001) 06 JH CK 0008
In the Jharkhand High Court
Case No : CWJC No. 3605 of 1999

Nimmi Minz

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-06-2001

Acts Referred:

Citation : (2001) 06 JH CK 0008

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

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Mahesh Kumar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner, a teacher of primary school, has preferred this application for direction on the respondents to pay salary, as stated to be due since 1997. The respondents on appearance filed counter-affidavit and took plea that the petitioner superannuated on 30th December, 1996. In this respect, they also enclosed a copy of order issued by DSE, Lohardagga, communicated, vide Memo No. 565, dated 26th April, 2000. The said order has been challenged by petitioner by filing a petition for amendment of prayer,

2. From the pleading made by the petitioner and enclosures attached thereto, it will be evident that the date of birth of petitioner was recorded in the Service Book (Annexure 4), as 30th December, 1936. It appears to have been opened on or before January 1992. It is on the basis of such date of birth i.e. 30th December, 1936, the respondents treated the petitioner to have retired from service on 30th December, 1996, having attained the age of 60 years and not-paid salary for the period from April 1997.

3. The counsel for the petitioner submitted that the petitioner applied for correction of date of birth which was entertained and corrected in the Service Book as 30th December, 1939. In this connection, he also placed reliance on Office order issued, as contained in Memo No. 88, dated 4th February, 1998 issued by DSE, Lohardagga, whereby and whereunder, it was ordered to treat the

date of birth of petitioner as 30th December, 1939. It was also pointed out that the authorities also directed to pay salary after necessary correction in the date of birth, but since April 1997, it was not paid.

4. Under the Rules framed by the State, a person stands compulsorily retired from the service/stands superannuated on attaining the age of superannuation (60 years in the case of a teacher). Once a person superannuated from service, cannot apply for correction of date of birth, he/she being no, more in service.

5. Admittedly, the petitioner has never raised any objection relating to date of birth till she remain in service and stood superannuated on 30th December, 1996. After her superannuation, the respondents could not have entertained any application for change of date of birth, as was entertained and corrected in March 1998 in pursuance of order communicated, vide Memo No. 88, date 4th February 1998. Such order being without jurisdiction, the petitioner cannot derive any advantage. She having superannuated, under the law w.e.f. 30th December, 1996, if worked beyond the period of superannuation and/or by virtue of some order passed more than one year after superannuation (4th February, 1998), she cannot claim any advantage out of the same from the State. If, the concerned DSE. misdirected the petitioner, the petitioner may claim damage against such individual.

6. There being no merit, the prayer is rejected.

However, this order will not stand in the way of the respondents to release the retiral benefits to which the petitioner is entitled treating her date of retirement as 30th December, 1996. If all such benefits have not been paid. It should be paid immediately, but not later than a period of three months. On failure, the petitioner will be entitled to interest @ 8% to be calculated from the date the writ petition was filed (6th December, 1999).

7. It is also made clear that the respondents cannot recover any amount from the retiral benefits of petitioner on the ground that the petitioner worked beyond the period of superannuation. However, while counting the benefits w.e.f. 1.1.1997, they may adjust the amount that might have been paid between January to March, 1997.

8. The writ petition stands disposed of.

9. Writ disposed of.