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**(2001) 11 JH CK 0023**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 3267 of 2000 (R)**

Ram Chandra Kunwar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 26-11-2001

**Acts Referred:**

**Citation :** (2001) 11 JH CK 0023

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

**Bench :** Single Bench

**Advocate :** S.N. Das and P. Chatterjee, for the Appellant; M.M. Banerjee, AG and Deepak Kumar, JC to AG, for the Respondent

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## Judgement

The Court

1. The petitioners, who are teaching employees of Middle School. Notified Area Committee. Sindri, have preferred this application for a direction on the respondents to pay them the salary due since October. 1998 till date with a further prayer to provide them the benefit of revision of pay in terms with the recommendation of the 5th Pay Revision Committee, as also time bound promotions to which one or other petitioner is entitled.

2. According to the petitioners, the Middle School, Sindri was-opened and run by the Notified Area Committee. Sindri. Petitioner No. 1 is working in the said school since 12th February, 1962 and at present is holding the post of Headmaster. Petitioners Nos. 2. 3. 4 and 5 are the Assistant Teachers, working since 5th July, 1963. 30th March, 1967. 18th May. 1963 and 25th April. 1972 respectively. They were paid their salary regularly up to September. 1998 but since October, 1998 no salary has been paid in their favour by the respondents nor the revision of pay has been made applicable to them as per the recommendation of the 5th Pay Revision Committee/ Fitment Committee.

3. The case of the petitioners is that the Fertilizer Corporation of India earlier preferred a writ petition before this Court against the levy of educational cess.

The matter went up to the Supreme Court in Civil Appeal No. 10779 of 1996 with Civil Appeal No. 10784 of 1996 and is pending. The Supreme Court. passed interim order on 21st of March, 1997 as follows :

"The order dated 21.3.1997 is modified to the limited extent that the Executive Officer. Notified Area Committee, Sindri may be permitted to withdraw the amount, but the condition originally laid down by this Court that it will be utilised for the purpose of payment of salary to the teachers shall remain."

4. It is stated that in pursuance of the order aforesaid, a sum of Rs. 20 plus 10 lakhs, total 30 lakhs, was withdrawn by the respondents but the salary to which the petitioners were entitled have not been paid by the Notified Area Committee. Sindri.

5. The Notified Area Committee. Sindri and its authorities have taken plea that the salary of the petitioners have been paid out of fund of the Committee. 70% of which are borne by the State Government from its Urban Development Department in the shape of 30% as grant and 40% as loan. The rest 30% of the establishment charge/cost are arranged from own local resources of the Notified Area Committee. Because of non-release of the grant by the State the Notified Area Committee is facing severe constrains. The Civil Appeals, as preferred above, are pending Before the Supreme Court against the order dated 27th March, 1996, passed by this Court in CWJC No. 3055 of 1992 (R) and CWJC No. 893 of 1994 (R) which involves payment of more one crore rupees to the Notified Area Committee by the Fertilizer Corporation of India and PDIL Sindri. An amount of Rs. 40 lakhs is due against the BIT, Sindri run by the Slate, besides which a sum of Rs. 7 to 8 lakhs is due against individual taxes of the State. The amount as was released by the order of the Supreme Court, is stated to have already been exhausted, though nothing details have been shown relating to payments made out of the fund, which was released for payment of salary to the teachers.

6. The SDO-cum-Chairman of the Notified Area Committee. Sindri was asked to appear before the Court on 22nd March, 2001 on which date the following orders were passed.

"Heard in part.

In pursuance of Court's order, SDO-cum-Chairman, Notified Area Committee. Sindri appeared before this Court and accepted that Rs. 30 lakhs was meant for payment of salary of teachers of the schools and was to be paid to them in terms with Supreme Court's order. He states that the earlier Executive Officer. Notified Area Committee. Sindri for one or other reason only released salary in favour of teachers for the period upto October, 1998 amounting to Rs. 14,47,279/- but he diverted the rest of the amount of Rs. 14-1/2 lakhs for payment of salary to other employees. He accepts that it was diverted in violation of the direction of the Supreme Court. The SDO-cum-Chair-man. Notified Area Committee states that the Committee entitled to receive grant from the State and about one crore

is due. The committee is expected to receive certain grant by 31st March, 2001 and will take step for payment of upto-date salary out of such grant, if released by the State.

Counsel for the State is directed to obtain instruction as to why this Court will not direct the State to release appropriate grant in favour of Notified Area Committee, Sindri so that the order passed by the Supreme Court is complied in its letter and spirit. If budget was passed for the year 2000-2001 and the Notified Area Committee, Sindri was entitled to receive the grant for more than Rs. 15 lakhs, the State will release such amount immediately, so that the Committee may comply the Supreme Court's direction.

Place this case for further hearing under the heading "for orders" on 18th April, 2001 by which the respondents should file additional affidavit giving details of step taken as may have taken in the meantime.

Let a copy of this order be handed over to learned GPI and Mr. Joy Prakash counsel for the Notified Area Committee,"

7. Subsequently the Secretary, Urban Development Department, Government of Jharkhand, also appeared and place the facts relating to grant and release of loan as approved in the budget. On 30th April, 2001, from the budget, he pointed out that the State Government sanctions grant/hand-loan only for payment, of salary to the non-teaching employees of the school and submitted that the Notified Area Committee is liable to pay salary to the teaching employees.

8. On 28th June, 2001 the Court took into consideration the fact that the School was established prior to 1962 by the Notified Area Committee and it was brought to the notice of the Court that in pursuance of the provisions made u/s 3 read with Section 2(a)(1) of the Bihar Non Government Elementary Schools (Taking over of Control) Act, 1976 (Bihar Act 13 of 1976) the school can be treated to have been taken over by the State Government with effect from 1st January, 1971. The parties were allowed to advance arguments on the issue.

9. Mr. M.M. Banerjee, learned Advocate General, also assisted the Court on behalf of the State. Prima facie two views were taken by two departments of the State and an idea was given by the Secretary, Urban Development Department, that the school can be termed to have been taken over by the State but such stand was refuted by the Education Department, Government of Jharkhand.

10. Now admittedly the grant or loan, if any, is to be granted to the Notified Area Committee by the State of Jharkhand. The only question arises as to whether the school deemed to have been taken over by the State since 1st January, 1971 as per Section 3 of the Bihar Non Government Elementary Schools (Taking over of Control) Act, 1976 or not. If it is held that it stood taken over by the State, it will be liability of the State to release salary of the teachers but not as a grant or loan to the Notified Area Committee for payment of salary of the employees of

the school.

11. u/s 2(a) the definition of the Primary School is stipulated, which includes the schools established by the District Board under the Bihar & Orissa Local Administration Act, 1885 (Bengal Act 3 of 1885), the schools, established and run by Municipal Board under Bihar & Orissa Municipality Act, 1922 and the schools, established and run by the Patna Municipal Corporation, constituted under Patna Municipal Corporation Act. 1951.

Under Section 3(1), a Non-Government Primary School run by the District Board, Municipal Board or Patna Municipal Corporation, step taken over with effect from 1st January. 1971 by the State Government.

12. In view of the aforesaid provision, if it is held that the school was established and run by the Municipal Board and if it includes Notified Area Committee, then there is no occasion for the State to deny the status of taken over school for the purposes of the release and payment of salary to its teachers.

13. The case is, accordingly, remitted to the State of Jharkhand. The Secretary. Education Department, in consultation with the Secretary, Urban development Department, Jharkhand, will bring the matter to the notice of the Chief Secretary. Government of Jharkhand, who, in his turn, will determine the status of the school as to whether it stood taken over since 1st January, 1971 or not.

14. It is needless to say that if the Municipal Board includes the Notified Area Committee the school having been established prior to 1976 and run by the Notified Area Committee, the respondent State can not deny the status to which it is entitled u/s 3 of the Act nor can shirk its responsibility from release and payment of salary.

15. A decision on the issue be taken and communicated to the Headmaster of the School within three months from the date of receipt/production of a copy of this order. If the school is treated to have been taken over by the State Government with effect from 1st January, 1971, in pursuance of Section 3 01" the Taking over of Control Act. 1976, the State of Jharkhand will release appropriate fund for payment of salary to the teachers within six weeks from the date of such decision.

16. If any contrary decision is taken, the petitioners may assail the grounds before a competent authority/court of law or may move before the Supreme Court, if order passed in Civil Appeal No. 10779 of 1996 with Civil Appeal No. 10784 of 1996 is stated to have been violated.

17. The writ petition stands disposed of with the aforesaid observations and directions.

18. Writ petition disposed of.