

(2014) 11 JH CK 0016
In the Jharkhand High Court
Case No : W.P. (S) No. 7538 of 2011

Ranjit Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 JH CK 0016

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rahul Kumar and Manoj Kumar, Advocate for the Appellant

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. These two petitioners have retired as Assistant Teachers from St. Joseph's School, Guhijori, Dumka, a Government Recognized Aided Minority School, on 31.02.2002 and 28.02.2002 respectively. The only grievance of the petitioners is that their claim for leave encashment amount earned during the period of their service, has been rejected by the impugned order dated 18.02.2009 (Annexure-10) passed by the District Education Officer, Dumka pursuant to the representations made by these petitioners on the basis of the observations and directions passed in their earlier writ petition being WPS No. 1796/2003.

3. According to the learned counsel for the petitioners, grounds of rejection is based upon the Circular issued by the Human Resources Development Department vide Circular No. 237 dated 20.02.1990, as per which, teachers of Government Recognized Aided Primary/Middle/Secondary Schools would be entitled to the facilities which are available to the teaching and non-teaching staff of the Government schools, but there is no provision for grant of earned leave encashment amount to the teachers of Aided Minority School either in the predecessor State of Bihar or successor State of Jharkhand. Reliance has also been placed upon the resolution No. 1970 dated 12.09.2006 issued by the Human Resources Development Department, Government of Jharkhand

(Annexure-A to the counter affidavit) of the respondent as well. However, counsel for the petitioners submits that the very issue has now been squarely decided by the judgment rendered by the Learned Division Bench of this Court in the case of Mariyam Tirkey Vs. The State of Jharkhand and Others, vide judgment dated 03.01.2014. It is submitted that therefore, the impugned order cannot be sustained in the eye of law and the respondents should be directed to make payment of the admissible leave encashment amount due to them.

4. Respondents have contested the prayer and defended the impugned order, relying upon the resolution of the successor State of Jharkhand dated 12.09.2006, as per which, teachers of Aided Minority Schools could not be entitled to the benefits of earned leave encashment amount, though they would be entitled to pension, gratuity and provident fund amount, as per resolution of the State of Bihar bearing Memo No. 777 dated 31.03.1981 and Circular No. 1775 dated 30.08.1980. Therefore, the claim of the petitioners have been rejected by the respondent District Education Officer, Dumka.

5. Having heard learned counsel for the parties and having gone through the relevant materials on record including the judgment rendered by the learned Division Bench of this Court in the case of Mariyam Tirkey (Supra), it is clear that the admissibility of leave encashment amount to the teachers working in Non-Government Aided Minority School is no-longer res-integra. Learned Division Bench of this Court, by the judgment dated 03.01.2014, considered the relevant circular dated 20.02.1990 which is also referred to in the impugned order dated 18.02.2009 (Annexure-10) and upon consideration of the judgments rendered by the Hon'ble Supreme Court, came to a definite finding that the petitioners therein were teachers in a Aided Minority School, were entitled to the leave encashment amount. Reference made by the learned Single Bench was answered accordingly. Opinion of the learned Division Bench contained in Paragraphs-10 to 13 and 20 are being quoted here-under:

"10. The Petitioners claim leave encashment on the basis of the above resolution No. 237 dated 20th February, 1990 (Annexure-3). According to the Petitioners, since pay parity is given to teaching and non-teaching staffs of Non-Government Aided Minority Primary/Middle/Secondary Schools and all facilities are being extended to them at par with the teaching and non-teaching staffs of Government Schools, therefore Para-9 of Resolution No. 68 dated 29.06.1983 is superseded.

11. In Resolution No. 237 dated 20th February, 1990, the teaching/non-teaching staffs working in Non-Government Recognized Minority Primary/Middle/Secondary Schools are entitled to House Rent Allowance, Urban Compensatory Allowance and such other allowances. By virtue of Resolution No. 68 dated 29.06.1983 (Annexure-2 to W.P.(S) No. 512 of 2013) the teachers working in Non-Government Aided Minority Primary/Middle Schools shall be entitled to General Provident Fund, Pension (including Family Pension) and Gratuity like Government employees. In terms of Resolution No. 237 dated 20th February,

1990 the teaching/non-teaching staffs working in Non-Government Aided Minority Primary/Middle Schools are given pay parity including Dearness Allowance, Medical Allowance, House Rent Allowance, Urban Compensatory Allowance etc. We are of the view that when the pay parity including all allowances are given to teaching/non-teaching staff, they cannot be denied the benefit of leave encashment.

12. In W.P.(S) No. 522 of 2002, the learned Single Judge proceeded under the footing that Resolution No. 237 dated 20th February, 1990 is related only to in service benefits but did not include retirement benefits. On that footing, the learned Single Judge held that the order or decision as circulated vide letter No. 23/B-1 42/82-Si dated 23rd June, 1983 has not been superseded and therefore the teaching/non-teaching staffs employed in Non-Government Aided Minority Primary/Middle Schools cannot seek for leave encashment.

13. The benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit. The learned Single Judge was not right in saying that leave encashment is a retiral benefit.

20. Applying the ratio of Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, case and also State of Rajasthan and another's [(2005) 10 SCC 346] case, it is held that the Petitioners are entitled to leave encashment. It is held that the view taken by the learned Single Judge in W.P.(S) No. 522 of 2002 vide order dated 13.12.2002 is no longer a good law and the order in C.W.J.C No. 2162 of 1999 (R) is a correct view made by the learned Single Judge. The Reference is answered accordingly. Respondents are directed to pay the leave encashment amount as per the entitlement of the Petitioners within a period of three months from the date of production of a copy of this order."

6. In view of the clear exposition of law, as aforesaid, grounds for rejecting the claim of leave encashment amount cannot be sustained in the eye of law. Accordingly, the impugned order dated 18.02.2009 (Annexure-10) is quashed. Respondents are directed to release the admissible leave encashment amount due to the petitioners who have retired from the post of Assistant Teachers in a Government Recognized Aided Minority School i.e. St. Joseph's High School, Guhijori, Dumka, within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition stands allowed in the manner as aforesaid.