
(2002) 04 JH CK 0095

In the Jharkhand High Court

Case No : CWJC No. 11462 of 2000 (Patna)

Sachindra Nath Mandal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0095

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

Bench : Single Bench

Advocate : A.K. Mehta, for the Appellant; A. Allam, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by petitioners for direction on the respondents to pay them salary taking into consideration the annual increments earlier granted and L.P.C. as contained in Annexure 12 series and to quash the order dated 18.10.2000 issued by Deputy Commissioner, Pakur whereby he was ordered that the petitioners shall get their initial salary of the scale of pay without any increment thereon.

2. The case of petitioner is that they were appointed as Asstt. Teachers in the year 1982-83 but it was subsequently cancelled. The petitioners and other similarly situated teachers challenged the termination order in the Hon'ble Patna High Court in C.W.J.C. Nos. 99/1985 and 405/1985 etc. In pursuance of interim order passed by the Hon'ble Patna High Court on 21.1.1985, 5.2.1985 and other dates, the termination orders were not given effect and petitioners continued to function as Asstt. Teachers without any break. Some of the petitioners, who were untrained, were also sent for training by the State at their cost between 12.5.1991 and 5.2.1994.

3. In the meantime, the Division Bench of the High Court disposed of the writ petitions on 11.8.1989 directing the State to proceed with the process of selection of teachers afresh from amongst the teachers already appointed, if they are found to be qualified. The order of the Division Bench was challenged before

the Supreme Court in different SLPs. In SLP (Civil) No. 1005/90, the Supreme Court while disposed of the case on 30.11.1992, made the following observations and directions :--

"We, therefore, direct once again that if there are vacancies and if there are no trained teachers available, the untrained teachers who were employed prior to the new rule came into operation, would be reinstated in service, if after subjecting them to the selection process they are found suitable. If there are no vacancies, they would be empanelled according to their seniority and would be appointed according to their seniority in the vacancies arising in future. Unless this panel is exhausted, no new appointments of untrained teachers will be made from outside. It is understood that those eligible for being so appointed will be the ones who were appointed before the new rule came into operation.

While making the appointments of those who were so in service prior to the date of appointment, the State Government will relax the age limit, if necessary.

We are informed that the appellants involved in the present case were paid salaries till 30th June, 1991. We also understand from Mr. B.B. Singh, learned Advocate appearing for the State that all the vacancies have been filled in till 1.1.1992. If there were vacancies and yet the appellants were not appointed in the said vacancies such of the appellants who were eligible to be appointed and yet were not appointed in spite of the vacancies, would be entitled to the salaries from 1st July, 1992 till their appointment. However, if there were no vacancies and all the appellants or some of them have to be appointed in the new vacancies which may be available hereafter, they will not be entitled to the salaries from 1st July, 1992 till the date of their appointment. However, when they are appointed the period of break in service not exceeding one year will be taken into consideration for benefits other than salary."

4. According to petitioners, after the decision of the Supreme Court, they have been selected afresh and provided with appointment order vide Memo No. 440 dated 4.4.2000. It is stated that while there was no Education Officer for the district of Pakur and work used to be performed by the District Superintendent of Education, Sahibganj, the similar situated persons were appointed vide Memo No. 9619 dated 26.12.1995, Memo No. 987 dated 11.1.1997 and Memo No. 5938-6000 dated 15.7.1997. In their case, the terms and conditions were reflected in the order of reappointment as per the order of the Supreme Court and their pay was fixed on the basis of last pay certificate. In the cases of petitioners, while order of reinstatement was issued on 4.4.2000, at Clause 8, the terms of pay fixation was shown as per the order of the Supreme Court but in spite of the same, the pay of the petitioners has not been fixed taking into consideration the last pay certificate.

5. In spite of time granted, no counter-affidavit has been filed on behalf of the respondent. The facts as pleaded have not been disputed.

6. From the order of the Hon"ble Supreme Court in SLP (C) No. 1005/90, as

quoted above, it is evident that the teachers when reappointed and in a case, the period of break in service is not exceeding one year. In their cases, the earlier period to be taken into consideration for benefits other than the salary. If the averment of petitioner is accepted that they continued to work as Asstt. Teacher without any break, till the reappointment order was issued on 4.4.2000 then there appears to be no ground to refuse for fixation of salary on the basis of last pay certificate as per clause 8 of the order of reappointment dated 4.4.2000.

7. As it appears that the aforesaid fact has not been taken into consideration by the Deputy Commissioner, Pakur while issued order dated 18.10.2000. The said order is set aside so far it relates to petitioner. The case is remitted to the Deputy Commissioner, Pakur and D.S.E., Pakur for determination of pay fixation of petitioners. If there is no break in service of one or other petitioner, in that case, the authority will give benefit to such petitioner as per direction of the Supreme Court, in the matter of pay fixation taking into account the last pay certificate of such petitioner.

8. The decision in this respect be taken and communicated to the petitioners within a period of two months from the date of receipt/production of a copy of this order.

9. So far as time bound promotion is concerned, no decision is given in the present case for which the petitioners may move separately.

The writ petition stands disposed of.