
(2004) 08 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4604 of 2001

Satya Prakash Mishra

APPELLANT

Vs

The Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Citation : (2004) 4 JCR 272

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Ananda Sen, for the Respondent Nos. 1 to 4 and B.S. Lall, Addl. A.G. for the Respondent No. 5 to 9, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—Heard Mr. Saurav Arun, learned counsel for the petitioner; Mr. B.S. Lall, learned Additional Advocate General for the State-respondents and Mr. Ananda Sen for the respondent Nos. 1 to 4 and with their consent this writ petition is being disposed-off at this stage.

2. The petitioner, in the instant case, makes a prayer that the respondent Nos. 1 to 4 should be directed to make payment of a scale of salary based on the principals of equal pay for equal work because he has been working right from 29.1.1988 till date without any break as a Teacher in the Rajkiya Madhya Vidyalaya, Phusri on a consolidated salary of Rs. 500/- per month which was given to him as per his letter of appointment issued on 29.1.1988 as contained in Annexure 3. The claim of the petitioner in relation to a scale of salary is directed against the respondent Nos. 1 to 4 because according to him notwithstanding the fact that the petitioner has been allowed to continue right from 1988 in that School and although the School itself was taken over by the Government way back in the year 1960 as has been admitted by the State- respondents in their supplementary counter affidavit, he is still being treated by the Government as an employee of the respondent Nos. 1 to 4 and it is not that count that he has

been deprived of a regular pay scale.

3. As a consequence of the aforementioned grievances of the writ petitioner, it has further been prayed that an appropriate direction be given to the State-respondents to take him/absorb him in their service under their administrative control which should have been a natural consequence of the act of taking over of the School.

4. The learned Additional Advocate General submits, with reference to the supplementary counter affidavit filed in the instant case on 25.3.2004, that the School was established prior to 1960, but was later on taken over by the State Government under the provisions of the Bihar Non-Government Elementary School (Taking Over of Control and Management) Act, 1976 with effect from 1.1.1971, He further submits that this School was upgraded from the status of a primary school to the status of a middle school in the year 1992 and that at present there are four units sanctioned for teachers and all of them are presently filled and there is no scope for absorption of the petitioner.

5. Apart from noticing the aforementioned fact as submitted by the learned Additional Advocate General, it is also necessary to take into consideration their submissions made in paragraph 7(b) thereof wherein it has been stated that the petitioner was not appointed by the competent authority, namely, by the District Superintendent of Education, Hazaribagh. It has further been stated that in the year 1988 when the petitioner was appointed vide Annexures 1 and 3, the Secretary, Welfare Committee, Tapin South Project was not competent to organize interviews for filling up the post of teacher in an already nationalized school which had been nationalized prior to the induction of the petitioner.

6. Mr. Ananda Sen, learned counsel appearing for the respondent Nos. 1 to 4 has submitted with reference to their counter affidavit that the School in question was functioning as a Middle School where the Welfare Committee of the Tapin Sough Colliery of M/s. Central Coalfields Limited had added two teachers and that the remunerations of these teachers had been made by a resolution of the Welfare Committee out of change funds, i.e. Colliery Welfare funds. It has further been stated that the petitioner had been inducted in the said School on the request of the employees of Tapin South Colliery since 1988 by the State Welfare Committee and that remunerations were being paid on the recommendations of the Welfare Committee from the existing Colliery Welfare Funds which is restricted to the extent of availability of change funds per month. However, in paragraph 8, the respondent Nos. 1 to 4 have stated that the petitioner has been inducted in the School which is run under the administrative control of the State Government, but the question of payment of salary at the rate which the skilled workmen are getting in the Company does not arise. They have further stated that the Welfare Committee is an independent body which pays remunerations from their own funds as a social responsibility.

7. From the pleadings made in the instant case, it is therefore, evident that the

petitioner was actually appointed by the Welfare Committee of the Colliery in question. He may have been allowed to continue to work but such continuance, by itself, cannot work as an estoppel against the State Government from saying that it has no obligation to absorb him in service he having never been appointed by the State Government. It is thus apparent that this writ petition, insofar as it seeks for a direction upon the State Government is concerned, is not maintainable as the State Government cannot be held responsible nor can they be called upon to absorb the services of the petitioner and treat him as a State Government employee. Such a prayer is therefore, rejected. The stand of the respondent Nos. 1 to 4, on the other hand, is that the petitioner, in fact, was appointed by the Welfare Committee of the Tapin South Colliery of M/s. Central Coalfields Limited and that he was being paid remunerations from out of the funds of the said Welfare Committee. It has also further been stated that the Welfare Committee is a totally independent body and that the Chairman-cum-Managing Director or the General Manager (Welfare) is not at all concerned in this case. To that extent therefore, it appears that even the respondent Nos. 1 to 4 have taken a stand disowning the petitioner totally. They have also taken a stand to the effect that the dominant object of the Central Coalfields Limited is to produce coal and not to foster education.

8. Therefore, the fact remains that the petitioner was, in fact, appointed by the Welfare Department of the Colliery concerned, which as has been stated by the respondent Nos. 1 to 4, is a totally autonomous wing which is run in different collieries for the interest and social welfare of the people working in those collieries.

9. Taking into consideration the aforementioned facts, both submitted and pleaded, it is thus evident that the petitioner has no right even to go to the respondent Nos. 1 to 4 and claim that he should be given a regular pay scale because there is no document on record showing that he was ever appointed by the Central Coalfields Limited in the manner appointments are made. However, the fact remains that the petitioner has been working in a Government School right from 1988 and he is continuing to do so even till today as has been stated by the petitioner in paragraph 3 of the supplementary affidavit. The petitioner has stated that he is still teaching in the Government Middle School, Phusri at Hazaribagh and that: he has not been paid his salary for the last so many years and whatever he had been receiving, has now been stopped because he has moved this Court by filing this writ petition.

10. Thus, it is evident that the petitioner has been working in a Government School from 1988 and has been allowed to work as a Teacher without any break even till date. But even then, taking into consideration the facts pleaded the petitioner cannot be said to have an existing right to claim either for absorption as against the State Government or payment of salary at par with Central Coalfields Limited employees as against the Colliery.

11. For the foregoing reasons, this Court feels that there is no merit in the Writ

Application. It is accordingly dismissed.

12. There shall however be no order as to costs.

13. It is made clear that the observations made herein would not in any manner be construed to be an obstruction for any of the respondents to consider any future application that the petitioner may file and if they do have and scheme for rehabilitation of persons like the petitioner, then they will look into the same and do the needful in accordance with law. This Court makes it clear that this Court has only taken into consideration the fact that the petitioner is still continuing right from 1988.

14. After the aforementioned order was dictated, the learned counsel for the petitioner states that the petitioner is not being paid anything since October 2000 although the respondents are continuing to take work from him. It goes without saying that the concerned respondents will immediately attended to this and release all the amounts to the petitioner to which he is entitled for the period he has actually rendered his services as per the terms agreed upon by the respondents" vide Annexure 3, i.e. a sum of Rs. 500/- per month.