
(2013) 01 JH CK 0023
In the Jharkhand High Court
Case No : WP (S) No. 6337 of 2005

Sheo Kumar Madhur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 4 JLJR 492

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner is aggrieved by the part of the order dated 19.3.2005 Annexure-6 para-5(Kh) whereby the respondent-the Director, Primary Education, Jharkhand, Ranchi, has denied the arrear of salary for a period from 4.9.2004 to 9.2.2005 while asking him to obtain sanction of earned leave or commuted leave for the said period.

2. The brief history of the case as per the petitioner is narrated hereinbelow:

3. The petitioner was a science teacher appointed in Government Middle School, Gaitoli in the district of Gumla and later on promoted to the post of Headmaster. Thereafter, he was posted in Government Harijan Middle School, Gumla on 7.1.2000. Vide office order dated 30.6.2004, the petitioner was transferred to Government Middle School, Ghaghra and by the same order Shankar Nath Singh was transferred to Government Girls School, Raidih from the same school. The petitioner submitted his joining on 9.7.2004 at his transferred place at Government Middle School Ghaghra after being relieved on 8.7.2004, but the said Shankar Nath Singh refused to hand over charge to him and vide office order dated 30.7.2004, the order of transfer of Shankar Nath Singh was stayed. This petitioner, thereafter, preferred writ petition being W.P. (S) No. 4081 of 2004 in which an interim Order dated 30.8.2004 was passed in following terms, which

is quoted hereinbelow:--

If the petitioner has joined the post of Assistant Teacher in the Government Middle School, Ghaghra, in pursuance of Memo No. 811 dated 30 June, 2004 and if there is no separate order of transfer issued in respect to him then in such case the memo No. 999 dated 30th July, 2004 (Annexure-4) shall remain stayed, so far as it relates to the petitioner and respondent No. 4.

4. In the meantime, it appears that on 19.8.2004, the petitioner had been transferred to Government Middle School, Hapamuni in the same District-Gumla (Annexure-2). Vide Annexure-3 dated 3.9.2004, the District Education Officer, Gumla passed an order relieving the petitioner to join at Government Middle School, Hapamuni. By the interim order dated 20.12.2004 (Annexure-4), respondents were directed to pay admitted salary to the petitioner as he complained that he was not being paid his salary. The said writ petition was disposed of on 2.2.2005 vide Annexure-5 by directing the Director Primary Education to inquire into the matter and pass necessary orders regarding transfer and posting of the petitioner and other teacher, who was respondent No. 4.

5. The facts, which have been narrated hereinabove, are also borne out from the said order contained at Annexure-5. From perusal of the order specially the second last paragraph, it appears that this Court had indicated that subject to the decision of the Director, petitioner will join at Hapamuni. From the aforesaid observation, it is gathered that this Court, while disposing of the said writ petition and in view of the aforesaid facts and circumstances on record, found that the petitioner had been continuing at his previous place of posting Ghaghra by virtue of the interim order passed on 30.8.2004 although he was transferred in between Ghaghra to Hapamuni; that is why this Court observed that the petitioner will join at Hapamuni subject to the decision of Director. The respondent-Director by his reasoned order revoked the said order dated 30.8.2004 relating to stay of transfer of other teacher Shankar Nath Singh as also the order of transfer dated 19.8.2004 in respect of the petitioner by which he was transferred to Hapamuni. It is indicated by the petitioner but not refuted by the respondent that after passing of the order dated 2.2.2005 in the earlier writ petition, the petitioner submitted his joining on 10.2.2005 at Government Middle School, Hapamuni. However, the respondent-Director declined to release salary from 4.9.2004 to 9.2.2005 in respect of the petitioner as being not posted at any place and by refusing him to pay salary for the said period, the Director asked him to seek sanction of earned leave or commuted leave for the said period.

6. The respondents in their counter affidavit have justified the impugned order stating that there was no stay order of transfer dated 19.8.2004 by this Court as made out by the petitioner in view of the interim order dated 30.8.2004. Since the order of transfer of the petitioner had been, in the meantime, issued on 19.8.2004 itself, the stay order would not be treated to have taken effect; as

such there is no error in the reasoned order by which the Director has held that the petitioner was not posted at any place, pursuant to his relieving on 3.9.2004. The petitioner had not joined his transferred place of posting at Hapamuni till he submitted his joining on 10.2.2005 and would be treated as not posted at Ghaghra during the said period for the purposes of payment of the arrears of salary. However, from the perusal of the reasoned order para-1 itself, it appears that Director has taken note of the fact that the petitioner had submitted his joining on 9.7.2004 itself on Ghaghra but other teacher Shankar Nath Singh had refused to hand over charge to him and subsequently the order of transfer of the said Shankar Nath Singh was put in abeyance by the respondents themselves vide order dated 30.7.2004.

7. However, from the facts, which have been narrated hereinabove and conjoint reading of the interim order dated 30.8.2004 final order passed on 2.2.2005, it would appear that the petitioner, who had submitted his joining at Government Middle School, Ghaghra on 9.7.2004, was treated as serving at the said place by this Court as per the observation made in the final order dated 2.2.2005. It was indicated that subject to the decision of the Director, petitioner will join at Hapamuni and in fact, the petitioner joined at Hapamuni only on 10.2.2005 after passing of the said order after disposal of the earlier writ petition.

8. In the circumstances, the respondent-Director has misconstrued the import of the order passed by this Court in the earlier writ petition and treated him without place of posting relating to the period from 4.9.2004 to 9.2.2005 while denying the arrears of salary for the said period. This obviously suffers from errors of facts as well as construction of order passed by this Court, which has attained finality. In these circumstances, that part of the order cannot be sustained and the respondents are directed to make payment of salary of the petitioner for the said period, subject to verification of the fact that he has remained present at his place of posting at Government Middle School, Ghaghra, within a period of eight weeks from the date of receipt/production of a copy of this order. Accordingly, this writ petition is allowed in the aforesaid terms.