

**(2003) 06 JH CK 0068**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 6149 of 2002**

Smt. Aren Minz

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 13-06-2003

**Acts Referred:**

**Citation :** (2003) 3 JCR 226

**Hon'ble Judges :** Vikramaditya Prasad, J

**Bench :** Single Bench

**Advocate :** K.N. Pd. and D. Roshan, for the Appellant; GA, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Vikramaditya Prasad, J.—The petitioner is a National Award Winner Teacher and this award was communicated to him on 5th September, 1992, Annexure-1. Admittedly, the petitioner superannuated on 31st December, 2000. He applied for extension of his service before his superannuation, which was refused by Annexure-4. It is also admitted that the petitioner was not given any cash award.

2. The policy of the Government as contained in Annexure-2 was that the award winner would be given one year extension of service for a maximum period of three years after superannuation dependent upon the physical and mental conditions of the awardee. This circular was issued in the year 1993. It appears that this circular was modified by Annexure-9, whereby the benefit of extension of service after superannuation was done away with and instead of that a National Award Winner Teacher was to be given Rs. 20,000/- in cash. This notification (modified) came into effect with effect from 23.5.1996, Annexure-9.

3. Undisputedly, the petitioner got this award in the year 1992, much before the modification of the earlier circular. The question that requires to be answered is whether the petitioner will be dealt with under the old circular or under the modified circular.

4. The learned counsel appearing for the petitioner submits that since the petitioner received the award prior to the date of modification, the right to get extension of service accrued to him with effect from the date he received the award and, therefore, the modified rules cannot be applied to him, giving retrospective effect to this modification. According to him this modification will be applicable to those cases, in which the awardees were communicated of the award on 23.5.1996 or thereafter and since the right to get extension of service to this petitioner accrued prior to this date, the petitioner is bound to get that benefit. In this context, the learned counsel appearing for the petitioner also relied on a decision of a learned Single Judge of this Court as contained in Annexure-10. In that case, the petitioner had obtained the certificate of award on 5th December, 1996, and therefore, the learned Single Judge observed as follows :

"In the present case, the National Award for teachers is of the year 1995. The certificate has been issued on 5th September, 1996. It is for the said reason, as by the said date, the Government decision was modified, vide Resolution dated 23rd May, 1996, the respondents refused to grant relief to the petitioner."

In that case, the petitioner had already received the cash amount in terms of the modified notification. Therefore, the Court ultimately held as follows :

"In the aforesaid background, the cause of action having taken place after 23rd May, 1996, the respondents have rightly refused to grant extension and I find no illegality in such decision."

5. Thus, there are two classes of National Award Winner Teachers - first who got their awards communicated prior to the date of modification of the circular and the second who got the award communicated on or before that date. The awardees who got the award prior to the amended notification could not be dealt with under the modified rules for the simple reason that the modified rule did not exist at that time, when a claim to get service extension accrued to them under the then existing provisions.

6. The learned counsel appearing for the respondents has argued that the cause of action actually could arise on the date of superannuation. Even under the old provisions and if on the date of superannuation, there existed no, rule giving extension, then on the date of superannuation, no cause of action existed and then the claim under the old provision could not be exercised. The claim of extension, according to the learned counsel appearing for the respondents, means the claim, which can be exercised at the time of superannuation. Therefore, the modified circular will be applicable also to the petitioner. I do not find myself in agreement with the submission of the learned counsel appearing for the respondents for the simple reason that the right had already accrued to him under the old provision and only the exercise of it has been deferred to a particular date. i.e. the date of superannuation.

7. In the modified circular, there is no provision that the cash award will be paid

to such awardees at the time of their retirement or thereafter, meaning thereby that soon after the award is there as per the new circular, cash amount has to be paid. Thus, it essentially means that this right of getting the cash award cannot be deferred till the retirement, whereas for claiming the extension of service, the claim of right has to be deferred, till the date of retirement. In that view of the matter, the petitioner of this case, who got the award prior to the modified circular, could not have claimed that right. There is nothing in the modified rule to show that it is retrospective. Thus, the awardees, who got the award prior to that date, i.e. 23.5.1996, are to be dealt with according to the provisions contained in the old circular and the awardees getting the award after that date have to be governed by the modified circular. Therefore, the writ petition is allowed. The petitioner will be dealt with according to the provisions contained in the old circular and the impugned order contained in Annexure-11, whereby extension was denied, is quashed.