

(2012) 06 JH CK 0080
In the Jharkhand High Court
Case No : Writ Petition (S) No. 863 of 2010

Smt. Dharmshila Devi and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Citation : (2012) 4 JCR 342 : (2012) 3 JLJR 538

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : V.P. Singh, Ashok Sinha and Rashmi Kumar, for the Appellant;

Judgement

D.N. Patel

1. Counsel appearing for the petitioners submitted all the three petitioners were appointed as Assistant Teachers prior to 1986 making them entitled to the pay revision from 1986. The then State of Bihar took a decision, vide Resolution dated 18th December, 1989, of pay revision with effect from 1st January, 1986 and as per the terms of this resolution, two increments are allowed to the Assistant Teachers as per Rule 22 (C) of the Fundamental Rules. Counsel appearing for the petitioners has further submitted that in the year 1993 wisdom prevailed upon the then Government of Bihar and vide Resolution dated 20th February, 1993, it modified the earlier resolution dated 18th December, 1989 and decided to give only one increment as per Rule 2(1) (a) (2) of the Fundamental Rules instead of two which was given as per Rule 22 (C) of the Fundamental Rules. Meanwhile, the Teachers, who were allowed the benefit of two increments and against whom respondents have taken action earlier preferred a writ petition before the High Court of Judicature at Patna and the judgment of that writ petition was challenged in an L.P.A. which was also dismissed but inspite of all above the respondents are about to make recovery from the salary of the present petitioners.

2. Counsel for the petitioners submitted that the Hon'ble Supreme Court in Syed

Abdul Qadir and Others Vs. State of Bihar and Others, has been pleased to decide that Rule 22 (C), as per which two increments were given, has already been deleted vide notification dated 30th August, 1989 and therefore, it was a mistake on the part of the government to allow two increments vide Resolution dated 18th December, 1989 because as per-Rule 22 (I) (a) (2), which has substituted Rule 22 (C), only one increment should have been given. But considering the fact that there was no misrepresentation of fraud on the part of the employees, no recovery should be made of the amount paid in excess to them. Counsel for the petitioners further submitted that in the present case petitioners are Assistant Teachers, who had already got two increments and since there was no suppression of facts on the part of the present petitioners or any misrepresentation made by the present petitioners, no-recovery of the amount paid in excess can be made from their salary in the light of the aforesaid decision of the Hon''ble Supreme Court.

3. Counsel for the petitioner has heavily relied upon the decision of the Hon''ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, and submitted that now since the petitioners have already retired, there may not be any revision of their pay-scale and prayed for stay against the recovery of the excess amount paid to them.

4. Counsel for the State submitted that they have filed a detailed counter affidavit and submitted that as per the direction given by the Hon''ble Supreme Court in the aforesaid decision the State has the power to make revision in the pay scale as per Rule 22 (i)(a)(2) of the" Fundamental Rules and the excess salary paid to the petitioners after 20th February, 1993 is recoverable.

5. Having heard counsel for both sides and looking to the facts and circumstances of the case, Rule.

6. Counsel for the respondents waives notice of Rule on behalf of the respondents.

7. So far as interim stay is concerned, in the light of the aforesaid decision of the Hon''ble Supreme Court, there is a prima facie case in favour of the present petitioners. Petitioners were appointed as Assistant Teachers prior to 1986. A decision was taken by the erstwhile State of Bihar vide Resolution dated 18th December, 1989 to revise their pay-scale as per Rule 22 (C) of the Fundamental Rules. Subsequently, government modified its Resolution dated 18th December, 1989 in the year 1993 vide Resolution dated 20th February, 1993 and instead of two only one increment was to be allowed to the Assistant Teachers. Therefore, since there was no fraud or misrepresentation on the petitioners, petitioners got two increments only due to the mistake on the part of the Government and therefore, in the light of the aforesaid decision, no recovery of the excess amount can be made from the retired petitioners. Thus, there is a prima-facie case in favour of the petitioners and balance of convenience is also in favour of the petitioners and there will be hardship caused to the retired petitioners if

recovery of the amount paid in excess is made. I, therefore, stay the operation, implementation and execution of Annexure 4, which is dated 29th January, 2009 and I, hereby restrain the respondents from reducing the pay-scales of the present petitioners and from making recovery of the excess amount paid to the petitioners during the pendency and final hearing of the present petition.