
(2016) 08 JH CK 0109

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3160 of 2007 and With W.P.(S) No. 1238 of 2010

Smt. Gita Das

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JCR 327

Hon'ble Judges : Mr. Ananda Sen, J.

Bench : Single Bench

Advocate : Mr. Jay Shankar Tiwari, Advocate, for the Petitioner; Mr. Rahul Kamlesh, J.C. to S.C.II, for the Respondents in W.P.(S) No. 3160 of 2007; Mr. Amit Kumar, J.C. to G.P.II, for the Respondents in W.P.(S) No. 1238 of 2010

Final Decision : Allowed

Judgement

Mr. Ananda Sen, J.—That the petitioners, in both the writ applications, have challenged condition no. II of order dated 20.10.2006 contained in Memo no. 2501/Jamshedpur.

2. The petitioners were initially appointed as Assistant teachers in Elementary Schools, in Matric Trained scale and subsequently both the petitioners were granted I.A. trained scale with effect from 01.01.1978. On 15.05.1993, the District Education Establishment Committee, Jamshedpur, allowed B.A. Trained scale to the petitioners with retrospective effect from 01.12.1985, but later on the District Superintendent of Education, without any authority, modified the order of the District Education Establishment Committee dated 17.05.1993 and allowed them B.A. trained scale with effect from 01.04.1981. Further an office order dated 26.12.1997 was issued, whereby grant of B.A. trained scale with retrospective effect from 1.4.1981 was cancelled and the petitioners were granted monetary benefits from the date of joining i.e. from 1.12.1985.

3. The said decision of the District Education Establishment Committee was

challenged before the Hon''ble court in C.W.J.C. No. 156 of 1998(R) and analogous cases, which were disposed of on 12.1.1998. The order dated 26.12.1997 was set aside on the ground of violation of the principles of natural justice and the matter was remanded to the District Education Establishment Committee for taking a fresh decision. The said Committee considered the matter and decided, that the order, of the District Superintendent of Education dated 3.6.1994, giving B.A. trained scale to the petitioners with retrospective effect from 01.04.1981 was illegal, irregular and without jurisdiction, and they were entitled to get monetary benefits of B.A. trained scale only from 01.12.1985 i.e. from the date of joining the said promoted scale. The said order was challenged in C.W.J.C. No. 3462 of 1999(R). The writ application was decided against the petitioners, resulting in filing of Letters Patent Appeal No. 260 of 2001. The said L.P.A. was heard and disposed of by order dated 2nd June 2003. The Division Bench of this Hon''ble Court disposed of the said Letters Paten Appeal after giving the following observations:

"12. In the facts and circumstances of the case, it prima facie appears that the appellants were entitled to get B.A. trained scale from the year 1981 itself unless the District Education Establishment Committee found some specific reason for providing them the said benefit from December, 1985 and not earlier. We, therefore, set aside the impugned order dated 17.4.2001 passed by the learned Single Judge in CWJC No. 3462 of 1999(R) as well as the order dated 10.06.1999 issued on the basis of the decision of the District Education Establishment Committee taken in its meeting dated 8.6.1999 relating to giving benefit of B.A. trained scale to the appellants only from 1.12.1985. Consequently the case is remitted to the District Education Establishment Committee, Jamshedpur with a direction to re-fix the appellants' pay taking into consideration as to whether they were entitled to get B.A. trained scale with effect from 1.4.1981 including the arrears of salary from the said date and pass appropriate orders in accordance with law within a period of six months from the date of communication/production of a copy of this order."

4. After disposal of the Letters Patent Appeal, the case of the petitioners was again considered and an order was passed on 20.10.2006 as contained in Memo no. 2501/Jamshedpur. Condition No. II of the said order is under challenge in the instant writ application.

5. Counsel for the petitioners submits that it was admitted by the respondents that these petitioners are senior to those teachers, who were promoted with effect from 20.08.1989 vide letter no. 1369. He further submits that because of the latches on the part of the respondents, the petitioners were promoted in the year 2006. He further submits that the petitioners were entitled to be promoted at least in the year 1983, but the said promotion was extended to the petitioners only in the year 2006, for which the petitioners cannot be penalized. He further submits that if the promotion order would have been issued at the right time, the petitioners would have joined the promotional post and would have got the

privilege of promotion long back. He lastly relies upon the order dated 20.09.2012 passed in C.W.J.C. No. 136 of 2000(R) in the case of Ramadhar Singh v. The State of Bihar and others and also upon the case of Suryadeo Prasad v. State of Jharkhand and others, reported in 2010 (3) JCR 238 (Jhr)). Relying on the said judgment he submits that the case of these petitioners stands exactly on similar footing and they are also entitled to the actual monetary benefits from the date of promotion and not from the date of joining.

6. Counsel for the State submits that the petitioners are not entitled to get the monetary benefits from the date of promotion, since they have joined the promotional posts in the year 2006. He relying upon a circular of the Finance Department dated 4.4.1985, Annexure-A, to the counter affidavit, submits that as per the said Circular, the petitioners are entitled benefit from the date when they actually join a post. He submits that, they were notionally promoted with effect from 30.03.1983, but so far actual monetary benefit is concerned, the same is payable to them, only from the date they joined their respective promoted posts. In the instant case, since they have joined the promotion post in the year 2006, they are entitled for the actual monetary benefits from the year 2006 itself, and not from any date before that.

7. After going through the records, I find that the respondents themselves have come to a conclusion that these petitioners were senior to those teachers, who stood promoted vide letter dated 28.8.1999. That being so, the petitioners should have been promoted before those teachers, who were promoted as Principals vide letter dated 28.8.1999. The respondents corrected their mistake, and finding that the petitioners are seniors to those, who were promoted on 28.8.1999, promoted the petitioners to the post of Principals with effect from 30.03.1983. If this order would have been passed at the right time, the petitioners would have availed the monetary benefit arising out of the said promotion. This Court in the case of Suryadeo Prasad v. State of Jharkhand and others reported in 2010 (3) JCR 238 (Jhr), in paragraph 8 and 9, referring to the earlier judgment of the Division Bench of the Hon''ble Patna High Court has observed as under:

"8. Both the aforesaid Rules were considered by the Division Bench of the Patna High Court in the case of Dr. Paras Nath Prasad v. State of Bihar, reported in 1990 (2) PLJR 248. The Division Bench in that case held that where an employee deserved promotion but was not granted the same for no fault of the employee, but because of wrong decision on the part of the State the employee would be entitled to not only to be granted promotion with retrospective but also financial benefits as a consequence of such promotion as also the interest on delayed payment of the financial benefits. The Division Bench expressly overruled the applicability of the Rule 58 to such situation.

9. Following the aforesaid Division decision a learned Single Judge of this Court in the case of Shri Mahavir Pandey v. State of Bihar and Ors. Reported in 2000(1) PLJR 768 held that not only Rule 58 but also Rule 74 would have no application

in such situation."

8. Thus, from the judgment, it is clear that an employee cannot be deprived of their actual monetary benefits because of wrong decision on the part of the State. As per the said Judgment, an employee would be entitled not only to be granted promotion with retrospective effect but is also entitled to all the consequently benefits by virtue of such promotion.

9. In the instant case, it is found that the petitioners were not promoted when they were really entitled to because of the latches on the part of their employer. Thus, I find that the position of law laid down, and also in the facts, the case of the petitioners are covered, by the judgment delivered in the case of Suryadeo Prasad (supra). Thus, following the said principle laid down, in the said judgment, I feel that the petitioners are entitled to receive their salary on the promotional post, with effect from the date of promotion, which were granted to them and not from the date of their joining. Applying the said principle, the petitioners are entitled to their salary, of the promoted posts, with effect from 30.03.1983 and not from the date of their joining. Thus Condition No. II as contained in memo no. 2501 dated 20.10.2006 is set aside, and it is directed, that the salary shall be paid to the petitioners for the post of Principal with effect from 30.03.1983. All the pensionary benefits, after recalculating the pension, shall be paid to the petitioners, within a period of three months from the date of receipt of a copy of this order.

10. These two writ applications stand allowed, with the aforesaid observations and directions.