

(2015) 02 JH CK 0185

In the Jharkhand High Court

Case No : LPA Nos. 256 and I.A. No. 4621 of 2014, 286 and I.A. Nos. 4808 and 5333 of 2014, 298 and I.A. No. 4597 and 4595 of 2014, 299 and I.A. No. 4623 and 4622 of 2014, 300 and I.A. No. 4598 and 4593 of 2014, 257 and I.A. No. 4620 of 2014, 281 and I.A. No. 4816 o

State of Jharkhand and Others

APPELLANT

Vs

Angela Kullu and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2015) 2 JLJR 512

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Rajesh Kumar and Renuka Trivedy, for the Appellant; M.M. Pan and K.N. Sahay, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J—These Appeals are preferred against the judgment and order delivered by the learned Single Judge in W.P.(S) No. 497 of 2014. Reported in 2014(4) JLJR 536 alongwith analogous cases dated 7th March, 2014 and also against the judgment and order delivered by the learned Single Judge in W.P.(S) No. 2553 of 2014 with W.P.(S) No. 2555 of 2014, which was disposed of on 30th June, 2014 whereby, the petitions preferred by the present respondents was allowed and the respondents were granted leave encashment in the government aided minority high school. They are serving in the different middle schools of Jharkhand. As these respondents were given leave encashment allowances on the basis of several rules and regulations including on the basis of Circular bearing No. 1775 dated 30th August, 1980 and Circular bearing No. 237 dated 20th February, 1990. Having heard counsels for both the sides and looking to the facts and circumstances, it appears that nothing new has been argued out by the counsel for the appellant(s). Very old tunes are being repeated by these appellants. Same is the orchestra and the same are the tunes which has already

been sung before the other Division Bench in CWJC No. 2162 of 1999(R) decided vide order dated 20th August, 2002. Against this judgment Letters Patent Appeal bearing No. 295 of 2004 was preferred by the State of Jharkhand which was dismissed by the Division Bench of this Court vide order dated 6th January, 2006, against which S.L.P. was preferred under Article 136 of the Constitution of India bearing CC No. 7881/2006 before the Hon''ble Supreme Court which was dismissed vide order dated 30th October, 2006. This is one round of litigation, but, this was not enough for the State of Jharkhand. Similar error has been committed by the State of Jharkhand i.e. again the leave encashment was not paid to the similarly situated petitioners. This has given birth of another round of litigation.

2. Thus, one round litigation has not awakened the senses of the Government. There is a National Litigation Policy with certain restrictions adopted by the State also. The State Litigation Policy also shows that if similarly situated matters are decided by the Hon''ble Supreme Court then it must be followed by the State so as to avoid multifarious litigations, but, as usual similar error has been again committed by the State i.e. non-payment of the leave encashment amount to the retired teachers of government aided minority school which is in question and therefore, the said teachers preferred writ petitions bearing W.P.(S) No. 497 of 2014 Reported in 2014(4) JLJR 536 with other cases which were allowed by this Court vide order dated 7th March, 2014 in terms of the Division Bench decision rendered in W.P.(S) No. 506 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 with W.P.(S) No. 509 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 with W.P.(S) No. 512 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 , all decided vide order dated 3rd January, 2014.

3. The aforesaid decision of the Division Bench of this Court dated 3rd January, 2014 was challenged by the State of Jharkhand before the Hon''ble Supreme Court in Special Leave Petition bearing C.C. Nos. 20606-20607/2014 which was dismissed by Hon''ble Supreme Court vide order dated 15th December, 2014.

4. Thus, the impugned judgment and order passed by the learned Single Judge was based upon the aforesaid Division Bench decision dated 3rd January, 2014.

5. Now the contention raised by the counsel for the appellants that earlier Division Bench decision which has been upheld by the Hon''ble Supreme Court also refers the Government Circular bearing No. 1775 dated 30th August, 1980 as well as Government Circular No. 237 dated 20th February, 1990, but the point which is agitated by these appellants was never canvassed and therefore, let there be a third round of litigation also.

6. The so-called new arguments is that in absence of any rules and regulations no leave encashment can be paid to the retired teachers from the Government aided minorities schools. We are not agreeing with the aforesaid arguments

canvassed by the counsel for the appellants looking to paragraph Nos. 11, 14, 15 and 18 to be read with aforesaid other various decisions of the Division Bench of this Court in W.P.(S) No. 506 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 , 509 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 and 512 of 2013 Reported in Mariyam Tirkey Vs. The State of Jharkhand and Others, (2014) 1 AJR 587 : (2014) 1 JLJR 465 . For the ready reference paragraphs Nos. 11, 14, 15 and 18 read as under:---

"11. In Resolution No. 237 dated 20th February, 1990 the teaching/non-teaching staffs working in Non-Government Recognized minority Primary/Middle/Secondary Schools are entitled to House Rent Allowance. Urban Compensatory Allowance and such other allowances. By virtue of Resolution No. 68 dated 29.6.1983 (Annexure-2 to W.P.(S) No. 512 of 2013) the teachers working in Non-Government Aided Minority Primary/Middle Schools shall be entitled to General Provident Fund, Pension (including Family Pension) and Gratuity like Government employees. In terms of Resolution No. 237 dated 20th February, 1990 the teaching/non-teaching staffs working in Non-Government Aided Minority Primary/Middle Schools are given pay parity including Dearness Allowance, Medical Allowance, House Rent Allowance, Urban Compensatory Allowance etc. We are of the view that when the pay parity including all allowances are given to teaching/non-teaching staff they cannot be denied the benefit of leave encashment.

14. In Para-25 of Dr. Dudh Nath Pandey's case Full Bench of this Court held that "the leave encashment is paid on account of unutilized leave and therefore it partakes the character of salary.

15. In the case of State of Rajasthan and Another [(2005)10 SCC 346] the Hon'ble Supreme Court considered the question whether the teachers of Non-Government Educational Institutions receiving aid are entitled to leave encashment benefits after retirement under the Rules framed under Rajasthan Non-Government Educational Institutions Act, 1989. Considering Rule 51 of the said Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993, under which the employees are entitled to leave salary for unavailed privileged leave, in paras 16 and 17 the Hon'ble Supreme Court held as under:---

"16. From the aforesaid Rules, regulating leave, it is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit.

17. For the aforesaid additional reason, the conclusion reached by the High Court is supportable that leave encashment is part of "salary" and covered in the wider expression "scales of pay and allowances" used in Section 29 of the Act which has to be read and understood with the definition of the word "salary" contained in Section 2(r) of the Act."

The ratio of the above decision applies to the case on hand. When pay parity

including all allowances are given to the employees working in Non Government Aided Minority Schools the benefit of leave encashment for the un-availed leave to the credit of employee cannot be denied.

18. The above contention does not merit acceptance. The appointment of teachers is governed by Chapter-5 of the Compendium of Circulars of Minority & Public High Schools. Section 2(c) of Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 provides for recognition of minority secondary schools. Under Section 2(c), Minority Secondary School means a secondary school which has been established by a minority community based upon either on religion or language, and which is managed by the minority community and has been declared and recognized as a minority school by the State Government. The State Government under Section 18(2) of this Act, by a notification, grants recognition to a school as a minority secondary school which has been established by a minority community on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section and it fulfills the prescribed condition of recognition. Sub-section 3 of Section 18 makes provisions for management and control of the minority secondary schools. Section 18(3)(a) prescribes that every minority secondary school shall have a managing committee registered under the Society Registration Act, 1860 and shall have written bye-laws relating to its constitution and function. Subsection (3) clause (b) thereof provides that according to the prescribed qualification laid down by the State Government for the teachers of the nationalized secondary schools and within the number of sanctioned posts, the managing committee of the minority secondary schools shall appoint the teacher with the concurrence of the School Service Board constituted under Section 10 of the Act."

(Emphasis supplied)

7. In view of the aforesaid decisions and also in view of the earlier orders passed by this Court against which S.L.P. preferred by the State have been dismissed, we see no reason to refer this matter to Larger Bench, as submitted by the counsel for the appellant. We are in full agreement with the decision earlier rendered by this Court and nothing new has been argued out at all.

8. Counsel for the respondents (original petitioners) submitted that in all earlier cases after the dismissal of the L.P.A. preferred by the State and also the S.L.P. dismissal by the Hon''ble Supreme Court, in the matters in which contempt applications have been preferred, the State has already paid the leave encashment amounts, Few of the orders have been pointed out by the counsel for the respondents bearing No. 701 dated 25th September, 2013 for the District-Jamtara. Photocopy of the said order is taken on record. In view of the aforesaid facts and reasons, the decision rendered by the learned Single Judge is absolutely in consonance with the law and we hereby uphold the decision rendered by the learned Single Judge. There is no substance in these Letters Patent Appeals and hence, the same are hereby, dismissed. In view of the final

disposal of the main appeals, all the interlocutory applications are also disposed of.