
(2004) 12 JH CK 0041
In the Jharkhand High Court
Case No : L.P.A. No. 567 of 2003

State of Jharkhand and Others

APPELLANT

Vs

Smt. Aren Minz

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Citation : (2005) 1 BLJR 696 : (2005) 1 JCR 337

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Atanu Banerjee, JC to GA, for the Appellant; Deepak Roshan, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant State of Jharkhand and others against the judgment and order dated 13th June, 2003, passed in W.P.(S) No. 6149 of 2002 (reported in Smt. Aren Minz Vs. State of Jharkhand and Others, , whereby and whereunder, the learned Single Judge while allowed the writ petition in favour of the petitioner Smt. Aren Minz (respondent herein), held that she is entitled for the benefits of extension of service as per the old circular.

2. For determination of the issue, it is desirable to discuss the relevant facts and guideline (s)/circular(s), issued by the State Government from time to time to provide benefits to the teachers having received National Awards. The State of Bihar initially issued guidelines, whereby, it was decided "to grant three years extension of service" to the teachers, who have been awarded National Awards. One of such guidelines was circulated by the Government of Bihar from its Education Department vide Resolution dated 16th May, 1973, followed by the Resolution No. 1744 dated 25th November, 1981 and Resolution No. 190 dated 13th February, 1984. The Government of India through its Ministry of Law, Justice and Company Affairs also circulated guidelines for grant of extension of

services to the teacher, who have received National Awards, by its Letter No. F. 1-9/80-Soh. 5, dated 30th June, 1980. The Union of India, however, opined that it being purely an administrative decision, the State Education Departments may make appropriate provisions for extension of service beyond the age of superannuation, if any State so desires.

3. The State of Bihar through its Secondary, Primary and Adult Education Department, subsequently issued Resolution No. 128 dated 23rd May, 1996, modifying its earlier decision, and decided not to extend the services of the teachers on the basis of National Awards. However, it was decided to provide monetary benefits to such teachers.

So far as writ petitioner Smt. Aren Minz is concerned, she was in the services of the State of Bihar, having been appointed as a Trained Middle School Teacher on 2nd May, 1963 and while in service, she was awarded National Award on 25th September, 1992. On attaining the age of superannuation i.e. 60 years, she retired on 31st December, 2000 from the post of Headmistress, Girls Middle School, Sehna, District-Lohardaga. At the time of retirement, she applied for extension of her service for three years, she having received National Award, but no order was passed. Thereafter, she filed the writ petition being W.P.(S) No. 6149 of 2002 for a direction on the respondent (appellant herein) to consider her case for extension of service for three years. During pendency of the writ petition, the appellant-State rejected her claim on 26th February, 2003. The learned Single Judge, thereafter, having heard the parties, while allowed the writ petition by the impugned judgment dated 13th June, 2003, (reported in Smt. Aren Minz Vs. State of Jharkhand and Others, set aside the order of rejection dated 26th February, 2003, holding that the writ petitioner is entitled for the benefit of 3 years extension of service on the basis of the old guidelines.

4. According to the appellants, the earlier guidelines, relating to extension of service, having been superseded by Resolution No. 128 dated 23rd May, 1996, the writ petitioner is governed by the guidelines, as contained in Resolution No. 128 dated 23rd May, 1996 she having retired on 31st December, 2000. Counsel for the appellants placed reliance on an "unreported" decision of this Court dated 24th September, 2001, passed in W.P.(S) No. 3337 of 2001, Nishi Kant Jha v. State of Jharkhand and others 2001 (3) JCR 577 (Jhr).

It appears that the decision aforesaid has also been brought to the notice of the writ Court. However, the learned Single Judge while distinguished the case of the writ petitioner, held that the writ petitioner would be governed by the old guidelines, she having received the National Award prior to 23rd May 1996. Similar stand have been taken by the parties before this (appellate) Court.

5. Admittedly, the effect of the guidelines, as contained in Resolution dated 23rd May, 1996 is prospective and was not given retrospective effect. Therefore, the only question arises for determination is whether the writ petitioner, who retired on 31st December, 2000, will be governed by Resolution dated 23rd May, 1996?

It is not in dispute that 60 years is the age, prescribed for retirement (superannuation) of a Government School Teacher. No person has a right to continue in service beyond the date of superannuation. The question as to whether extension of service should be given or not, can be determined only by the competent authority. It can be determined only at the time of superannuation, as the total records of the employees concerned is required to be taken into consideration. No decision for extension of service can be taken long before the date of retirement or the day when the employee receives the National Award. Therefore, the guidelines, as existing on the date of superannuation, are the relevant one and not the guideline(s), as was/were in vague on the date, the employee received the National Award. While extension of service has direct nexus with the date of retirement, it has not nexus with the date of National Award.

6. For the reasons aforesaid, I hold that Resolution No. 128 dated 23rd May, 1996 is applicable to all the employees/ teachers, who have retired on or after 23rd May, 1996, irrespective of the date of National Award.

7. Admittedly, the writ petitioner Smt. Aren Minz superannuated from service on 31st December, 2000 i.e. much after issuance of Resolution No. 128 dated 23rd May, 1996. The earlier guidelines, having been superseded on the date of her superannuation, neither she can claim benefit on the basis of earlier guidelines, nor she can claim for extension of her services on the basis of National Award. The judgment dated 13th June, 2003, passed by the learned Single Judge in W.P. (S) No. 6149 of 2002, being against the spirit of the guidelines, circulated vide Resolution No. 128 dated 23rd May, 1996, cannot be upheld. The impugned judgment is, accordingly, set aside and the appeal is hereby allowed. However, in the fact's and circumstances, there shall be no order as to costs.

Narendra Nath Tiwari, J.

8. I agree.