(2008) 02 JH CK 0089

In the Jharkhand High Court

Veena Anjana Lakra APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Citation : (2008) 2 JCR 124

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the Letter No. 1917 dated 4.4.2000 issued by the

Director. Welfare Department, Government of Bihar as also the Letter No. 2066 dated 19.10.2001 issued by the respondent No. 4 whereby the

direction has been issued to the concerned officer including the respondent No. 5 to pay the revised scale of pay to the untrained teachers working

in the Welfare Department as is being paid to the untrained teachers of the Human Resources Development Department in the Government

Schools and also for quashing the order whereby recovery of the excess amount paid to such teachers has been sought to be made. The petitioner

has further prayed for a direction on the respondents to pay the revised scale of Rs. 5500-9000 which she is entitled to get.

2. It has been stated that the petitioner was appointed as Assistant Teacher in the Welfare Department in the pay scale of Rs. 1500-2750. In the

letter of appointment there was no such condition that the petitioner has to undergo Teachers Training. After her appointment, the petitioner has

been working. Her pay scale was also revised from time to time. Her pay scale was also approved by the District Accounts Officer. It has been

stated that there was an audit objection and on the basis of the same the petitioner''s pay scale has been sought to be reduced from Rs. 5500-

9000 to Rs. 4000-6000.

3. The petitioner was not given any notice or opportunity of hearing before issuing the impugned order of reduction of her pay scale. It has been

stated that not only the petitioner''s pay stale has been substantially reduced, a letter dated 19.10.2007 has also been issued by the Deputy

Secretary to the Government, Welfare Department to take steps for recovery of the excess amount paid to the untrained teachers in trained scale.

4. According to the petitioner, since there was no representation or misrepresentation by her for getting the said scale of pay, she is not at fault for

the fixation and payment of the scale. The pay scale was fixed by the competent authority of the Department and the same was revised from time

to time and the pay scale given to her cannot be reduced without giving her any notice and opportunity of hearing.

5. The petitioner''s writ petition has been contested by the State-respondents as well as by the Accountant General, Jharkhand. The State-

respondents justifying the reason for reduction of the petitioner''s pay scale have, inter alia, stated that the petitioner was given the said pay scale

along with other teachers. When the accounts of the school were audited by the Auditor of the Accountant General, an audit objection was raised

in respect of the payment of trained scale to the untrained teachers. On the basis of the above, the Fitment Committee took decision to revise the

petitioner''s pay scale and to fix the same at untrained pay scale and to recover the excess amount paid to the petitioner. It has been stated that the

petitioner is not a trained graduate teacher and she is not entitled to get the Trained Graduate scale. The decision of reduction of pay scale as well

as recovery of excess payment is, thus, not arbitrary and illegal.

6. In the counter-affidavit filed on be half of the Accountant General, Jharkhand, it has been, inter alia, stated that the audit of the accounts of the

school was made by the Auditor of the Accountant General and it was found that the petitioner, who was untrained, was getting the B. Ed, trained

scale. The said objection was made in view of the provisions, rules and circulars. However, it was clearly pointed out that the same was initial finding on the basis of the report and it was not an audit report.

7. I have heard learned Counsel for the parties and perused the facts and materials appearing on record. It is an admitted fact that the petitioner on

her appointment was given the pay scale by the Department. There is no allegation of any misrepresentation on her behalf. The petitioner''s pay

scale was fixed by the concerned authority which was also approved at the higher level. The said scale was revised from time to time. No

objection was ever raised by the State-respondents. The Accountant General after a preliminary audit found that the petitioner, who is untrained,

has been getting the trained scale. The same was pointed out to the concerned respondents. On such preliminary finding the petitioner was not

given any notice and opportunity of hearing. The State-respondents only on the basis of the said report, which is preliminary in nature and not an

audit report, suddenly reduced the petitioner''s pay scale and also directed for recovery of the alleged excess amount paid to the petitioner.

8. It is well established that any order which causes civil consequences or affects a person monetarily cannot be passed unless the person is given

notice and opportunity of representation/hearing. Admittedly, no such prior notice or opportunity of hearing was given to the petitioner before

reducing her pay scale or taking decision for recovery of the amount of the alleged excess payment made to her. The decision taken without giving

any opportunity of hearing to the petitioner violates the rules of the principles of natural justice and the same is unsustainable.

9. The impugned orders contained in Annexures 6 & 7 are thus, hereby, quashed. This writ petition is allowed

10. It does without saying that the respondents are at liberty to proceed against the petitioner in accordance with the due procedure established by

law and/or to pass appropriate order in accordance with law.