

Sanjay Kumar and ors Vs. State of Jharkhand and ors

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Court : Jharkhand

Decided On : Sep-17-2013

Appellant : Sanjay Kumar and ors

Respondent : State of Jharkhand and ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 2696 of 2009 Sanjay Kumar & Ors. Petitioners -V e r s u s- The State of Jharkhand & Others Respondents With W. P. (S) No. 2703 of 2009 Subhash Chandra & Ors. Petitioners -V e r s u s- The State of Jharkhand & Others Respondents With W. P. (S) No. 5488 of 2009 Bidyut Kumar Ojha & Ors. Petitioners -V e r s u s- The State of Jharkhand & Others Respondents With W. P. (S) No. 6061 of 2009 Ravindra Kumar Ravikar & Ors. Petitioners -V e r s u s- The State of Jharkhand & Others Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners: - M/s Rajiv Ranjan, A. Ahmad & S. B. Haque (in W. P. (S) Nos. 2696/09 & 2703/09) M/s Sohail Anwar, A. Ahmad & S. B. Haque (in W. P. (S) No. 6061/09) M/s Mahesh Tiwari & Anand Kr. Pandey (in W.P. (S) No. 5488/09) For the Respondents : - M/s R. No. Roy, GP-III, M.Jalisur Rahman, JC to GP-III, Binoda Nand Tiwary, JC to GP-II 10/17.09.2013 Heard learned counsel for the parties. The petitioners in these cases are Instructors of vocational courses in +2 schools in the State of Jharkhand. For better appreciation, though the facts are common in all these writ petitions and also not disputed by the counsel appearing on behalf of the respondents, the facts of the

W. P. (S) No. 2696 of 2009 are being noticed hereinbelow. According to the petitioners, an Advertisement was issued in the year 1991, which is Annexure-10 to the present writ petition for appointment of Instructors in vocational course in +2 Schools under the then State of Bihar. The said Advertisement was issued by the Vidyalaya Seva Board, Bihar, Patna against vacancies in different trades indicated in the said Advertisement for appointment of Instructors in +2 Schools. It is categorical contention of these petitioners that they possessed criteria specified by the Central Government under the scheme of Vocational Technical Education i.e. these petitioners were having Post Graduate Degree in such vocational subjects like Agriculture, Business and Commerce, Home Science, Humanities and others in which subjects they were seeking appointments. It is contention of the learned counsel appearing on behalf of the petitioners that minimum qualifications for appointment to the post of Instructors have also been prescribed and have been reflected at Annexure-4/A to the writ petition. These petitioners, after their appointment, joined in various +2 schools as Instructors. Certificates of the petitioners in W. P. (S) No. 2696 of 2009 are enclosed as Annexure-1 series stating that they were having Post Graduate Qualification and qualification of individual petitioners has also been disclosed at para-4 to the writ petition. Similar stand is also taken in the other writ petitions as well. According to these petitioners, in the 4th Pay Revision after their appointment, they were placed in the scale of Rs. 1500-2750/-. Under the 5th Pay Revision, they were placed in the revised scale of Rs. 5000-8000/- with Grade Pay of Rs. 4800/-. Their individual pay fixation was done in terms of the decision of State Government by the Controlling Authority by placing them in the respective pay scale of Rs. 5000-8000/- with Grade Pay of Rs. 4800/-. However, subsequently vide Annexure-6, dated 18.04.2009 issued by the Secretary, Finance Department, Government of Jharkhand addressed to the Principal Secretary, Human Resources Development Department and also Welfare Department, Government of Jharkhand, Ranchi, it was indicated that appropriate regulations/ rules be framed in the matter of appointment/promotion and other service condition of teachers under the State Government in line with those under the Central Government. This is also necessary in view of the Central Pay Structure/revision being implemented for such State Government employees. It was also indicated that under the

Resolution No. 660 dated 28.02.2009 under Schedule-III the Scale of pay of 10+2 Schools Instructors was placed in the Scale of Rs. 4800/-. However, untrained Lecturers/Instructors are entitled to Grade Pay of Rs. 4200/-. Therefore, request was made to undertake an exercise in respect of verification of revised pay scale granted to individual incumbent i.e. the Instructors and to recover the excess Grade Pay. Learned counsel for the petitioners' has drawn attention of this Court to the said Gazette Notification dated 28.02.2009 where at serial no. 298, scale of Instructors has been indicated, the same is quoted hereinbelow :- Note:- Regarding all Instructors/Vocational teachers in the different training colleges/10+2 schools at present drawing pay scale of Rs. 5000-8000 for such categories corresponding new pay scale/grade pay(4800) will be applicable specifically on fulfillment of recruitment qualification as mentioned in the Central Gov. guide lines for vocational teachers/Instructors, if not then only Rs. 4200/- grade pay is admissible. It is contention of the petitioners that as per the said note indicated in the Gazette Notification(supra), for all Instructors/vocational teachers in different training colleges/10+2 schools at present drawing pay scale of Rs. 5000-8000 corresponding new pay grade pay of Rs. 4800/- will be applicable to them on fulfillment of recruitment qualification as mentioned in the Central Government guidelines for vocational teachers/ Instructors, if not then only Rs. 4200/- grade pay is admissible. It is contention of counsel for the petitioners that these petitioners fulfill the recruitment qualification as prescribed by the Central Government guidelines as they are having Post Graduate Degree in their respective vocational courses in question and basic technical qualifications as required under the Central Government guidelines. In such circumstances, it is submitted that the exercise to reduce their Grade Pay to Rs. 4200/- has been undertaken in number of cases and certain amounts have also been recovered without due application of mind in each individual cases. It is contention of the petitioners that if they fulfill the recruitment qualification as prescribed under the Central Government guidelines, then there was no reason for the respondents to reduce Grade Pay to Rs. 4200/- and to recover the same. In the circumstances, they have approached this court. Respondents have appeared and filed their counter affidavit. Counter affidavit of the Finance Department has also been filed in the instant writ petition. The stand taken in the counter affidavit by the

respondents on the legal issues is not different than what has been indicated in the Notification dated 28.02.2009. They also insist that if the incumbents to the post of Instructors/vocational teachers in +2 Schools in the State of Jharkhand fulfill the recruitment qualification as prescribed by the Central Government notification, they would be entitled to the Grade Pay of Rs. 4800/- otherwise they would be placed in the Grade Pay of Rs. 4200/-. However, statement has been made unsubstantiated by any evidence on their part that these persons have been appointed on the initial qualification of Matric with Diploma in concerned subject. Therefore, they are not entitled to the said Grade Pay of Rs. 4800/-. In one of the writ petition, it has also been stated on behalf of the respondents that some of the petitioners have the qualification of B.Sc. in Sericulture. This has, however, been explained by the petitioners by stating that in the said subject there is no Post Graduate Qualification. The Qualification of Bachelor in Sericulture is requisite basic technical qualification for appointment to the post of Instructors/vocational teachers in the vocational course in question as per the Central Government guidelines. Therefore, in sum and substance, the respondents abide by the resolution contained in Gazette Notification dated 28.02.2009. It, therefore, appears that whether individual petitioners in the aforesaid writ petitions do possess the necessary recruitment qualification prescribed under the Central Government guidelines or not is dependent on determination of facts upon the scrutiny of individual credentials/service records of the petitioners before undertaking such exercise to reduce the Grade Pay of Rs. 4800/- in each individual case. As per the resolution dated 28.02.2009, if they possess requisite qualification as prescribed by the Central Government, then there is no reason why Grade Pay should be reduced. In such circumstances, therefore, when on the main legal issue, there is no dispute about the interpretation of Resolution dated 28.02.2009 in question, the concerned respondents i.e. the District Education Officer of the respective districts, where these individual petitioners are working, are directed to undertake an exercise of verification of individual service records of the petitioners in question so as to come to a finding whether they have fulfilled the required recruitment qualification as prescribed under the Central Government guidelines for being entitled to the Grade Pay of Rs. 4800/-. Dependent upon such exercise, any consequential action would be taken. Let such exercise be undertaken within a

period of 12 weeks from the date of receipt of a copy of this order. The general direction issued vide letter dated 18.04.2009, Annexure-6, by the Secretary, Finance Department would be carried out in the manner as indicated hereinabove. If the amount has wrongly been recovered and if the petitioners are found to be having requisite minimum qualification as prescribed under the Central Government guidelines, excess amount recovered in case of individual petitioner's, shall be refunded thereafter. Accordingly, these writ petitions are disposed of in the aforesaid manner. (Aparesh Kumar Singh, J.) Kamlesh/

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