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Rita Sinha and Ors Vs. Education

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Court : Jharkhand

Decided On : Sep-01-2017

Appellant : Rita Sinha and Ors

Respondent : Education

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 452 of 2016 -------- 1. Rita Sinha 2. Samir Kumar Murmu 3. Sahendra Prasad Singh 4. Ram Badan Singh Yadav 5. Md. Perwez Alam 6. Kamal Kishore 7. Mukesh Kumar Sinha 8. Ranju Kumari 9. Neelam Kumari 10. Anil Kumar 11. Prabha Toppo 12. Juhi Kumari 13. Nand Lal Ram 14. Kamleshwari Prasad Petitioners Versus 1. The State of Jharkhand.

2. The Secretary, School Education & Literacy Department, Govt. of Jharkhand, Ranchi.

3. The Director, Secondary Education, Govt. of Jharkhand, Ranchi.

4. The District Education Officer, Ranchi.

5. The District Education Officer, Gumla.

6. The District Education Officer, Hazaribagh.

7. The District Education Officer, East Singhbhum. .. Respondents ------ CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK ----- For Petitioners : Mr. A. K. Sahani, Sr. Advocate Mr. Ajit Kumar, Advocate For Respondents : Mr. D.K. Dubey, Sr. SC-I Mr. Sumir Prasad, Advocate Ms. Ruchi Rampuria, JC to SC-I --- 04/ 01.09.2017 The petitioners have approached this Court with a prayer for quashing the order passed under Memo No. 3214 dated 23.11.2015 by the Director, Secondary Education, School Education and Literacy Department, Govt. of Jharkhand, whereby Memo No.6/Wa-25/2006-2709 dated 21.08.2015 has been 2 cancelled/revoked (as contained in Annexure-4 to this writ petition). Factual Matrix The petitioners were appointed on the posts of laboratory Assistants in Government +2 Schools after following the due process for appointment and on the recommendation of the Vidyalaya Sewa Board, Patna (Bihar). The petitioners were appointed by the Director, Secondary Education, Govt. of Bihar through appointment letters issued on different date, on the post of Laboratory Assistants in the scale of Rs.1400-2600/- along with admissible allowances. After receiving the appointment letters, the petitioners joined the post in in different schools. The petitioners having requisite qualification for appointment as Laboratory Assistants, were also confirmed in their services on the post of laboratory assistants. It is the specific case of the petitioners that they were appointed in the scale of Rs.1400-2600/- along with admissible allowances, the same pay-scale was revised and they were granted the pay scale of Rs. 5000- 8000/-, by way of 5th Pay Revision. The petitioners were allotted State of Jharkhand in cadre division order issued by the Govt. of India dated 03.03.2006. In the cadre division, the pay scale of the petitioners have been shown as Rs. 5000-8000/-. After having completed 12 years of continuous service, the case of petitioners were considered for grant of benefits of ACP by the Screening Committee in its meeting dated 31.07.2015 and on its recommendation, they were granted the benefits of ACP with effect from the date on which they completed 12 years of continuous service and accordingly, an order bearing Memo No. 6/Wa-25/2006-2709 dated 21.08.2015 was issued by the Director, Secondary Education, Govt. of Jharkhand, in which the petitioners names find place. But, surprisingly, all of sudden and without any notice or show cause and without affording any opportunity of hearing, the Director Secondary Education, School Education & Literacy Department, Govt. of Jharkhand has

issued an office order bearing memo No. 6/Wa-25/2006-3214 dated 23.11.2015, whereby the letter bearing Memo No. 6/Wa-25/2006-2709 dated 21.08.2015 has been cancelled/revoked on the basis of a decision taken in the Screening Committee meeting. Aggrieved by the said letter, the petitioners represented before the respondent-authorities regarding the sustainability of order dated 23.11.2015, but no heed was paid. Hence, this writ petition has been preferred challenging the said order of recovery. Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioners strenuously urges that order dated 23.11.2015, which is at Annexure-3, is illegal, arbitrary and unconstitutional. The said order is not sustainable in the eyes of law. learned counsel for the petitioner further submits that this writ 3 application may be disposed of in view of order passed by this Hon'ble Court in W.P.(S) No. 118 of 2016 today. Though no counter-affidavit has been filed by the respondents but learned counsel appearing on behalf of the State submits that the respondents have no objection if this writ petition is disposed of in view of the directions given in W.P.(S) No. 118 of 2016. In view of the fair submissions made by the learned counsel for the parties, this writ petition is disposed of in view of the directions issued in W.P.(S) No.118 of 2016 by this Court. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioners need consideration. The order dated 23.11.2015 is illegal and arbitrary on the following grounds:- I. The said order has been issued without following the principles of natural justice and before passing the order of recovery, no opportunity of hearing was given to the petitioners, if any opportunity would have been given they would be in possession to satisfy the respondents regarding the non-applicability of said circular. II. No reasons have been assigned in the impugned order. Reasons cannot be supplemented by way of counter-affidavit, the said proposition of law has been held in case of Commissioner of Police Vs. Gordhandas Bhanji, AIR 1952 SC16 which has been reiterated in case of Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner, New Delhi & Ors. reported in 1978 Volume 1 SCC, 405. III. It is an admitted fact that the petitioners were granted the pay- scale in the erstwhile State of Bihar. After bifurcation and cadre division, the petitioners joined the State of Jharkhand with the same pay-scale in view of the Bihar Reorganization Act, Section 73 (1) which reads as follows:- Nothing in Section 72

shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State. Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government. 4 IV. The letter dated 01.09.2000 was issued by the Govt. of Bihar in entirely different context, the same is not applicable also in the petitioners' case. It has nothing to do with the reduction of the petitioners' scale which has been granted on the revised pay scale of Rs. 1400-2600/- and as such the petitioners are entitled for the pay scale of Rs. 5500-9000/-. No misrepresentation has ever been made by the petitioners for getting the same pay scale as they were entitled in accordance with law and in view of the benefits of ACP. As a cumulative effect of the aforesaid facts, rules, observations and guidelines, I hereby quash and set aside the order dated 23.11.2015 which is at Annexure-8 to the writ petition. As the petitioners are entitled for the benefits of ACP and the Scale of Rs. 5500-9000/-, no recovery shall be made from the pay scale rightly given to the petitioners. Recovery made, if any, may be refunded to the petitioners. Resultantly, this writ petition stands allowed. (Dr. S.N. Pathak, J.) Kunal/

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