**Ram Ayodhya Vs. the State of Jharkhand and ors.**

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**Court** : Jharkhand

**Decided On :** Oct-18-2008

**Reported in** : [2009(1)JCR421(Jhr)]

**Judge** : D.G.R. Patnaik, J.

**Acts** : Constitution of India - Articles 14, 16 and 21

**Appeal No.** : W.P. (S) No. 4396 of 2005

**Appellant** : Ram Ayodhya

**Respondent** : The State of Jharkhand and ors.

**Advocate for Def.** : J.C to Sr. S.C. I. and; S. Srivastava, Adv. for Respondent No. 5

**Advocate for Pet/Ap.** : Anil Kumar, Sr. Adv. and; Satish Kumar Keshri, Adv.

**Disposition** : Application allowed

**Judgement** :

**D.G.R. Patnaik, J.**

1. Challenge in this writ application is against the order issued by the respondent No. 6 vide order No. 1309 dated 16.05.2005 (Annexure-11) whereby the petitioner's claim for his retiral dues on the basis of his salary drawn by him on the

post which he had held last, prior to his retirement, was rejected.

2. Facts of the petitioner's case stated briefly are as follows:

(i) The petitioner was appointed as Assistant Teacher in the Government Higher Secondary School, Chhapra, Saran, Bihar in the pay scale of Rs. 387-600/- on the recommendation of the Central Selection Board and he joined the post on 30.11.1973.

(ii) He worked in the post of Assistant Teacher till 31.05.1993.

(iii) In the year 1992, an advertisement was published in the newspaper by the Additional Secretary, Human Resource Development Department, Vikash Bhawan, Government of Bihar, Patna for selection on deputation, on the post of Principal, District Institute of Education and Training (DIET). The petitioner applied for the post. On being called upon, he appeared at the interview held on 27.02.1993 and was finally selected for his appointment on the post of principal and under notification vide No. 186 dated 05.05.1993 and he was appointed as Principal, DIET, Pabia, Dumka in the pay scale of Rs. 3700-5000/-.

(iv) Upon his selection to the post of Principal, DIET, Pabia Dumka, the petitioner was relieved from his post of Assistant Teacher, Government Higher Secondary School, Chapra, Saran. On being relieved, he joined the office of Principal, DIET, Pabia, Dumka on 01.06.1993.

(v) Upon revision of the pay scales, he was issued the pay slip by the Accountant General, Bihar, Patna in the revised pay scale of Rs. 12,000 - 16,500/-.

(vi) While the petitioner was on the verge of his retirement, he was allowed to continue on the post by way of extension pursuant to the sanction letters issued by the Secretary, Primary Secondary Mass Education, Government of Bihar/Jharkhand and he ultimately retired from service while working in the said post on 30.06.2002.

(vii) The pension papers of the petitioner were forwarded to the Secretary, Human Resource Development Department, Government of Jharkhand by the Principal, DIET, Pabia, Jamtara, Dumka along with the service book and other relevant papers for sanctioning the same vide letter No. 21 dated 13.02.2004.

(viii) The amount of General Provident Fund and Group Insurance Scheme being sanctioned by the Deputy Secretary, Human Resource Development Department, Government of Jharkhand, the petitioner had received the said amounts. However, since the sanction order for extension of the petitioner's service was issued in the month of July, 2002, after the petitioner's retirement, the petitioner could not draw the arrears of his salary. As per circular issued by the State Government in the Department of Finance containing a direction to all Commissioners-cum-Secretaries, Heads of Department and all controlling departments of the Government, payment of arrears of salary of Government Servants was to be made from a separate Head by borrowing advance from the Contingency Fund of the Government of Jharkhand.

(ix) The petitioner submitted his bills which were forwarded to the Accountant General, Bihar/Jharkhand for pre audit through the respondent authorities.

(x) When no response was received in the matter of payment of arrears of the salary, the petitioner filed a writ petition before this Court vide W.P.(S) No. 937 of 2005 praying for a direction to the respondents for payment of retiral benefits and arrears of salary. While disposing of the writ petition vide its order dated 28.02.2005, the petitioner was given a liberty to submit a representation before the respondent No. 2 raising his claim and with a corresponding direction to the respondent No. 2 to determine the question as to whether the petitioner was entitled to any retiral benefits as claimed by him and whether he is entitled for arrears of salary as prayed for in the writ petition.

(xi) The petitioner submitted his representation on 26.04.2005. However, vide the impugned order (Annexure-11), the petitioner's claim for determination of his retiral benefits on the basis of the salary drawn by him on the post of Principal, was rejected and it was declared that the petitioner is entitled to benefits of pension only on the basis of his scale of pay in the original cadre of Subordinate Education Service. No order was passed with regard to the payment of salary.

3. The petitioner has assailed the impugned order on the following grounds:

(i) The impugned order is illegal and arbitrary since the pension of an employee has to be fixed on the basis of last pay drawn by him which was fixed in the pre-revised scales of Rs. 3,700 - 5,000/- and post-revised scale of Rs. 12,000-16,500/-.

(ii) Although the petitioner was appointed purportedly on deputation to the post of Principal, but before his superannuation, he was never repatriated back to his original post and as such it has to be deemed that he was absorbed to the post of principal.

(iii) In absence of any order for repatriating his services from the post of Principal to the Subordinate Education Service cadre, the petitioner's continuation in the post of Principal even after expiry of three years of the extended tenure, cannot be said to be illegal.

Since the petitioner's salary in the post of Principal was sanctioned and released by the State Government, the withholding of his pension, gratuity and other retiral benefits by the respondent authorities is violative of Article 14, 16 and 21 of the Constitution of India.

4. Shri Anil Kumar, Senior Counsel for the petitioner would explain that even though from the contents of the advertisement, the appointment was purportedly on deputation for a fixed period but cannot be said that it was a case of mere deputation. Rather, the petitioner was appointed to the post of Principal by way of a selection process adopted for appointment. Furthermore, on his being selected for the appointment, his appointing authority had relieved him from his original post of Assistant Teacher enabling thereby the petitioner to join his new assignment where he continued from June, 1993 till the date of his retirement after ten years of service.

5. During this period, prior to his retirement, he was not repatriated to the Subordinate Education Service cadre. Under such circumstances, the respondent cannot deny and deprive the petitioner his right to claim and receive pension on

the basis of the last pay drawn by him nor can they deny and deprive him of the salary for the period which he had served pursuant to the sanction of the State Government extending the period of his service.

5. Counter affidavit has been filed on behalf of the Principal, DIET, Pabia district Jamtara (Respondent No. 7) as also on behalf of the Accountant General, Bihar/Jharkhand, Ranchi (Respondent No. 5).

6. While acknowledging the fact that pursuant to an order passed by this Court in the earlier writ application filed by the petitioner, the representation submitted by the petitioner was received wherein the petitioner had forwarded his claim in terms of the prayer made by him in the writ application for fixation and payment of his pension on the basis of the salary last drawn by him in the post from which he retired, it is explained that the petitioner's claim was considered by the appropriate authorities. By letters dated 29.06.2005 and 24.09.2005 the petitioner was called upon by the respondent No. 7 to appear before the office of the respondent No. 7 to fill up an submit his pension papers but the petitioner did not appear.

7. Despite the petitioner's failure to appear before the office of Respondent No. 7, his claim was considered and it was found from his service book that his basic pay was fixed at Rs. 2,900/- per month as on 30.11.2002 and there is no further information available in the service book. It was apparent therefore, that the petitioner had drawn excess amount in the form of salary. Since the petitioner has taken away all relevant documents from the office prior to his retirement, including the acquitance roll and cash book etc., the office of the respondent No. 7 has not been able to estimate the actual amount of excess payment drawn by the petitioner during his period in service in the form of his salary.

8. It is further stated that although on the direction of the higher authorities, the pension papers along with service book of the petitioner was sent to the office of the Accountant General, Jharkhand but the same has been returned to the office of the respondent No. 7 due to incomplete information.

9. In the counter affidavit filed on behalf of the respondent No. 5 namely the Accountant General, Bihar/Jharkhand, the stand taken is that the sanction of

pension and gratuity has not been received in the office of the Accountant General despite several letters and reminders from the concerned department.

10. As regards the payment of salary for the period July, 2000 to June, 2002, pay slip has already been issued vide letter No. GE-9-Edn.-1441 dated 07.11.2002 with a request to submit pre audit bill to the office. A reminder letter was also sent on 22.03.2005 to the Secretary, Human Resource Development Department, Ranchi regarding non receipt of the pre audit bill. The respondent No. 5 has acknowledged that pursuant to the notification No. 186 dated 05.05.1993 issued by the Government of Bihar in its Department of Human Resources, six persons, including the petitioner, were appointed in the pay scale of Rs. 3,700 - 5,000/- on the basis of deputation and accordingly, pay slip was issued by the office of Accountant General to the petitioner in the aforementioned scale.

11. As regards payment of leave encashment, a letter of request was issued by the office of Accountant General to the Principal, Higher Secondary School, Chhapra, Saran on 17.12.2002 to arrange the payment of leave encashment to the petitioner as per rules applicable lo non gazetted employees, since the petitioner was originally an assistant teacher of the basic school and retired as Principal, working on deputation.

12. From the counter affidavit filed by the respondent No. 7 and respondent No. 5, the substance of their stand appears to be that since the petitioner's appointment was initially in the Subordinate Education Service of the State Government as Assistant Teacher and since he was sent on deputation to officiate as Principal, DIET, Dumka, he is entitled lo pension only on the basis of scale of pay fixed in his parent cadre and not on the basis of the last pay drawn by him in the office from which he retired. The inference from such stand, as taken by the respondents, is that the petitioner's appointment as Principal, DIET is being treated only as his deputation on the post of Principal.

13. The counter affidavit of the respondents does not adequately deal with the petitioner's claim that his, appointment to the post of Principal, DIET was not strictly a deputation. Rather, it was by way of his appointment to the said post on which he had continued till the date of his retirement after serving for more than 10

years and the further contention, that during the entire period of his service as Principal, and prior to his retirement, he was never repatriated to the cadre of the Subordinate Education Service.

14. The question for determination is to whether the appointment of the petitioner to the post of Principal, DIET was on the basis of his deputation or whether the same was an appointment by way of his independent selection on the basis of the requisite qualification which he had possessed?

15. Referring in this context to the advertisement (Annexure-1), it would transpire that by the advertisement, applications were invited in the prescribed proforma from eligible candidates. The eligibility criteria was fixed and candidates belonging to B.E.S. (Class I)/Readers (in Universities/Colleges/Institutes) or persons holding analogous posts equivalent to Class I Cadre (Irrespective of Pay Scales) were only invited to submit their applications in the prescribed proforma. The eligibility criteria prescribing minimum academic qualification was also stipulated along with minimum experience of teaching in the elementary schools/institutions.

16. In response to the advertisement, the petitioner had applied declaring that he did possess all the requisite qualifications. His candidature was considered and he was selected for the post and thereafter he was appointed to the post of Principal, DIET in the pay scale of Rs. 3,700 - 5,000/-.

17. From the procedure adopted for selection and the appointment of the petitioner to the aforesaid post it is apparent that though it was mentioned in the advertisement that the selection to the post was on deputation but apparently, deputation was also a mode of and a source of appointment to the post. Although the advertisement does not indicate as such, but from Annexure-7 it appears that the post of Principal, DIET to which the appointment was made, was initially for a period of two years. The period was extended from time to time both by the erstwhile State of Bihar and later by the State of Jharkhand and thus, the petitioner was allowed to continue in the post till the date of his retirement.

18. For the purpose of appointment on any post, the appointing authorities may resort to any of the several modes/sources such as regularization, absorption,

transfer and deputation. As it would be evident from the advertisement (Annexure-1) in the present case, the source of appointment and selection is a mode of appointment by deputation. It cannot therefore, be said that the petitioner's appointment was mere 'on deputation' amounting to transfer under administrative exigencies.

19. A bare reading of the advertisement would indicate that applications were invited from candidates belonging to the Bihar Education Services (Class-I) or persons holding analogous post equivalent to Class-I cadre, possessing requisite qualification as detailed in the advertisement. Selection of the candidates was to be made on the basis of their qualifications and teaching experience and the appointment of the candidates was made only after scrutiny in accordance with the selection process and the merit list. The appointment of the petitioner to the post of Principal, DIET, being not strictly 'on deputation', the pension to the petitioner cannot be denied to him on the basis of the scale of pay last drawn by him on the date of retirement.

20. For the reasons stated above, I find merit in this application. Accordingly, this writ application is allowed. Accordingly, the respondents are directed to consider the claim of the petitioner for fixing his pension on the basis of the scale of pay last drawn by him in the post from which he retired, along with all consequential benefits. The respondents shall also pay to the petitioner the arrears of salary to which he is entitled for the services rendered by him during the period of extension of the tenure of the post pursuant to the sanction for extension granted by the State Government through its concerned department. The petitioner shall submit his representation stating his claim therein enclosing all the relevant documents which would be necessary to be executed by him by way of his pension papers, before the concerned respondents, along with a copy of this order and within three months from the date of submission of representation, the concerned respondents should complete the processing so as to enable the petitioner to receive his retiral benefits in terms of his claim as observed in this order.