

Harendra Jha Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Nov-06-2015

Appellant : Harendra Jha

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 780 of 2015
Harendra Jha Petitioner Versus 1. The State of Jharkhand. 2. The D.S.E.,
Deoghar Respondents. CORAM: HONBLE MR. JUSTICE APARESH KUMAR
SINGH For the Petitioner : In Person. For the Respondents : J. C. to S.C.III
11/6.11.2015 Heard learned counsel for the parties. Petitioner has made the
following prayer at para 1 which is quoted hereunder: That in this writ, challenge
the letter no. 103 dated 21.01.2014 issued by respondent no. 2 is voidable, and
misconceived petitioner is entitled gradeII Scale from 1.6.1975 as per letter no.
6022(F) dated 18.12.1989, and gradeIII Scale as per gradation Rule1993 and
when 8 years junior Shri Janardan Prasad Singh teacher Girl Middle School,
Bamangama had obtained gradeIII Scale on 1011998 than petitioner is 8 years
senior why shall not obtain gradeIII Scale 8 years before from 01.01.1990, 18
percent interest on dues and harassment cost for torture mentally, physically and
economically and court may impose cost to discourage the person who represent
as real. The reasoned order under challenge at Annexure1 dated 21st January,
2014 has been passed pursuant to directions contained in his previous writ petition
i.e., W.P.(S) No. 3496 of 2012 and upon disposal of Cont. Case (Civil) No. 529 of

2013. Petitioner came in service on 1st June, 1963 and has retired in September, 2000 as per his assertion. He has been drawing pension also as per P.P.O issued by the office of Accountant General enclosed as AnnexureB to the counter affidavit. The present grievance as would appear from Para 1 of the writ petition and the averments contained therein is in relation to a claim for GradeII Scale from 1st June 1975 relying upon letter no. 6022(F) dated 18th December, 1989 (Annexure2). The second grievance is in relation to a claim for GradeIII Scale as per Bihar Taken over Elementary School Teachers Promotion Rules, 1993 alleging that one Janardan Prasad Singh teacher, who was 8 years junior to him has been granted the said scale on 1.1.1998, petitioner should have been granted the said scale with effect from 1.1.1990.

2. Perusal of the reasoned order shows that in terms of Finance Department resolution no. 6022 dated 18th December, 1989, petitioner has been granted GradeII Scale of Rs. 14002600/ with effect from 1.1.1986 on his prerevised scale of Rs. 680985/. The circular dated 18th December, 1989 has been placed by the petitioner specifically paragraph 13(ii). The instant circular is in relation to revision of the scales of pay of teachers, of schools taken over and under the Administrative control of Department of Human Resources. The revised scales of pay will apply to all teachers, who were in service on 1st January, 1986 and to all new appointments or promotions made effective on or after the said date subject to the provisions made in subsequent paragraphs of the resolution. Para 13 of the instant circular of the Finance Department is quoted hereinbelow: Para 13: The State Government have decided that Revised pay scale indicated in Schedule II be extended to teaches in these schools and the provisions under the Central Government regarding training, eligibility for appointment and promotion and other serviceconditions be made applicable to them as far as possible. Thus the efficiency bars in their pay scales shall also continue. The following principles have been laid down for fixation of pay in the Revised scale. These provisions shall be applicable to all teachers except those having matric (untrained) qualification: (i) All those teaches who were in the basic grade on 1st January, 1986 shall have their Revised pay fixed in the basic grade indicated in Schedule II. (ii) All those teachers who were in receipt of promotion or time bound promotion into the Junior Selection grade and had completed 12 years of service in the basic grade prior to

1st January 1986 shall have their pay fixed in the Revised senior scale were indicated in Schedule II. Those teachers who were in receipt of promotion or time bound promotion into the junior selection grade prior to 1st January 1986, but had not completed 12 years of service in the basic grade on that date shall also have their pay fixed in the Revised scale in the basic grade only on 1st January 1986. Benefit of promotion and fixation of pay in senior scale shall be given to them with effect from the date they complete 12 years of service. (iii) Those teachers who have received promotion into Junior Selection Grade or first time bound promotion after 1st January 1986 but before 1st March 1989 shall be given the benefit of promotion for the purpose of fixation of their pay in the Revised scale only with effect from the date they have received promotion or date on which they complete 12 years of service whichever is later. (iv) Those teachers who have been promoted in Senior Selection Grade and have also completed 12 years of service or have received second time bound promotion on completion of 25 years of service prior to 1st January 1986 shall also have their pay fixed in the Revised senior scale. Promotion into the Senior Selection Grade or second time bound promotion after 1st January 1986 shall be ignored for the purpose of fixation of pay in the Revised scale. (v) Benefit of selection scale in the Revised scale of pay shall be extended to teachers in accordance with the availability of posts and the procedure and conditions prescribed by the Central Government for their teachers which would be deemed to have been in force with effect from 1st January, 1986. The number of posts in the selection scale where admissible in Schedule II will be restricted to 20 percent of the number of posts in senior scale of the respective cadre. Regarding conversion of posts into selection scale on 1st January, 1986 the Department of Human Resources Development shall issue separate orders in consultation with Finance Department and promotion shall be given according to the conditions prescribed by the Central Government for their teachers. The number of posts in the selection scales shall be subject to review on 1st April of each year, the first such review being due on 1st April, 1987. (vi) The existing facility of timebound promotion and selection grade discussed in paragraphs 1011 of F.D. Resolution No. 10770, dated 30th December, 1981 shall cease to be applicable from 1st March, 1980 onwards in the existing Payscales and shall not be applicable at all for the purpose of pay fixation in Revised scales with effect

from 1st January, 1986. The supertime selection grade now being introduced for other Government employees shall not be applicable to these teachers. Such promotions, however, if due before 1st March, 1986 shall be given and payment in the existing scale made only upto 28th February, 1989 after which the promotion would be deemed to have been terminated. (vii) The existing procedure of fixation of pay on promotion will cease to be applicable to teachers in the Revised payscales with effect from 1st January, 1986. In their case the pay fixation on promotion shall be governed by Rule 22(c) of Fundamental Rules and instructions issued by the Central Government for their teachers from time to time. The fixation of pay on promotion referred to subparagraphs (ii), (iii), (iv) and (v) shall also be governed by those provision. Perusal of para 13 shows that all those teachers who were in basic Grade on 1st January, 1986 shall have their revised pay fixed in the basic grade indicated in ScheduleII. Clause2 thereof states that all those teachers who were in receipt of promotion or time bound promotion into the Junior Selection Grade and had completed 12 years of service in the basic grade prior to 1st January, 1986 shall have their pay fixed in the revised senior scale as indicated in ScheduleII. Those teachers who were in receipt of promotion or time bound promotion into the junior selection grade prior to 1st January, 1986, but had not completed 12 years of service in the basic grade on that date shall also have their pay fixed in the revised scale in the basic grade only on 1st January, 1986. Benefit of promotion and fixation of pay in senior scale shall be given to them with effect from the date they completed 12 years of service. It has been emphasized by the petitioner in support of his claim for GradeII scale with effect from 1.6.1975 that he completed 12 years of service from 1963 by the 4. year 1975. The construction of the relevant provision of the circular dated 18th December, 1989, more specifically Clause 13(ii), however, do not lead to the said inference. The instant circular is not in the nature of laying down the condition of promotion from a date prior to its enforcement. It is in the nature of implementation of Central Pay Scale with effect from 1st January, 1986. The relevant Clause 13 lay downs the guidelines relating to fixation of scale of pay in respect of those who are in the basic grade or those who had already received promotion or Time Bound Promotion or those who had received promotion or Time Bound Promotion, but had not completed 12 years of service in basic grade on that date i.e. 1st January, 1986, for the purposes of their

fixation in revised scale only on 1st January, 1986. The construction of these provisions does not support the case of the petitioner for claim of retrospective promotion to Grade II from 1st June, 1975. No other executive circular/instruction of any prior date have been noticed to make out that case. The instant grievance has been raised after delay and much after his retirement also in 2000. The present writ application is of 2015 after rejection of his claim upon due consideration by the reasoned order dated 21st January, 2014. On the ground of matter being stale, such a claim was not maintainable. Even then, since the petitioner an old age person has been pursuing his case, the issue on being examined on merits is found untenable. So far as grievance relating to Grade III Scale with effect from 1st January, 1998 is concerned, relying upon instance of one Janardan Prasad Singh, teacher of Girls Middle School, Bamangama, it is apparent from the supplementary counter affidavit filed by the respondents pursuant to the query made by this Court on 8th October, 2015, that Janardan Prasad Singh got Intermediate Trained Scale of pay from 5th June, 1971 while the petitioner was in the Matric Trained Scale of pay at the relevant point of time and retired with the said qualification. Janardan Prasad Singh therefore became senior to him though petitioner's appointment was of 5. 1963 while Janardan Prasad Singh was appointed in March, 1970. The claim for Grade III Scale has been examined by D.S.E. respondent no. 2. The claim for promotion to Grade III is dependent upon availability of vacancy and upon the position of the incumbent in the seniority list. Perusal of the reasoned order shows that petitioner's name is at serial no. 305 while said Janardan Prasad Singh was at serial no. 103 in gradation list. The District Education Establishment Committee upon consideration of claim of all eligible person as per their seniority has recommended promotion to Grade III scale of teachers in the year 1998, 1999 and 2000. Petitioner's case for promotion to Grade III was not found tenable in view of his lower position in the seniority list and the availability of vacancy for the respective years. It is not shown that anyone else junior to the petitioner has been promoted in Grade III scale by the respondent. Taking into account these facts and discussions made hereinabove, this Court is not satisfied that the reasoned order dated 21st January, 2014 suffers from non application of mind or failing to consider the relevant material required to decide the issue . Therefore, no case for interference is made out . Accordingly,

the writ petition is dismissed. (Aparesh Kumar Singh,J) jk

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