IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 1502 of 2015

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1. Sabahuddin Azeem, Son of Late B.I. Azeem at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.
2. Shiv Shankar Jha, Son of Late Rajeshwar Jha, at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.
3. Chandradeo Thakur, S/o Sri Jaigdish Narayan Thakur, at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.
4. Raj Karan Prasad, Son of Late Gulab Prasad, at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.
5. Arvind Sharma, Son of Sri Ram Sevak Sharma, at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.
6. Amar Mandal, Son of Late Bhuneshwar Mandal, at present working as Teacher in other backward class +2 girls residential High School, Kalyanpur Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Backward and extreme Backward Class, Welfare Department, Government of Bihar, Patna.
3. The Secretary, Backward and extreme Backward Class, Welfare Department, Government of Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 27-08-2018

Heard learned counsel for the petitioners and State.

2. The petitioners have moved the Court for the

following reliefs:

> *"That the petition is being filed for issuance of an appropriate writ/writs, order/orders, direction/directions for payment of dearness allowance and House Rent to the petitioners in pursuant resolution dated 01.02.2014 whereby and whereunder Finance department has already issued direction for payment of Dearness Allowance and other emolument to those retired employee who have been appointed in fixed pay scale and for the other necessary relief/reliefs on basis of facts and circumstances of the case."*

3. The petitioners were teachers under the Education Department, Government of Bihar and superannuated on various dates. In terms of the policy of the State Government in the Department of Backward Class and Extremely Backward Class Welfare Department, Government of Bihar, for filling of posts in schools run by the said Department, Teachers who had retired were recruited on contractual basis. With regard to payment, it was provided that the last pay of the person minus the pension amount would be the monthly honorarium payable to the person concerned. The petitioners claims Dearness Allowance and house rent based on the Resolution of the Finance Department dated 01.02.2014 contained in Memo No. 246 dated 21.02.2014.

4. Learned counsel for the petitioners submitted that the aforesaid Resolution dated 21.02.2014 provides that the pay on reemployment would be the last pay drawn minus the pension on

which the dearness allowance was to be paid and with regard to other benefits, at the time of reemployment, the same had to be decided. Learned counsel submitted that in view of the aforesaid Resolution of the Finance Department dated 21.02.2014, the petitioners are required to be paid both Dearness Allowance as well as house rent.

5. Learned counsel for the State submitted that the writ petition is totally misconceived. It was submitted that the matter is not of reemployment and rather of a fresh appointment in a different Department. It was submitted that the same was in terms of the advertisement issued by the Backward Class and Extremely Backward Class Welfare Department, which clearly stipulated that appointments were to be made from among retired teachers and the amount of monthly honorarium would be the last pay drawn by them minus the pension amount. Learned counsel submitted that the Resolution of the Finance Department dated 21.02.2014 had no relevance in the present matter as it relates to reemployment, which is not the case herein. Learned counsel submitted that such appointment being strictly in accordance with the terms of the advertisement cannot confer any right on the petitioners to any additional benefits, much less as indicated in the Resolution of the Finance Department dated 21.02.2014.

6. Having considered the facts and circumstances of the

case and submissions of learned counsel for the parties, the Court does not find any merit in the writ application. The contention of learned counsel for the State is correct that the present is a case of appointment on contractual basis and not a case of reemployment. Reemployment pre-supposes that the employer is the same and a person going out of service is reemployed in the service of the same employer. The undisputed position is that the petitioners superannuated from the post of teachers under the Education Department whereas the appointment given to them was by the Backward Class and Extremely Backward Class Welfare Department. Thus, clearly the employer becomes different and it cannot be a case of reemployment. Equally relevant is the fact that such employment being on contractual basis, the rights conferred *inter se* between the parties is strictly as per the terms and conditions of the advertisement. The advertisement dated 14.11.2013, copy of which has been made Annexure-1 to the writ application clearly discloses in clear terms at clause-3, that the monthly honorarium would be the amount which the superannuated teacher got as his last pay minus the amount of pension. Thus, when there is a specific clause relating to the amount of monthly honorarium allowed to such persons appointed on contractual basis, neither the law provides for nor the Court is required to go into any other aspect or documents of any other Department of the State Government.

7. In view thereof, the writ petition stands dismissed.

8. At this stage, learned counsel for the petitioner submitted that after their superannuation, the petitioners have been granted promotional benefits, and, thus, as a consequence, their monthly honorarium shall also increase even as per the terms of their appointment, once the pay drawn by them at the time of superannuation is enhanced. Be that as it may, the same being a different and fresh cause of action, the petitioners shall be at liberty to move before the appropriate forum, in accordance with law, which shall be considered on its own merits.

(Ahsanuddin Amanullah, J.)

P. Kumar

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