

In the High Court of Jharkhand at Ranchi

Civil Review No.13 of 2012

With

Civil Review No.14 of 2012

The Secretary, Finance Department, Government of Jharkhand, Ranchi having its office at Project Building, P.O and P.S- Dhurwa, District-Ranchi...Respondent/Petitioner
(in both the cases)

V E R S U S

1. Padamshree Kashyap, wife of Sri Kishore Kumar, Resident of Block Campus, Bermo, P.O and P.S-Bermo, District-Bokaro.
 - 2.The Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand, having its office at Project Building, P.O and P.S-Dhurwa, District-Ranchi.
 - 3.The Secretary/Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S-Dhurwa, District – Ranchi.
 4. The Director, Social Welfare, Women and Child Development Department, Government of Jharkhand, having office at Project Building, P.O. & P.S-Dhurwa, District-Ranchi.
-Performa Respondents/Respondents no.2,3,5
(Civil Review No.13 of 2012)

- Preeti Rani, wife of Dr.Anand Kumar, resident of Flat No.C-404, Choudhary Madhusudan Road, Dimna Chowk, P.O-M.G.M, P.S- Mango, District – East Singhbhum at Jamshedpur.
- 2.Bibha Sinha, wife of Sri Sunil Kumar, resident Of Qr.No.H6/2, Tiljuga Road, Sakchi, Jamshedpur, P.O & P.S-Sakchi, Dist-East Singhbhum, Jamshedpur.
 - 3.Sanchita Bhakat, wife of Sri Ganesh Prasad, resident of Sonari, P.O & P.S-Sonari, Jamshedpur, District – East Singhbhum, Jamshedpur.
 4. Nitu Kumari, wife of Sri Surendra Prasad, resident of Golmuri, P.O & P.S –Golmuri, Jamshedpur, District-Singhbhum East, Jamshedpur.
 5. Reena Sahu, wife of Sri Laxman Sahu, resident of Mohalla – Gorang Kocha, P.O & P.S – Ichagarh, District – Saraikella Kharasawan.
 - 6.The State of Jharkhand through the Chief Secretary, Having its office at Project Building, P.O & P.S – Dhurwa, District – Ranchi.
 7. The Secretary/Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, having office at Project Building, P.O & P.S – Dhurwa, District – Ranchi
 8. The Secretary/Principal Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand having office at Project Building, P.O & P.S – Dhurwa, District – Ranchi.
 - 9.The Director (District Welfare Directorate), Social Welfare, Women and Child Development Department, Government of Jharkhand, having office at Project Building, P.O. & P.S – Dhurwa, District – Ranchi.....Respondent nos.1 to 4/Respondents

CORAM: **HON'BLE MR. JUSTICE R.R.PRASAD**

For the State/Petitioners: M/s.Ajit Kumar,AAG

and Vikas Kumar, J.C to A.A.G

For the Respondents/writ Petitioners:M/s. Rajendra Krishna and

Amit Sinha (Civil Review 13/12)

For the Respondents/Writ Petitioners: M/s. Manoj Tandon, Navin Kumar

Singh and Shiv Shankar Kunwar

(Civil Review no.14/12)

14/ 30 .4.15. Both the review applications were heard together and are being disposed of by this common order as the same are directed against the order dated 19.10.2011 passed in W.P.(S) No.2350 of 2010 and W.P.(S) No.5141 of 2011 whereby and whereunder the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand (respondent no.2) and also the Principal Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand (respondent no.3) were directed to do the needful in the matter of fixation of the salary of the petitioners in the revised scale of Rs.8000-13500/-.

The petitioners-opposite parties had put forth the claim of fixation of their salaries in the pay scale of Rs.8000-13500/- on the ground that the State Government, vide its resolution dated 17.12.2007 had decided to revise the salaries of those persons working in different departments in the Government drawing salaries in the pay scale of Rs.2200-4000/- (unrevised) and in revised scale of Rs.6500-10500/- to pay scale of Rs.8000-13500/- provided the promotional post does have pay scale of Rs.10000-15200/-. In spite of that when the Government denied such pay scale to the petitioners-opposite parties on the ground that the service rule has not been framed, the petitioners-opposite parties came to this Court with a plea that they are also drawing salaries in the revised pay scale of Rs.6500-10500/- and the pay scale of the next promotional post of District Programme Officer/District Social Welfare Officer is Rs.10000/-15200/-.

A counter affidavit on behalf of the respondent no.3, the Principal Secretary, Social Welfare, Women and Child Development Department,

Government of Jharkhand was filed in W.P.(S) No.2350 of 2010 but not in other writ application bearing W.P.(S) No.5141 of 2011 wherein the stand which had been taken was that the rule relating to the condition of service has yet not been framed and as such, Child Development Project Officer cannot have its promotional post and thereby they are not entitled to the salaries in the pay scale of Rs.8000-13500/-. The plea taken by the respondent was not accepted, in view of the letter bearing no.1371 dated 15.10.2008 as contained in Annexure 6 to the writ petition indicating therein the hierarchy of the post in the Social Welfare Department whereby next promotional post was shown as District Programme Officer/District Social Welfare Officer having pay scale of Rs.10000-15200/-.

The other ground on which the plea of the State was not accepted was that the same ground had been taken by the State when some of the Child Development Project Officers had approached to this Court for a direction to the authorities for grant of annual increment but the plea taken by the State was not accepted.

Being aggrieved with the said order, review applications have been filed for review of the order dated 19.10.2011 passed in W.P.(S) No.2350 of 2010 and W.P.(S) No.5141 of 2011 on the ground that on account of non-filing of the counter affidavit on behalf of the petitioner, the Secretary, Finance Department, Government of Jharkhand, Ranchi, correct fact could not be placed before the Court though counter affidavit had been filed by the Secretary, Social Welfare, Women and Child Development Department in W.P.(S) No.2350 of 2010.

In this regard, it was submitted that the petitioners working as Child Development Project Officer have never been holding a tenure post as they had been appointed under the integrated child development scheme being monitored by the Central Government and the World Bank and thereby their services exist so long scheme is in force. As soon as the scheme will come to an end, services of the Child

Development Project Officer would be deemed to have been terminated automatically.

The other ground taken for review of the order is that the Court on the basis of a letter, bearing no.1371 dated 15.10.2008 (Annexure 6 to the writ application) has taken that promotional post of Child Development Project Officer in the Social Welfare Department is District Programme Officer now it is being termed as District Social Welfare Officer having pay scale of Rs.10000-15200/- but that letter has nothing to do with the matter relating to the hierarchy of the post, rather it was a simple information given by the Social Welfare Department to the fitment committee and as such, it has no binding effect.

Further it was submitted that the writ petitioners are laying claim that the promotional post of Child Development Project Officer is District Programme Officer/District Social Welfare Officer on the basis of a resolution of the Government as contained in memo no.1515 dated 3.8.2011 but that resolution had been passed without taking concurrence of the Finance Department and thereby if any such stipulation is there in the said resolution, that cannot have any effect and as such is fit to be ignored.

Further it was pointed out that service rule relating to the service condition of the Child Development Project Officers has been framed whereby promotional post does not have pay scale of Rs.10000-15200/-.

As against this, Mr. Rajendra Krishna and Mr. Monaj Tandan, learned counsel appearing for the opposite parties submit that the petitioners have been appointed by virtue of a rule framed under proviso to Article 309 of the Constitution of India known as Bihar Bal Bikash Parishad Padadhikari Bhartiya Niyamawali, 1995. That rule not only confined to the provision relating to the recruitment but also speaks about the promotion on the post of junior selection and senior

Selection and in due course, even the services of the petitioners have been confirmed and have not only been given increment under the order of the Court but Child Development Project Officers have also been given 1st ACP in the scale of Rs.10000-15200/-and 2nd ACP in the scale of Rs.12000-16500/- and that the person from the cadre of Child Development Project Officers are getting pension and thereby the petitioners cannot be said to have not been holding tenure post and that in the writ petition, bearing W.P.(S) No.2350 of 2010, a counter affidavit had been filed on behalf of the Secretary, Social Welfare, Women and Child Development Department wherein it had been stated in paragraph 16 which reads as follows:

“.....1st promotional post of Child Development Project Officer should be that of District Programme Officer, however, in absence of service rule, the post of Child Development Project Officer is lying vacant and hence, no persons of the regular course are District Programme Officer. “

Further it was pointed out that the fact that the post of District Programme Officer/District Social Welfare Officer is the promotional post of Child Development Project Officer would be evident from the resolution of the Government as contained in memo no.1515 dated 3.8.2011 wherein it has been stipulated that post of District Social Welfare Officer shall be filled up from senior Child Development Project Officers but the State is disowning its own resolution by taking a plea that Department of Finance had never given any concurrence to that resolution which stand can not be allowed to be taken as the said resolution is still in force and has never been withdrawn.

Further it was submitted that the order passed in the writ application bearing W.P.(S) No.5141 of 2011 is being sought to be reviewed on the ground that the Principal Secretary, Department of Finance had not filed counter affidavit but that cannot be taken to be a valid ground as the Principal Secretary, Department of Finance was very

much party in the writ application along with other respondents but the Principal Secretary, Department of Finance never choose to file counter affidavit, though the Principal Secretary, Department of Social Welfare, Women and Child Development Department had filed counter affidavit in W.P.(S) No.2350 of 2010 which was heard along with W.P.(S) No.5141 of 2011 as the issue was the same and under the circumstances, it can not be the case of the State that the writ court passed an order in violation of principle of natural justice.

Further it was submitted that review jurisdiction of the Court is very limited and unless there is mistake apparent on the face of the record, the order/judgment never calls for its review.

Here, in the instant case, the State has never been able to make out a case of mistake apparent on the face of the record, rather has advanced argument which amount rehearing of the matter on merit which cannot be allowed to be raised in a review application.

Thus, it was submitted that the review applications are fit to be dismissed.

Having heard learned counsel appearing for the parties, it be stated that the petitioners all Child Development Project Officers, who were drawing salaries in the revised pay scale of Rs.6500-10500/- approached this Court claiming fixation of their salaries in the pay scale of Rs.10000-15200/- as according to them, they were entitled to such scale in view of the resolution of the State Government dated 17.12.2007 as the promotional post of District Programme Officer subsequently named as District Social Welfare Officer was having pay scale of Rs.10000-15200/-. In the said case, counter affidavit on behalf of the Principal Secretary, Social Welfare, Women and Child Development Department was filed in one of the writ applications wherein in one of the paragraphs as mentioned above it had been stated "1st promotional post of Child Development Project Officer should be that of District Programme officer. However, in absence of service

rule, the post of Child Development Project Officer is lying vacant and hence, no persons of the regular course are District Programme Officer.” Keeping in view that statement showing that assertion of the petitioner to the effect that District Social Welfare Officer is the promotional post had never been refuted specifically couple with the fact that the letter dated 15.10.2008 does indicate that the District Programme Officer does have pay scale of Rs.10000-15200/-, direction was given to the concerned authority to do the needful in the matter of fixation of the salary in the revised scale of Rs.8000-113500/- which order is being sought to be reviewed on the ground that District Programme Officer/ District Social Welfare Officer never happened to be promotional post of Child Development Project Officer and that post of Child Development Project Officer never happened to be a tenure post. Thus, by taking those pleas, the State intends to have rehearing of the matter on merit which cannot be allowed to be agitated in a review application as the review jurisdiction is extremely limited and unless there is a mistake on the face of the record, the order/judgment does not call for review.

In this regard, I may refer to a decision rendered in a case of ***N.Anantha Reddy vs. Anshu Kathuria and others [(2013) 15 SCC 534]*** and in a case of ***Meera Bhauja (Smt.) vs. Nirmal Kumari Chodhary (Smt.)[(1995) 1 SCC 170]*** and also in a case of ***Kewel Chand Mimani vs. S.K.Sen [(2001) 6 SCC 512]***.

That apart, it be recorded that the court having inherent power to act as ex-debito justitiae to prevent abuse of the process of the Court, can go for “procedural review” to correct orders passed under some misapprehension or inadvertently or in breach of principles of natural justice or on account of some false representation and/or to prevent the abuse of the process of the Court. In other words, where a case is of procedural review, it can be entertained in the following circumstances.

- (i) *if there is serious irregularity in the proceeding such as violation of principle of natural justice.*

- (ii) *If a mistake is committed by an erroneous assumption of fact which if allowed to stand would cause miscarriage of justice.*

The instant case never falls in any of such categories as in the facts and circumstances stated above, as has been highlighted on behalf of the opposite parties that the respondent-Principal Secretary never choose to file counter affidavit in the writ application, it cannot be said that the order was passed in violation of principle of natural justice.

Further it be recorded that the Court on the basis of document and also on account of the fact that there was no specific denial that the District Social Welfare Officer never happens to be a promotional post of the Child Development Project Officer passed an order and therefore, the order cannot be said to have been passed on an erroneous assumption of fact. The same issue has been raised which had been raised in the writ application and thereby it cannot be allowed to be agitated for the reason that if it is allowed that amounts to rehearing of the appeal which is beyond the scope of the court when exercising review jurisdiction.

Thus, the order passed by the Court never warrants to be reviewed. Accordingly, both the review applications stand dismissed.

(R.R.Prasad, J.)

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