IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

LPA No. 13 of 2024

1. The State of Jharkhand through the Secretary, Government of Jharkhand, Human Resources Development Department, Secondary Education Directorate, Ranchi, Government of Jharkhand having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist.: Ranchi.
2. The Director, Secondary Education, Human Resources Development Department, Government of Jharkhand, having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist.: Ranchi.
3. The District Education Officer, Gumla, having its office at Court Compound, P.O. & P.S.: Gumla, District: Gumla.

…Appellants/Respondents

Versus

1. Miss Ursula Tirkey, D/o: Benedict Tirkey, aged about not known, R/o: Village- Kasir, PO: Tongo, PS: Chainpur, Dist. Gumla
2. Smt. Lalita Tirkey, W/o: Sri Aloise Tirkey, aged about not known, R/o: Village-Bartoli, PO: Chainpur, PS: Chainpur, Dist.:Gumla.
3. Smt. Cemilla Surin, W/o: Late of Jonathan Surin, aged about not known, R/o: Village- Nawatoli, PO: Konbir, PS: Basia, Dist.: Gumla.
4. Miss Clara Grace Tirkey D/o: Late Lucas Tirkey, aged about not known, R/o: Village- Reshmi Nagar, Sisai Road, PO: Gumla, PS:Gumla, Dist.: Gumla.
5. Smt Louisa Khoya W/o: Shri Aloise Khoya, aged about not known, R/o: Village- Tilsiri, Palmi Semra PO: Gumla, PS: Gumla, Dist. Gumla.
6. Miss Pranchisca Kiro D/o: late of : Patras Kiro, aged about not known, R/o: Village-Jyoti Nagar, College Road, PO: Gumla, PS: Gumla, Dist. Gumla.

…Respondents/Writ Petitioners

With

LPA No. 629 of 2023

1. The State of Jharkhand through the Secretary, Government of Jharkhand, Human Resources Development Department, Government of Jharkhand having its office at Telephone Bhawan, Dhurwa, Ranchi-4, P.O.& P.S.: Dhurwa, Dist. Ranchi.
2. The Director, Secondary, Government of Jharkhand, having its office at Telephone Bhawan, Dhurwa, Ranchi-4, P.O.& P.S.:Dhurwa, Dist.: Ranchi.
3. The District Education Officer, Ranchi, having its office at Court Compound, P.O.: GPO, P.S.: Kotwali, District: Ranchi.
4. The Secretary/ Headmaster, St. Joseph' High School, Kanke, PO & PS Kanke, Dist.: Ranchi.

…Appellants/Respondents

Versus

1. Shrawan Kumar Pathak, S/o: Shree Indrajeet Pathak, aged about not known, R/o: Kumarbagh Road, Block Chowk PO & PS Kanke, Dist. Ranchi.
2. Rabindra Prasad Chaurasia, aged about not known s/o: Shri Sarju Prasad Chaurasia, R/o: Uphar Cloth Store Irgu Road, Kumhartoli, PO: GPO,

Ranchi, PS: Sukhdeonagar, Dist: Ranchi.
3. Rajiv Ranjan Singh, aged about not known, S/o: Late Nirad Gopal Singh, R/o: LIG R-325, Harmu Housing Colony, PO: Harmu, PS: Argora, Dist.: Ranchi.
4. John M. Baa, aged about not known, S/o: Late Louis Baa R/o: Village Sundarnagar, PO:Kanke, PS: Kanke, Dist.: Ranchi.
5. Silbanus Toppo aged about : not known, S/o: Late Nicholas Toppo, R/o: Village Kadma, P.O: Kanke, P.S.: Kanke, Dist.: Ranchi.

…Respondents/Writ Petitioners

With

LPA No. 630 of 2023

1. The State of Jharkhand
2. The Secretary, School Education and Literacy Department, Government of Jharkhand having its office at Telephone Bhawan, Dhurwa, P.O.& P.S.: Dhurwa, Dist.: Ranchi.
3. The Director, Secondary Education, Government of Jharkhand, School Education and Literacy Department, Ranchi having its office at Telephone Bhawan, Dhurwa, P.O.& P.S.:Dhurwa, Dist.: Ranchi.
4. The District Education Officer, Ranchi, having its office at Court Compound, P.O. & P.S.: Ranchi, District: Ranchi.
5. The Secretary St. Pauls High School, Church Road, Ranchi, PO: Church Road, PS: Lower Bazar, Dist.: Ranchi. **…Appellants**

Versus

1. Bachchu Prasad, S/o: late Raghu Nandan Prasad, aged about not known, R/o: Makchund Toli, Chutiya, PO & PS: Chutiya, Dist.: Ranchi.
2. Sultan Ahmed S/o: late Mustaq Ahmed, aged about not known, R/o: New Tiwary Tank Street, PO & PS: Hindphidhi, Dist. Ranchi.
3. Lawrence Silas Hembrom, S/o: late John Hembrom, aged about not known, R/o: Shanti Nagar, Garha Toli, PO: Ranchi, PS: Sadar Ranchi, Dist. Ranchi.
4. Anil Mundu S/o: late Joseph Mundu, aged about not known, R/o: village Kadma, PO, PS & Dist.: Khunti.
5. Sudha Rani Michiyari, W/o: Late Ashok Michiyari, aged about: not known, R/o: 24/B, Nayatoli, Church Road, Ranchi, PO Church Road, PS: Church Bazar, PO: Dist.: Ranchi.
6. Md Iqbal, S/o: Late Md Immamuddin, aged about: not known, R/o: Village Darsgah Islami, Itki, PO & PS: Itki, Dist: Ranchi.
7. Hem Kumari Nag W/o: Late John Mundu, aged about not known, R/o: Konwa, Binda Bazar, PO: Jate, PS: Nurhu, Dist. Khunti.
8. Bela Tirkey W/o: Nicodin Tirkey, aged about not known, R/o: Saket Vihar, Harmu, PO: Harmu, PS: Argora, Dist: Ranchi.
9. Shiv Narayan Ohdar S/o Harakhmain Ohdar, aged about not known, R/o: Ganpat Nagar, Dhumsa Toli PO & PS: Chutiya, Dist: Ranchi.
10. Ariel Demta S/o: Smt. Mary Demta (Tuti) R/o: Sarna Lane Sanlong, PO & PS: Namkom, Dist: Ranchi
11. Malti Devi W/o: Late Hare Krishna Sinha, aged about not known, R/o: Vinghya Vasni Nagar Road No.1, PO & PS: Chutiya, Dist: Ranchi

12. Usha Lakra, W/o: Binay Mundu, aged about not known R/o: Mohalla Chutiya, PO & PS: Chutiya, Dist: Ranchi.
13. Suchita Pushpa Tirkey, W/o: Anil M. Runda, aged about not known, R/o: Albert Compound, Pathal Kuduwa, Ranchi, Sesai, PO: Church Road, PS: Lower Bazar, Dist: Ranchi.
14. Jyotsana Barobhaiya W/o: P.M Barobhaiya aged about not known R/o: St Pauls Mission Compound, Church Road. PO: Church Road PS: Lower Bazar, Dist: Ranchi
15. Juel Tirkey S/o: Late Remis Tirkey aged about not known R/o: Dongaduba Koromia, Simdega PO Karomia PS Thetiatamar Dist: Simdega
16. Sanju Anubha Khalko W/o: Jagjit Tirkey aged about not known R/o: Basar Toli Church Road PO: Church Road, PS: Lower Bazar, Dist: Ranchi
17. Manila Tirkey W/o Anil Ekka aged about not known R/o: Court Compound Lohardaga, PO & PS Lohardaga, Dist: Lohardaga
18. Ajita Sosan Demta W/o Amitabha Mridul Bhaingraj aged about not known R/o: Road no.3 Golden Nursery, Ashok Nagar PO: Doranda PS: Argora, Dist: Ranchi
19. Sonia Shabnam Bara W/o: Vijay Tiru aged about not known, PO & PS: Namkom, Dist: Ranchi
20. Kumud Kumar Jha, S/o Late Meeth Jha aged about not known R/o: Gayatri Nagar, Sector- II, Dhurwa, PO Jaganathnagar PS Jaganathpur Dist: Ranchi
21. Onil Talan S/o Late Orion Talan aged about not known R/o Kathar Toli PO: Church Road, PS: Lower Bazar, Dist Ranchi
22. Sandeep Kumar Nag S/o Phulmani Nag aged about not known R/o Basar Toil Church Road, Ranchi, PO: Church Road, PS: Lower Bazar, Dist: Ranchi
23. Sushil Sanga S/o Jakris Sanga aged about not known R/o: Post- Bera Jamchua Namkom Ranchi PO Jamchuan PS Namkom Dist Ranchi
24. Baji Ram Mahto S/o Hari Mohto aged about not known R/o Chutrudih Sohatu PO & PS Sonahatu Dist Ranchi **…Respondents/Writ Petitioners**

With

LPA No. 712 of 2023

1. The State of Jharkhand through the Secretary, Government of Jharkhand, Human Resources Development Department, Government of Jharkhand having its office at Telephone Bhawan, Dhurwa, Ranchi-4, P.O.& P.S.: Dhurwa, Dist. Ranchi.
2. The Director, Secondary Education, Jharkhand, Human Resources Development Department, Government of Jharkhand, having its office at Telephone Bhawan, Dhurwa, Ranchi-4, P.O.& P.S.: Dhurwa, Dist. Ranchi.
3. The District Education Officer, Hazaribagh, having its office at Court Compound, P.O.:GPO, P.S.: Kotwali, District: Ranchi.

…Appellants/Respondents

Versus

1. Mohammad Asad, aged about not known, S/o: Late Md. Abu Muzzafar Nigar

2. Sultana w/o: Md. Javeduddin, D/o: Late Md. Abu Muzzafar aged about not known

Both are R/o: Hashmiya Colony, Pagmil PO & PS: Hazaribagh, Dist. Hazaribagh. …..**Respondents/Writ Petitioners**

With

LPA No. 14 of 2024

1. The State of Jharkhand through the Secretary to the Government of Jharkhand, Human Resources Development Department, Secondary Education Directorate having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist.: Ranchi.
2. The Director, Secondary Education, Jharkhand, Human Resources Development Department having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.:Jagarnathpur, Distt. Ranchi.
3. The District Education Officer, Gumla, having its office at Court Compound, P.O. & P.S.: Gumla, District: Gumla.

…Appellants/Respondents

Versus

1. Raj Nath Singh, S/o: Late Ram Bachan Singh, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
2. Theophil Minz, S/o: Late Andhrias Minz, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
3. Vincent Beng, S/o: Late Fuchu Beng, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
4. Anand Prakash Ekka, S/o: Late Siebanus Ekka, aged about not known, R/o: Village- Chainpur, PO:Chainpur, PS: Chainpur, Dist. Gumla.
5. Silbester Toppo S/o: Late Julias, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist.: Gumla.

…Respondents/Writ Petitioners

With

LPA No. 15 of 2024

1. The State of Jharkhand through the Secretary to the Government of Jharkhand, Human Resources Development Department, Secondary Education Directorate having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist. Ranchi.
2.The Director, Secondary Education, Jharkhand, Human Resources Development Department having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.:Jagarnathpur, Dist. Ranchi.
3. The District Education Officer, Gumla, having its office at Court Compound, P.O. & P.S.: Gumla, District: Gumla.

…Appellants/Respondents

Versus

1. Rev Anand Tigga, S/o: Laye Libus Tigga, aged about not known, R/o: Village-Katkahi, PO: Katkahi, PS: Chainpur, Dist. Gumla.
2. Smt. Terchilla Ekka, W/o: Sri Alekander Kujur, aged about not known,

R/o: Village- Karaku, PO: Katkahi, PS: Chainpur, Dist.:Gumla.
3. Mangia Prasad Yadav, s/o Shri Baburam Yadav, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist.: Gumla.
4. Haribansh Yadav S/o: Shri Palakdhari Yadav, aged about not known, R/o Village-Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
5. Nicholas Kujur S/o: Late Poulus Kujur, aged about not known, R/o: Village- Kareng Tetartoli PO: Kareng, PS: Chainpur, Dist.: Gumla.
6. Herman Lakra S/o: Shri Peter Lakra, aged about not known, R/o: Village- Karaku, PO: Katkahi, PS: Chainpur, Dist.: Gumla.
7. Augustus Kerketta, S/o: Late Emile Kerketta, aged about not known, R/o: Village Bandotoli, PO: Janawal, PS: Chainpur, District Gumla.

…Respondents/Writ Petitioners

With

LPA No. 16 of 2024

1. The State of Jharkhand through the Secretary to the Government of Jharkhand, Human Resources Development Department, Secondary Education Directorate having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist.: Ranchi.
2. The Director, Secondary Education, Jharkhand, Human Resources Development Department having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist. Ranchi.
3. The District Education Officer, Gumla, having its office at Court Compound, P.O. & P.S.: Gumla, District: Gumla.

…Appellants/Respondents

Versus

1. Yogendra Prasad, S/o: Late Gopal Prasad, aged about, not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
2. Jyoti Prakash Toppo, S/o: Late Patras Minz, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
3.Smt. Khusmaren Minz W/o: Mikhail Masidas Tirkey, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
4. Satten Toppo, S/o: Mritunjai Toppo, aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
5. Kaushal Kishore Singh S/o: Late Mahendra Prasad aged about not known, R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.
6. Mangal Das Khalkho aged about not known S/o:Manohar Khalkho R/o: Village- Chainpur, PO: Chainpur, PS: Chainpur, Dist. Gumla.

…Respondents/ Writ Petitioners

With

LPA No. 17 of 2024

1. The State of Jharkhand through the Secretary to the Government of Jharkhand, Human Resources Development Department, Secondary Education Directorate having its office at Telephone Bhawan, Dhurwa, P.O.: Dhurwa, P.S.: Jagarnathpur, Dist. Ranchi.
2. The Director, Secondary Education, Jharkhand, Human Resources Development Department having its office at Telephone Bhawan, Dhurwa,

P.O.: Dhurwa, P.S.:Jagarnathpur, Distt. Ranchi.
3. The District Education Officer, Gumla, having its office at Court Compound, P.O. & P.S.: Gumla, District: Gumla.

…Appellants/Respondents

Versus

1. Miss. Poulina Minz, D/o: Late Symon Minz, aged about not known, R/o: Village-Mariumpur, PO: Konbir, PS: Basia, Dist.:Gumla.
2. Smt. Maria Goretti Bage, W/o: Late Bijamin Bage, aged about not known, R/o: Village- Anand Basti, PO: Konbir, PS: Basia, Dist.: Gumla.
3. Smt. Prephulla Kujur, w/o: Late Peter Kujur, aged about not known, R/o: Village- Anand Basti, PO: Konbir, PS: Basia, Dist.: Gumla.
4. Smt. Kumudini Toppo, w/o: Late Karlous, aged about not known, R/o: Village-Mariumpur, PO: Konbir, PS: Basia,, Dist.: Gumla.
5.Smt. Shashikala Kindo W/o: Late Martin Kindo, aged about not known, R/o: Village- Mariumpur, PO: Konbir, PS: Basia, Dist.: Gumla.

…Respondents/Writ Petitioners

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant-State : Mr. Ranjan Kumar, Sr. SC 1

Dated: 22nd April, 2024

Per, Shree Chandrashekhar, A.C.J.

Twenty-one writ petitions challenging the order dated 18th August 2008 passed by the Director, Secondary Education were taken up for hearing together and a decision thereon was rendered on 2nd May 2023; writ petitions were allowed.

2. In this batch of Letters Patent Appeals, the State of Jharkhand seeks to challenge the common order dated 2nd May 2023 passed in the aforementioned batch of writ petitions with a direction for refund of the amount recovered from the writ petitioners.

3. The brief facts of the case are that the respondents were appointed in the government-aided minority institutions on teaching and non-teaching posts. They referred to the decision of the Government of Bihar vide memo No. 2526 dated 11th July 1979 whereunder the salary of the teaching and non-teaching staff of the minority-aided-school was brought equivalent to the staff in the government schools. They have also referred to

Resolutions dated 30th August 1980 and 22nd December 1981 whereunder pay-scale, allowances, provident fund, family pension and other monetary benefits were extended to the teaching and non-teaching staff in the minority-aided institutions. They further pleaded that Resolution No. 237 dated 20th February 1990 brought the employees of the minority-aided-schools at par with the government schools.

4. On recommendation of the Fitment Committee vide Resolution dated 8th February 1999, the pay-scale of the government employees was revised w.e.f 1st January 1996 and the arrears of monetary benefits to be given from 1st April 1997. The Human Resources Development Department accepted the aforesaid Resolution dated 8th February 1999 and vide letter dated 26th September 2007 the Department issued an instruction to the Deputy Directors and District Education Officers for providing the benefits thereunder to the employee of the minority-aided-schools w.e.f 1st January 1996. Consequent thereto, the monetary benefits were given to the respondents from 1st April 2007 till February 2009 which included interim allowance and education allowance.

5. However, the Director, Secondary Education, Government of Jharkhand by a letter dated 18th August 2008 advised the District Education Officer, Ranchi that the employees of the minority schools are not entitled for interim allowance and education allowance and issued a direction to fix their pay-scale excluding the interim allowance and education allowance.

6. The respondents challenged the letter dated 18th August 2008 before this Court in a batch of writ petitions.

7. In the order dated 2nd May 2023, the writ Court held as under:

> "15. Similar issue fell for consideration before the Hon'ble Patna High Court in C.W.J.C. No. 2897 of 2005 and the Court after interpreting various resolutions and government decisions to maintain complete parity in the matter of pay-scale and other allowances between the teaching and non-teaching staff of government nationalized school and government aided minority schools, vide its order dated 10.05.2011 allowed the said writ petition directing the respondent-State to resume payments of teaching allowance and interim relief to petitioners and their like till pay revision were effected as in the case of other teachers of nationalized government schools. The relevant paragraphs of the said judgment is quoted herein below:
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> "Thus, two Resolutions clearly show that the Government decision was to treat both of them at parity and there would be no discrimination between

the two on ground of being Teachers in a recognised minority school. In my view, this is consistent with Article-30 (2) of the Constitution which prohibits any such discrimination. A reference to Annexure-4 would also show that Government was conscious that pending pay revision, interim relief is made payable. It was specifically decided that even interim relief would be payable to Teachers of Government aided minority schools just like other Government Teachers. All this is being upset on a curious interpretation of Annexure-6 which is Annexure-A. The stand of the State in the supplementary counter affidavit is that when in 1998 (Annexure-B to the supplementary counter affidavit), State decided to grant interim relief pending pay revision, it mentions that it would be available to all Government servants and Teachers as specifically there was no mention of Teachers of Government aided recognised minority institutions that it would not apply to them. In my view, that is a perverse reading of the Government Resolution. As noticed above, the Government decision consistently was that a parity has to be maintained between the two classes of Teachers. There is no decision on record where this parity has been broken or Government has decided to forget this parity. If this parity is to be maintained then anything that became due and payable to Government Teachers of nationalised schools, that would automatically become payable to these Teachers as well. Thus, if Teachers of Government aided recognised minority institutions were to be deprived of the interim relief, that had to be specifically mentioned, otherwise automatically it would be carried to all Teachers as well. Similarly, when we come to Annexure-A, which is Annexure6 to the writ petition as well, it nowhere mentions that teaching allowance and interim relief shall not be paid to Teachers of Government aided recognised minority institution. In view of the Government policy, as noted above of maintaining parity, if these payments were started which were indeed started after 1990 then the circular of 08.11.1990 does not restrict its payment. Interim relief came to be granted in 1998, 8 years after this. How could anyone, with a sane mind, state that this 19 circular of 1990 prohibited grant of interim relief to the petitioners when interim relief itself was born in 1998. Thus, I find that the stand of the State is not valid either in law or in fact. I, therefore, hold and direct that as per the decision of the Government itself to maintain complete parity in matters of paying pay scales and payments as between Teachers in Government nationalised schools and Teachers of Government aided minority institutions, anything that is paid to the Teachers of nationalised Government schools, would be payable to the Government aided recognised minority institution as well otherwise there would be chance of violation of Article 30 (2) of the Constitution. Thus, Annexure-1 and consequently Annexures-2 and 3, based thereon, cannot be sustained. They are quashed accordingly. State is directed to resume payments of teaching allowance and interim relief to the petitioners and their like till pay revisions were effected as in the case of other Teachers of nationalised Government schools. There shall be no recovery from the petitioners and their like."

16. Similar view was taken by this Court in W.P.(S). No. 5419 of 2014 and a specific direction was given by this Court vide order dated 10.03.2015 to the State to consider the cases of the petitioners taking into consideration the order dated 10.05.2011.

17. From the aforesaid resolution and the interpretation made thereafter by the Hon'ble Patna High Court as well as by this Court, no other view can be taken other than what has been decided and this Court is also of the view that petitioners are entitled for the relief as claimed for.

18. The arguments of learned counsel for the respondent-State that the writ petition is not maintainable is totally misconceived as the writ petitioners were continuously seeking remedy and praying for relief with the respondents and thereafter, approached this Court and as such, it cannot be said to be a belated claim. Rather, it is recurring cause of action, so delay does not come in the way.

The further arguments of learned Additional Advocate General that the order of Hon'ble Patna High Court is in favour of State, is also not acceptable as the same is very clear in issuance of directions to the State holding therein that, *"I, therefore, hold and direct that as per the decision of the Government itself to maintain complete parity in matters of paying pay scales and payments as between Teachers in Government nationalised schools and Teachers of Government aided minority institutions, anything 20 that is paid to the Teachers of nationalised Government schools, would be payable to the Government aided recognised minority institution as well otherwise there would be chance of violation of Article 30 (2) of the Constitution". The respondents cannot interpret the order of the Court in their own way.*

The contention of learned counsel for the petitioners finds strength from the order of this Court passed in case of Mariyam Tirkey Vs. State of Jharkhand, reported in 2014 SCC Online Jhar. 15, which was affirmed upto the Hon'ble Apex Court. The relevant paragraphs of the said judgment reads as under:

> "11. In Resolution No. 237 dated 20th February, 1990, the teaching/non-teaching staffs working in Non-Government Recognized Minority Primary/Middle/Secondary Schools are entitled to House Rent Allowance, Urban Compensatory Allowance and such other allowances. By virtue of Resolution No. 68 dated 29.06.1983 (Annexure- 2 to W.P.(S) No. 512 of 2013) the teachers working in Non-Government Aided Minority Primary/Middle Schools shall be entitled to General Provident Fund, Pension (including Family Pension) and Gratuity like Government employees. In terms of Resolution No. 237 dated 20th February, 1990 the teaching/non-teaching staffs working in Non-Government Aided Minority Primary/Middle Schools are given pay parity including Dearness Allowance, Medical Allowance, House Rent Allowance, Urban Compensatory Allowance etc. We are of the view that when the pay parity including all allowances are given to teaching/non-teaching staff, they cannot be denied the benefit of leave encashment."
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> 12. In W.P.(S) No. 522 of 2002, the learned Single Judge proceeded under the footing that Resolution No. 237 dated 20thFebruary, 1990 is related only to in service benefits but did not include retirement benefits. On that footing, the learned Single Judge held that the order or decision as circulated vide letter No. 23/B-1 42/82-Si dated 23rd June, 1983 has not been superseded and therefore the teaching/non-teaching staffs employed in Non-Government Aided Minority Primary/Middle Schools cannot seek for leave encashment.

It is also to be taken note that till date State Government has not taken any decision not to extend the benefits of interim relief to the teachers of government aided minority schools.

19. The contention of Mr. Jai Prakash, learned AAG-IA that the petitioners are entitled for interim relief till the date of pay-revision is also 21 not acceptable. Further, from counter-affidavit, it appears that a specific plea has been taken that since teaching allowance and interim relief are not mentioned in the resolution of 1990 therefore, the petitioners are not entitled for the said benefits. The said plea is also without any basis. This Hon'ble Court in case while disposing of one of the present batch of cases i.e. W.P.(S). No. 4284 of 2016 has clearly held as under:

> "7. Be that as it may, having gone through the rival submissions of the parties, in my view the petitioners are entitled for the benefits prayed for in the instant writ application i.e. for re-fixation of their salary in the revised pay scale w.e.f. 01.01.1996 after quantifying the amount of interim relief and teaching allowance in view of letter No. 2728 dated 26.09.2007. The Hon'ble Patna High Court in C.W.J.C.No.2897/2005 clearly observed:

> "I, therefore, hold and direct that as per the decision of the Government itself to maintain complete parity in matters of paying pay scales and payments as between Teachers in Government Nationalized Schools and Teachers of Government aided minority institutions, anything that is paid to the Teachers of Nationalized Government Schools, would be payable to the Government aided recognized minority institution as well otherwise there would be chance of violation of Article 30(2) of the Constitution."
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> 8. It is an admitted fact that the Government has not come out with a policy to discriminate between teachers of nationalized Government Schools and Teachers of Government aided minority schools in matters of payment where payment is to be made from Government aid. In that view of the matter, when a teacher in a Govt. nationalized school or a Teacher in a Government aided minority educational institution having same eligibility/ criteria and the same qualification they have to be treated similarly Article 30(2) of the Constitution prohibits any such discrimination and thus discrimination would be violation of the aforesaid provision of the Constitution as there is no decision on record where parity has been broken or Govt. has decided to forget this parity. Thus if teachers of Govt. aided recognized minority institutions were to be deprived of the interim relief, that had to be specifically mentioned, otherwise automatically it would be carried to all Teachers as well."
>
> 20. As a sequitur to the aforesaid observations, rules, guidelines and Govt. circulars, this Court is of the considered view that petitioners are entitled for re-fixation of their salary in the revised pay scales w.e.f. 01.01.1996 after quantifying the amount of interim relief and teaching allowance in view of letter No. 2728 dated 26.09.2007. The respondents are directed to make the entire payments with all consequential benefits to the petitioners within a period of eight weeks from the date of receipt of this order.
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> 21. Resultantly, the impugned order dated 18.08.2008 passed by the Director, Secondary Education, Govt. of Jharkhand, Ranchi vide memo No. 2162 being not tenable in the eyes of law, is hereby quashed and set aside. Further the consequential orders of recovery i.e. Order dated 12.03.2011 impugned in W.P.(S). No. 1386 of 2009; W.P.(S). No. 1451 of 2009; W.P.(S). No. 1452 of 2009; W.P.(S). No. 1453 of 2009; W.P.(S). No. 1457 of 2009; & W.P.(S). No. 1465 of 2009 The letter No. 763 dated 06.03.2009 (in W.P.S. No. 4140 of 2009); letter No. 599 dated 21.02.2009 (in W.P.S. No. 4142 of 2009); and letter No. 2408 dated 04.08.2009 (in W.P.S. No. 4291 of 2009) Resolution No. 2315 dated 20.08.2007, resolution No. 2728 dated 26.09.2007 and resolution No. 2956 dated 22.09.2009 in W.P.(S). No. 6849 of 2017 and W.P.(S). No. 511 of 2018, are also hereby quashed and set aside and the respondents are directed to refund the amount, if already recovered from the petitioners.
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> 22. With the aforesaid observations and directions, all these writ petitions stand allowed."

8. The grievance raised on behalf of the respondents before the writ Court was directed against withdrawal of interim and education allowance that were initially provided to them. Before the writ Court, the State of Jharkhand referred to a letter dated 10th November 2000 issued by the Finance Department wherein the Special Director, Secondary Education,

Bihar stated that teaching allowance and interim relief are not payable to the teaching and non-teaching staff of the minority schools and, therefore, these components cannot be included in the pay fixation.

9. Mr. Ranjan Kumar, the learned State counsel refers to the communication dated 10th November 2000 issued by the Special Director, Secondary Education, Bihar and the order dated 13th June 2019 issued under the signature of the Principal Secretary, School Education and Literacy Department, to submit that the aforesaid communication and order demonstrate that this is not the responsibility of the State Government to pay interim allowance and education allowance through grant-in-aid to the teaching and non-teaching staff of the minority-aided-schools. The learned State counsel would further submit that the decision taken by the Government of Bihar is not binding on the State of Jharkhand which is entitled to take its own decision as regards the payment of grant-in-aid to the minority-aided-schools.

10. Proviso to section 73(1) of the Bihar Reorganization Act, 2000 provides that the conditions of the 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. Article 26 of the Constitution of India provides that every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes. The State therefore, cannot interfere with the affairs of the religious and charitable institutions so long as the same does not infringe any State or Central law. This is quite a settled proposition that for maintaining the standard of education in the institutions for religious and charitable purposes the minority schools are required to make selection of the teaching and non-teaching staff adhering to the norms and standards fixed by the State Government. This is not in dispute that the teaching and non-teaching staff for whom grant-in-aid is provided by the State of Jharkhand are appointed through a selection process in which participation of the nominee of the State Government is mandatory. Not only that, such appointments are made

following the mandate under Article 14 and Article 16 of the Constitution of India. Quite clearly, the salary and other allowance payable to teaching and non-teaching staff of the minority-aided-schools who are sponsored by the State Government cannot be different from the employees of the government schools. A case on the point is grant of leave encashment to the teaching and non-teaching staff in the minority schools vide *"Mariyam Tirkey v. The State of Jharkhand" 2014 SCC OnLine Jhar 15*. In *"Mariyam Tirkey"* wherein this Court held as under:

> "18. The above contention does not merit acceptance. The appointment of teachers is governed by Chapter-5 of the Compendium of Circulars of Minority & Public High Schools. Section 2(c) of Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 provides for recognition of minority secondary schools. Under section 2(c), Minority Secondary School means a secondary school which has been established by a minority community based upon either on religion or language, and which is managed by the minority community and has been declared and recognized as a minority school by the State Government. The State Government under section 18(2) of this Act, by a notification, grants recognition to a school as a minority secondary school which has been established by a minority community on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section and it fulfills the prescribed condition of recognition. Sub-section 3 of section 18 makes provisions for management and control of the minority secondary schools. Section 18(3)(a) prescribes that every minority secondary school shall have a managing committee registered under the Society Registration Act, 1860 and shall have written bye-laws relating to its constitution and function. Sub-section (3) clause (b) thereof provides that according to the prescribed qualification laid down by the State Government for the teachers of the nationalized secondary schools and within the number of sanctioned posts, the managing committee of the minority secondary schools shall appoint the teacher with the concurrence of the School Service Board constituted under Section 10 of the Act.
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> 19. Provisions of the aforesaid Act have also been adopted and followed by the Successor State of Jharkhand after its creation on bifurcation of the parent State of Bihar. The School Service Board has not been constituted in the State. It is the Directorate of Secondary Education which is the authority which grants approval to such appointment of teacher. Under the scheme of the Act, and the Circular issued from time to time by the State Government, the appointment of a teacher in a minority school is to be made by a Selection Committee in which the representative of the Education Department shall be there. The appointment of a teacher selected through such process, is subject to the approval of the District Superintendent of Education and also the Director of Secondary Education of the Government of Jharkhand. On the recommendation of the District Superintendent of Education, the Director, Higher Education, after scrutiny of the compliance of the necessary norms as laid down and on being satisfied, approves the preposition statement and fixation of salary of such a teacher of minority school. Only upon such approval, does the State Government grant aid

for payment of salary and other service benefits to the teacher concerned. At the same time, rules relating to the service condition of the teachers of minority schools, are to be based upon the principles of natural justice and prevailing law and are also to be sent to the State Government as provided under section 18(3)(c) of the Act. In the aforesaid scheme of recognition of minority secondary school under the Act of 1981 and approval of appointment of teachers and further, fixation of their salary and grant-in-aid, object and purpose of the issuance of the Circular dated 20th February 1990, is to be appreciated.

20. Applying the ratio of Dr. DudhNath Pandey's [2007 (4) JCR 1 (Jhr)(FB)] case and also State of Rajasthan's [(2005) 10 SCC 346] case, it is held that the Petitioners are entitled to leave encashment. It is held that the view taken by the learned Single Judge in W.P. (S) No. 522 of 2002 vide order dated 13.12.2002 is no longer a good law and the order in C.W.J.C No. 2162 of 1999 (R) is a correct view made by the learned Single Judge. The Reference is answered accordingly. Respondents are directed to pay the leave encashment amount as per the entitlement of the Petitioners within a period of three months from the date of production of a copy of this order."

11. The communications dated 10th November 2000 and 13th June 2019 labelled as "order" are not based on any statutory provision. The letter dated 18th August 2008 issued by the Director, Secondary Education on the basis of which the respondents are denied interim allowance and education allowance is also not issued under any statutory provision. By such communications, the teaching and non-teaching staff of the minority-aided institutions cannot be discriminated. The distinction sought to be made by the State of Jharkhand is clearly unreasonable and does not relate to any intelligible classification and, therefore, shall be in the teeth of Articles 14 and 16 of the Constitution. In *"Kangsari Haldar v. State of West Bengal" AIR 1960 SC 457* the Hon'ble Supreme Court observed that the propositions applicable to the cases arising under Article 14 of the Constitution "have been repeated so many times during the past few years that they now sound almost platitudinous". The second part of Article 14 which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution and enjoins that equal protection shall be secured to all persons without discrimination. This means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Therefore, classification must not be arbitrary and should relate to the object sought to be achieved. In short, Article 14 forbids class discrimination by conferring privileges or imposing

liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated. In *"D.S. Nakara & Ors. v. Union of India" (1983) 1 SCC 305*, the Hon'ble Supreme Court held that to pass the test on permissible classification, the decision under challenge must fulfill two conditions viz. (i) the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved in question. As noticed above, the process of appointment of the teaching and non-teaching staff in the minority-aided-schools follows the procedure prescribed by the State Government. The appointment process was in consonance with the requirement under Articles 14 and 16 of the Constitution and such appointments in the minority-aided-schools are sponsored by the State Government. Quite evidently, no distinction can be made between the teaching and non-teaching staff in the government schools and the teaching and non-teaching staff of the above referred group in the minority-aided-schools.

12. For the forgoing reasons, these Letters Patent Appeals are dismissed.

13. Pending interlocutory applications stand disposed of.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

Tanuj/Vedanti
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