

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12620 of 1993

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Awadhesh Sharma, son of Sri Aslok Sharma, resident of village Araunja, Police Station-Karpi, District-Jehanabad, at present Assistant Teacher, Middle School-Konch, Police Station-Konch, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna.
3. The District Superintendent of Education, Gaya.
4. The Sub-divisional Education Officer, Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate
 Mr. Shiv Kumar, Advocate
 Mr. Sahjanand Sharma, Advocate
For the Respondent/s : Mr. (SC6)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 17-08-2015

This writ application has been preferred, seeking quashing of an office order issued vide Memo No.2799, dated 25.09.1993, under the signature of the Director, Primary Education, Government of Bihar, whereby he has rejected the petitioner's claim for grant of B.A. trained pay scale on the ground that the petitioner was not eligible for such scale due to coming into force of the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 (hereinafter referred to as '1993 Rules').

The petitioner had earlier approached this Court by filing a

writ application claiming scale of B.A. trained teacher The writ petition gave rise to CWJC No.7172 of 1993. The said writ application was disposed of by order, dated 06.08.1993, with the following direction and observations:

“In paragraph 8 of the writ application it has been stated that the petitioner has passed the said examination in 1970 and in support thereof he has filed the certificate issued by the Bihar School Examination Board, as contained in Annexure-2. According to the petitioner, the impugned order (annexure-8) suffers from a mistake apparent on the face of record. Keeping this aspect in view, the petitioner has filed representations, including annexure-12 which is dated 10.6.1993, before the learned Director to remedy his grievance.

In the above view of the matter, we direct the learned Director, Primary Education, Govt. of Bihar, to pass appropriate order in relation to the grievance of the petitioner within two weeks from the date of communication of this order, keeping in view the law in this regard.

This writ application is, accordingly disposed of.”

In compliance of the said order of this Court, dated 06.08.1993, the order, under challenge, dated 25.09.1993 (Annexure-14), came to be passed by the Director, Primary Education, Government of Bihar, holding that the petitioner was not entitled for such scale in view of the provisions as contained in the 1993 Rules.



Mr. Banwari Sharma, learned counsel, appearing on behalf of the petitioner, has drawn our attention to a Division Bench decision of this Court, dated 21.05.2010, in CWJC No.12861 of 1993 (*Ram Milan Mishra & Ors. Vs. State of Bihar and others*) and another analogous matter, in order to contend that the said 1993 Rules have been held to be *ultra vires* Articles 14 and 16 of the Constitution of India. He submits, therefore, that the decision of the Director, Primary Education, Government of Bihar, as contained in his order, dated 25.09.1993 (Annexure-14), cannot be sustained as the very basis of rejection of the petitioner's claim for grant of B.A. trained pay scale does not survive any more.

We find some force in the submission made on behalf of the petitioner that in the light of the Division Bench decision of this Court in case of *Ram Milan Mishra and others Vs. State of Bihar and others* (supra), the case of the petitioner for grant of B.A. trained pay scale requires reconsideration by the Director, Primary Education, Government of Bihar.

Accordingly, we set aside the order, dated 25.09.1993, (Annexure-14) passed by the Director, Primary Education, Government of Bihar, with a direction to reconsider the petitioner's case for grant of B.A. trained pay scale in accordance with law. We have not gone into the merit of petitioner's claim for B.A. Trained teacher's scale.

Needless to say that if the Director, Primary Education, Government of Bihar, comes to a conclusion that the petitioner was, on the basis of qualification which he had, entitled to B.A. trained pay scale, the arrears of pay, arising of it, shall be calculated and paid to him within a period of six months from the date of such decision. The decision on petitioner's claim for grant of B.A. trained pay scale, in the light of the present order, must be taken within a period of three months from the date of receipt/production of a copy of this order.

This writ application is allowed with the above observations. There shall, however, be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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