

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6721 of 2001

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1. Ramjee Prasad Singh son of late Raghubansh Prasad Singh, General Secretary, Bihar State Industrial Training Institute Employees Association, resident of Ramjee Chak, P.S.- Digha, District- Patna.
 2. Tookar Prasad Sharma, son of Deo Rajan Prasad Sharma, Senior Instructor, Bihar State Industrial Training Institute, Digha Ghat, P.S.- Digha, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner and Secretary, Labour Employment and Training, Government of Bihar, New Secretariat, Patna.
3. The Director, Labour Employment and Training, Government of Bihar, New Secretariat, Patna.
4. The Finance Secretary, Government of Bihar, Old Secretariat, Patna.
5. The Principal, Industrial Training Institute, Digha, Patna-11.
6. The Principal, Industrial Training Institute (Ladies) Anishabad, Patna.
7. The Principal, Industrial Training Institute (Ladies, Arrah.
8. The Principal, Industrial Training Institute Buxar.
9. The Principal, Industrial Training Institute, Dehri Ansone.
10. The Principal, Industrial Training Institute, Motihari.
11. The Principal, Industrial Training Institute, Gaya.
12. The Principal, Industrial Training Institute,, Nawada
13. The Principal, Industrial Training Institute, Bhagalpur
14. The Principal, Industrial Training Institute, Munger.
15. The Principal, Industrial Training Institute, Birpur
16. The Principal, Industrial Training Institute, Supaul
17. The Principal, Industrial Training Institute, Faribasganj
18. The Principal, Industrial Training Institute, Katihar
19. The Principal, Industrial Training Institute, Ghoghardiaha
20. The Principal, Industrial Training Institute, Darbhanga.
21. The Principal, Industrial Training Institute, Begusarai
22. The Principal, Industrial Training Institute, Sitamarhi
23. The Principal, Industrial Training Institute, Muzaffarpur
24. The Principal, Industrial Training Institute, Muzaffarpur
25. The Principal, Industrial Training Institute, Bettiah
26. The Principal, Industrial Training Institute, Marhaura
27. The Principal, Industrial Training Institute (Ladies) Siwan
28. The Principal, Industrial Training Institute, Hathua
29. The Principal, Industrial Training Institute, Muzaffarpur
30. The Deputy Director, Koshi Division, Darbhanga.
31. The Deputy Director, Training, Bhagalpur Zone, Bhagalpur.
32. The Assistant Director (Apprentice) Training Digha, Patna-11
33. The Assistant Director (Apprentice) Training Muzaffarpur
34. The Assistant Director (Apprentice) Training Begusarai
35. The Examination Controller, Industrial Training Institute, Digha, Patna-11.
36. The Regional Inspecting Officer, Industrial Training Institute Digha, Patna-11.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Singh, Advocate.

For the Respondent/s : Mr. Manindra Kishore Singh, SC 6

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 11-08-2015

Heard learned counsel for the parties.

2. At the outset, when this writ application was taken up for hearing, learned counsel for the petitioners has submitted that the petitioner no. 1 has died and as such time should be given to him for filing substitution petition.

3. This Court, having perused the writ application and specially the impugned order, would find that the petitioner no. 1 had filed this writ application in capacity of General Secretary of Bihar State Industrial Training Institute Employees Association and, therefore, right to sue will not survive because it is actually the Association which had filed the writ application in representative capacity of which the petitioner no. 1 was the General Secretary. As a matter of fact, the petitioner no. 2, Tookar Prasad Sharma, has filed the writ application in individual capacity and is still alive.

3. As a matter of fact, if the prayer in the writ application is examined, the order dated 18.12.1999 passed by the Finance Commissioner and Secretary to the Labour Employment and Training Department has been questioned by the Association in respect of entitlement of the pay scale to the entire cadre of Instructor working in the Labour and Employment Department. Their plea was that after the enforcement of the Time bound Promotion in terms of the Finance Department Regulation dated 31.12.1981, the pay scale of Instructor should have been Rs. 785-1210 and consequently, the first Time bound Promotion should have been Rs. 785-1210. and Second Time bound Promotion should have been in the pay scale of Rs. 850-1510.

4. It is this aspect of the matter, which has been considered at length in the impugned order in the backdrop of the decision taken by the Finance Department as also the State Government laying down the norms for grant of Time bound Promotion.

5. It is not in doubt that the pay scale of the post of Junior Instructor as on 01.04.1981 was Rs. 335-555 and that of the Senior Instructor of Rs. 348-600. After submission of report of Pay Anomaly Committee, the said pay scale of the Junior Instructor was revised to Rs. 730-1080 whereas the pay scale of senior Industrial Instructor was revised to Rs. 785-1210. These facts have been admitted and consequence thereof, in terms of the policy of second Time bound Promotion will also be automatic inasmuch as whatever has been laid down in the policy of Time Bound Promotion notified by the State Government on 31.12.1981 itself lays down that the first Time bound Promotion shall be on the first higher pay scale and the second Time bound Promotion shall be on the second higher pay scale. Thus, for the post of Instructor when the pay scale, as on 01.04.1981, was Rs. 730-1080, their first Time bound Promotion scale will be Rs. 785-1210 and their second Time bound Promotion scale will be Rs. 850-1360 .

6. This Court must clarify that the concept of post of junior selection grade and senior selection grade has to be not confused with the concept of Time Bound Promotion. These are two different things. The Time bound Promotion scheme had provided that since the promotion could not be given on account to want of sanctioned vacant higher promotional post the employees have to be given Time Bound Promotion in the sense that while they will continue on some post, they will get benefit of two higher pay scale, one at the end of 10 years and other at the end of 25 years. As against it, the concept of post of junior selection grade and/or senior selection grade is based on strength of the cadre inasmuch as

under the 4th Pay Revision Committee Report of the Government, 20% posts were identified of the post of junior selection grade and 12 1/2 % post of senior selection grade and 2 1/2 posts of super time pay scale and for that whatever pay scale would come out as per the order of the Government again provided in the report of the Pay Revision Committee, they can be applicable. Thus the concept of Time bound Promotion and the grant of junior selection grade and/or senior selection grade being wholly different, they cannot be interchanged for the purpose of calculating the benefit under Time bound Promotion.

7. Judged in this background, this Court would find full justification that has been given by the respondent nos. 2 and 3 in their counter affidavit who have also clarified the whole issue in the following terms:

6. That with regard to the statement made in para 7 of the writ petition under reply it is stated and submitted that it is denied. So far as sanctioned strength of instructors is concerned, the fact is that altogether 950 posts of senior instructors and 83 posts of junior instructors were sanctioned before 1.4.81, so far as their pay scale is concerned it seems that no comments are required to be made.

7. That with regard to the statement made in para 8 of the writ petition under reply it is to be stated that the minimum prescribed qualification for appointment to the posts of Junior/senior instructors was non-matriculate. These Junior instructors who obtained practical experience of five years, and if their service records and C.C.Rs. were satisfactory were appointed to the post of Senior instructors in the scale of pay of Rs. 335-555/- with effect from 1.4.73 as pay order of Govt. No. 3888 dt. 18.12.73. The appointment of instructors is done on the recommendations at B.P.S.C.

8. That with regard to the statements made in para 9 of the writ petition under reply it is stated and submitted that this is an old case and as such papers relating to this case are not available.

9. That with regard to the statement made in para 10 of the writ petition under reply it is stated that those junior instructors who had obtained practical experience of five years, their service records and their C.C.R. were satisfactory were appointed to the posts of senior instructors in the scale at 335-555/- with effect from 1.4.73 as per Govt. order contained in memo no. 3888 dt. 18.12.73.

It is denied that with effect from 1.4.73 was under posts of senior

instructions were in existence. The fact of the matter is that there were two scale of posts of junior and that of senior instructors.

10. That with regard to the statements made in para 15 of the writ petition under reply is stated that this is denied so far as their scale of pay of senior instructors is concerned, the fact is that the Govt. of Bihar in the Deptt. of revised the scale of pay of Junior and senior instructors w.e.f. 11.4.81 vide its resolution no. 10770/F dt. 30.12.81 and revised it as follows:

Designation	Before 1.4.81 the revised pay scale.	After 1.4.81 revised pay scale
Senior Industrial Instructor	335-555/-	Rs. 730-1080/-
Junior Instructor	340-490/-	Rs.
Senior Industrial Instructor	348-6000/-	Rs. 785-1210/-
Instructor	400-660	

11. That with regard to the statement made in para 16 of the writ petition under reply it is stated that this is denied. In this connection it is to be pointed out that the historical back ground of pay scale of Junior & Senior Instructors which is as follows:

Prior to 1.1.71 there were two categories of instructors, known as senior instructors and Junior Instructors and the scales of pay for the aboe mentioned categories are Rs. 200-300 for Junior Instructors and Rs. 200-350/- for senior instructors. Besides, senior instructors were in the pay scale at Rs. 200-400/- . The Govt. of Bihar constituted 3rd Pay Revision Committee in the eyr 1970. On the recommendations of this Committee the Govt. revised the pay scale of its employees vide Finance Department Resolution No. 14636 dt. 30.11.72 & the following pay scale were granted to the instructors.

Name of the post	Old Scale	Revised Scale (ITI)
Senior Instructors	200-350/-	335-555/-
Senior Instructors	200-400	348-600/-
Junior Instructors	200-300	340-490/-

12. That with regard to the statement made in para-17 of the writ petition under reply, it is stated and submitted that it is denied that Director's letter bearing No. 2064 dt. 6.8.92 was also cancelled after

obtaining the approval at Finance Department, vide letter no. 1752. This was done under the circumstances explained in para 11 above of the counter affidavit.

13. That with regard to the statement made in para 18 of the counter affidavit, it is stated and submitted that it is denied. Director's letter no. 4544 dt. 11.12.90 was also cancelled, after obtaining the approval of Finance department of Govt. of Bihar, vide Govt. order no. 1752 dt. 27.6.96 and 1907 dt. 15.7.96. Circumstances under which this letter was cancelled have already been dealt with in para 11 of the counter affidavit.

8. As a matter of fact, when the respondents in the counter affidavit have also clarified that during pendency of the writ application, the pay of the Instructor has been revised to Rs. 5000-8000/- and that Time bound Promotion had also come to an end on 30.12.1995, this writ application questioning the Government decision must be held to be wholly misconceived and ill advised.

9. That being so, this writ application fails and is accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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