

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5455 of 2015

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1. Shailesh Kumar son of Late Tej Narayan Prasad Singh, resident of village - Sorathi, Post Office - Daidaha, Police Station - Dinara, District - Rohtas.
 2. Binod Kumar son of Deepak Kumar, resident of Mohalla Takia (Sasaram), District - Rohtas.
 3. Avinash Kumar Pandey son of Late Srikant Pandey, resident of village - Pipara Khurd, Post Office - Babhani, Police Station - Kargahar, District - Rohtas.
 4. Prbhakar Kumar Singh son of Late Rajendra Prasad Singh, resident of village, Post Office and Police Station - Baddi, District - Rohtas.
 5. Ajay Kumar Singh son of Late Shiv Bachan Singh, resident of village, Post Office and Police Station - Kochas, District - Rohtas.
 6. Pramod Kumar Tiwari son of Late Bigo Prasad Tiwari, resident of village - Sawan Dihri, Post Office - Balthari, Police Station - Kochas, District - Rohtas.
 7. Harendra Kumar, son of late Kanhaiya Pandey, resident of village - Sonhar, Post Office - Jhanuwa, Police Station - Sheosagar, District - Rohtas.
 8. Rakesh Kumar son of Late Chhabinath Singh, resident of village - Chaukhandia Chitauli, Post Office - Samardihan, Police Station - Sasaram, District - Rohtas.
 9. Krishna Kant Tiwari son of Late Narvadeshwar Tiwari resident of village - Kumbhau, Post office - Moresarai, Police Station - Sheo Sagar, District - Rohtas.
 10. Vankatesh Kumar Pandey son of Late Chandrama Pandey, resident of village - Thori Pandeypur, Post Office and Police Station - Murar, District - Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development, Ministry, Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Education Officer, Rohtas.
4. The District Programme Officer, Rohtas.
5. The District Account Officer, Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K N Choubey, Sr. Advocate
 Mr. Ambuj Nayan Chaubey
 Mr. Alok Kumar Garg
 Mr. Dineshwar Pandey

For the Respondent/s : Mr. Sunil Kumar, AC to SC 2

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 24-07-2015

Writ application has been filed by the petitioners after a



resolution dated 2.1.2015 issued under Memo No. 340 dated 11.02.2015 under the signature of the Joint Secretary, Department of Education, Government of Bihar, came to be notified. Anneuxre-8 is the resolution which petitioners want quashing of.

2. The reason for seeking such a relief is because State Government has notified as to which category of primary teachers will get matric trained scale from when and if somebody has derived benefit of such a scale beyond his entitlement, recovery is required to be made.

3. Petitioners had been appointed as Assistant Teachers between the years 1992 to 2003, some of them under the compassionate quota. They worked as Assistant Teachers but then were not given the training required for deriving benefit of matric trained scale. The training and the examination thereof finally came to be held in the year 2004 and 2007. Not only acquisition of training but passing of examination thereafter was made mandatory for matric trained scale so the petitioners blame the respondent State authorities for not sending them for training and holding examination on time.

4. Even without passing of the examination, some of the authorities in the field extended the benefit of matric trained scale, which became a bone of contention, leading to issuance of Annexure-8.



5. It may be clarified that Annexure-8 which is the resolution of the Department of Education, has been issued in the background that many cases on such disputes came to be filed before the High Court and law was settled by the two Division Benches, reference of which have been provided in the notification itself i.e. L.P.A. No. 412 of 2003 and L.P.A. No. 1459 of 2013.

6. The stand of the State is that the resolution under challenge has been issued in terms of the directions issued by the two Division Benches of the High Court. There is nothing contrary to what the Division Benches had held and directed. The fall-out upon the teachers is a culmination of judicial adjudication and directions. The basis for issuance of the resolution has been explained in para 23 of the counter affidavit, filed on behalf of the State.

7. Learned senior counsel representing the petitioners looking at the stand of the State has changed his thrust of argument on the question of recovery by relying upon the two decisions rendered in the case of **Chandra Kant and others Vs. The State of Bihar and others, 2010 (4) PLJR 732** and **State of Punjab and others vs. Rafiq Masih (White Washer), 2015 (1) PLJR (SC) 261**.

8. With due respect to learned senior counsel, the two decisions have no application to the present set of facts. The resolution under challenge (Annexure-8) is a culmination and

manifestation of the direction issued by the two Division Benches of the High Court. The rights and obligations of such teachers which include the present petitioners have been crystallized in the two decisions. If that is so, then the principles which may have been enunciated in the two decisions indicated above will not govern the cases of the present petitioners because their right and their entitlement has been settled by a judicial pronouncement in relation to a class of teachers, whose claim for grant of matric trained scale was the issue before the two Division Benches.

9. In view of the above, no case is made out for interference with the resolution, contained in Annexure-8, because any interference with the same also amounts to overreaching the two Division Benches and the adjudication made by them.

10. Writ application stands dismissed in view of the above.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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