

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2509 of 2013

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1. Kedar Prasad Singh S/O Late Rajendra Singh R/O Village- Panapur Kariyat,
P.S.- Kanti, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department, Govt. Of Bihar, New Secretariat,
Patna
3. The Director, Primary Education, Govt. Of Bihar, Patna
4. The Regional Deputy Director, Tirhut Division, Muzaffarpur
5. The District Magistrate-Cum-Chairman Of The Then District Education
Establishment Committee Muzaffarpur, District- Muzaffarpur
6. The District Education Officer-Cum-Chairman District Education Establishment
Committee, Muzaffarpur, District- Muzaffarpur
7. The District Programme Officer (Establishment) Muzaffarpur, District-
Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHASHI BHUSHAN SINGH

For the Respondent/s : Mr. Purnendu Singh, G.P.27,
Mrs. Sunita Kumari, AC to GP.27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-01-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In the present case, the petitioner is challenging the
notification dated 4.1.2010 issued under the signature of the
Director, Primary Education, Government of Bihar, Patna
(respondent no.3) by which he has given direction to all the
District Magistrates/District Superintendent of Education of
Bihar that promotion would not be granted in the scale of trained

graduate pay-scale as well as Headmaster's pay-scale with retrospective effect. The petitioner has sought a relief with regard to grant of trained graduate pay-scale.

3. Brief facts of the case is that petitioner was initially appointed as assistant trained teacher on 24.9.1974 and accordingly he joined the service on 26.9.1974 at Primary School, Gausi Bhagirath. At the time of appointment, petitioner was holding the qualification of Intermediate and was sent for training, passed the training examination during the service period. While working petitioner enhanced the qualification and also passed the Bachelor of Arts in 1976. From time to time he was posted at different Schools; ultimately he was superannuated on 29.2.2008. He was in the pay-scale of Rs.1500-2250 with effect from 1.1.1986 and from 1.1.1996 his pay-scale was enhanced from Rs.5000-8000/-. The petitioner was not granted the trained graduate pay-scale.

4. The Government of Bihar in exercise of powers conferred by proviso to Article 309 of the Constitution of India has framed the rule with regard to promotion of elementary school teachers named as Bihar Taken Over Elementary Schools Teacher Promotion Rules, 1993. In the Rule it has been provided manner the promotion will be granted to the teachers of the



School which has been taken over, was challenged before this Court and ultimately it was considered by the Full Bench in the case of Ram Nath Prasad Singh V. The State of Bihar and others reported in 2009(3) PLJR 384. This Court took note of the order passed in the year 1997 for maintaining status quo and on that ground no teacher was granted any promotion either in the trained graduate pay-scale or in the pay-scale of the Headmaster, since 1997, the promotion remained completely stagnant. Ultimately this Court decided the issue of promotion and directed to prepare a fresh seniority list in accordance with Promotion Rules, 1993 and joint seniority list prepared on the direction of the Division Bench in the case of Naresh Jha and Others v. State of Bihar and others, reported in 1994(2) PLJR 348 and draft rules created in 2006 subject to the approval of the Court with regard to promotions cannot be acted upon and this Court directed the State Government for preparation of fresh list and pass consequential promotion and transfer it in accordance with law. The Court has taken into consideration the predicament of the teachers who remained in the same pay-scale for 10 years and the Court has directed the Government for making separate seniority list for promotion to grade IV for Arts and Science teacher a fresh and, thereafter, prepare a

consolidated list for promotion expeditiously. The draft list should be published within three months from the date of judgment and the final seniority list shall be thereafter published and promotion and transfer be made in accordance with law. It will be relevant to quote paragraph 10 of the aforesaid judgment:

“10. Counsel for the petitioners contended that if the classification between Arts and Science teachers for the purposes of promotion to Grade 4 were to be upheld, then the petitioners and others who were initially appointed on the basis of their intermediate Science qualification would never have any chance of promotion because now after changing over to Arts and doing graduation in Arts it is not possible to again do graduation in science. According to the counsel that interpretation would be contrary to the decisions of the apex Court according to which Service Rules should be fashioned in the manner that every employee gets at least one chance of promotion in whole of his career. In view of what has been said above, it is not necessary to go into this aspect of the matter.”

5. In pursuance thereof the Principal Secretary, Human Resources Development Department, Government of Bihar issued a letter vide memo no.1097 dated 9.7.2009 addressed to all the District Magistrates and all the District Superintendent of Education by which a direction was given to take appropriate steps and grant promotion to the eligible teachers in trained graduate pay-scale as well as to the post of Headmaster in terms of the direction of the Court. Later on the Director, Primary

Education, Government of Bihar vide letter as contained in memo no.4 dated 4.1.2010 no promotion will be given to any teachers retrospectively either in trained graduate pay-scale or in the pay-scale of Headmaster.

6. Learned counsel for the petitioner submits that petitioner and other similarly situated persons were remained in the same pay-scale since 1997 on account of the order passed by this Court. There was no laches on the part of the petitioner and they cannot be deprived the benefit of trained graduate scale on account of the fact that this Court has granted status quo and thereafter no promotion was given to the petitioner and other similarly situated persons. He further submits that there is nothing in the judgment of the Full Bench prohibiting the persons to grant the benefit with retrospective effect to those who were entitled for promotion in 1997 as because the petitioner has superannuated he has a right of promotion in the pay-scale of trained graduate pay-scale cannot be striped off. Further he has submitted that other similarly situated persons of different district have been given benefit even to those persons who have already supersaturated from the service and by way of example he has annexed letter dated 28.2.2013 (Annexure-13) which shows three persons have been granted promotion after



their superannuation. Similarly he has also shown the number of such notification including the office order dated 5.4.2010 (Annexure-14), there he has also pointed out certain persons who have already superannuated from service have been given benefit of promotion in the trained graduate pay-scale. So much so he has submitted that for the act of the Court or for the act of the party third person should not suffer as admittedly, no act has been done by the petitioner which disentitled him from promotion as on account of order of status quo the petitioner has been deprived of promotion.

7. In support of his contention he has placed reliance on the judgment of this Court passed in C.W.J.C. No. 3035 of 2013 (Annexure-15) Ram Naresh Prasad Sah V. The State of Bihar and others. There identical question was raised and the Court has taken a view that for the act of the officer or for the act of the Court citizen can not suffer a loss where there is no fault on his part.

8. Counsel for the State submits that petitioner has not granted benefit of trained graduate pay-scale on account of superannuation of service. He has shown a Fax Message and on that basis he submits that some materials are required to give proper reply.

9. This case has been registered in 2013, case was adjourned on different dates but the State has not taken care to file the documents.

10. Having considered the rival contentions of the parties, it is well known principle of law that a person cannot be put to disadvantage because of the act of the Court or for the act of the Government. Here in the present case for deciding the issue of granting promotion to teachers, State Government has framed Promotion Rules, 1993 that Rule was challenged before this Court which remained pending for a quite long time of 10 years and during that period the petitioner and others could not be given benefit of promotion. If the citizen has legitimate claim the State should not shirk his legal obligation in a democratic set up which is governed by Rule of law to give his legal dues. The State should do what is fair, just and proper to the citizen and they should not act in such a manner to defeat the legitimate claim of the citizen. In the present case on account of the pendency of the case the petitioner was deprived from promotion. The Full Bench has not directed that those who were entitled to the benefit of trained graduate pay-scale during of cases 10years will not be entitled to the benefit. So much so as

has been shown by the counsel for the petitioner that similarly situated retired persons have been granted the benefit of trained graduate pay-scale. There is no reason to deprive the petitioner from that benefit and that too the issue has already been gone into in C.W.J.C. No.1489 of 2010 (Arun Kumar Deo v. The State of Bihar & others) where the Court has issued direction to the District Superintendent of Education to grant the relief.

11. This Court is of the view that the petitioner cannot be deprived of his legal right when already accrued to him, in pursuance of Promotion Rule 1993. Hence direction is given that the District Education Officer will consider the case of the petitioner and take decision as per the direction and grant relief which the petitioner is entitled. Order dated 4.1.2010 with respect to the present petitioner is hereby set aside.

12. With the aforesaid observation this writ petition is allowed.

(Shivaji Pandey, J)

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