

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7852 of 2011

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Triveni Prasad, son of Sri Ram Chandra Prasad, Resident of Mohalla -
Daulatganj, Police Station - Bhagwan Bazar, District - Saran at Chapra,
retired Assistant Head Master, Middle School, Tajpur, Police Station -
Manjhi, District - Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Superintendent of Education, Saran at Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr. Dinbandhu Singh GP-9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 15-07-2016

Heard Sri Naresh Chandra Verma, learned counsel for
the petitioner and Sri Dinbandhu Singh, learned Govt. Pleader - 9.

2. It is a peculiar case, in which, petitioner was
constrained to approach this Court again-and-again for grant of
Graduate trained scale. Despite the direction of this Court dated
25-08-2008 passed in C.W.J.C. No. 3016 of 1995, whereby, the
Commissioner-cum-Secretary, Primary Education was directed to
call for a report from the District Superintendent of Education and
thereafter, decide the case regarding the claim of the petitioner in
respect of B.A. trained scale, the Principal Secretary, Human
Resources Development Deptt. by the impugned order i.e. order



dated 20-12-2010 (**Annexure - 8** to the writ petition) without application of his mind and in perfunctory manner has rejected the claim of the petitioner. The Principal Secretary had received recommendation from the District Superintendent of Education, Saran, wherein it was categorically indicated that persons placed junior to the petitioner in the seniority list were granted scale of B.A. trained and he recommended in favour of the petitioner. The Principal Secretary, to the reasons best known to him, has not considered the recommendation and passed the impugned order.

3. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has now made a prayer for quashing of an order dated 20-12-2010 passed by the Principal Secretary (Annexure - 8) and has prayed for directing the respondents to grant him B.A. trained scale w.e.f. 01-04-1981, the date on which for the first time juniors to the petitioner were given the said benefit.

4. Short fact of the case, as pleaded in the writ petition, is that the petitioner was appointed as Assistant Teacher in Matric Trained Scale on 07-11-1963. Subsequently, w.e.f. 01-01-1975, he was promoted in Intermediate Trained Scale and posted as Assistant Headmaster. In the year 1980, the petitioner passed Bachelor of Arts examination from the Bihar University, Muzaffarpur. The petitioner



has claimed that after passing the B.A. examination, the petitioner was entitled to be promoted in the B.A. trained scale since 01-04-1981. The petitioner thereafter approached the authority concerned for granting the same benefit. It has categorically been stated in paragraph - 7 of the writ petition that number of persons, who were granted scale of Intermediate Trained after the petitioner and who were junior to the petitioner, were granted the Graduate trained scale. He has specifically mentioned at least name of five persons namely Sri Rajdeo Singh, Sri Ram Nath Singh, Sri Kamaldeo Dubey, Sri Ramdeo Singh and Sri Sayeed Ahmad with specific date. Earlier, the petitioner had filed writ petitions, which were disposed of, even thereafter, the petitioner got no favourable order. The petitioner again approached this Court by filing a writ petition, vide C.W.J.C. No. 3016 of 1995. This Court while disposing of the said writ petition i.e. C.W.J.C. No. 3016 of 1995 in its order dated 25-08-2008 virtually had shown displeasure to the attitude of the State authority and finally, this Court directed the Commissioner-cum-Secretary, Primary Education to call for a report from the District Superintendent of Education, examine the case and decide within specified time. At this juncture, the Court proposes to incorporate the order dated 25-08-2008 passed in C.W.J.C. No. 3016 of 1995, which is as follows:-



"The petitioner has challenged the order contained in annexure-9 issued by memo no. 1947 dated 13.9.1994 by the Director, Primary Education, Bihar. The order passed in annexure-9 has been passed on remand from this Court, is rather strange inasmuch as it says that the petitioner's case for promotion will be considered after preparation of the gradation list. It may be noted that the order was passed by the Director, Primary Education in the year 1994 and even today i.e. in the year 2008 no such gradation list has been prepared and the petitioner's future with respect to his claim for consideration as a B.A. trained teacher has been allowed to rot in the files.

The petitioner along with several other teachers like him came before this court in C.W.J.C. No. 4352 of 1993 and analogous cases. This batch cases was disposed of by an order contained in annexure-6 to the writ application on 16 March, 1994 whereby this court directed as follows:

'1. The vacancies accruing during the period 15.12.1976 to 31.03.1981 will be filled up by way of promotion keeping in view the principles laid down in the Government Order No. 4557 dated 15.12.1976 which has been held to be the law in this regard by a bench of this Court in the case of Kameshwar Prasad Sharma Vs. State of Bihar (C.W.J.C. No. 2205 of 1977) disposed of on 12.9.1979.

2. The vacancies following in higher grade between the period 1.4.1981 to 31.12.1985 will be filled up in accordance with Government Notification No. 2440 dated 18.12.1984 and

3. The vacancies accruing on or after 1.1.1986 will be filled up in accordance with 1993 Promotion Rules.'

Having laid down the principles for consideration this Court directed the District Establishment Committee to consider the cases of the petitioners for promotion by 30th of June, 1994. It appears that the cases of several persons were considered favourably and those Assistant Teachers were granted the higher scales as claimed by them. However, the petitioner's claim was not considered.

Petitioner's case is that he was appointed as an Assistant Teacher in a Government School which was earlier run by municipality on

7.11.1963. He was promoted and was drawing I.A. trained scale since 1.1.1995 which would be apparent from the reply to the counter affidavit on behalf of the petitioner dated 25.8.2008. The petitioner claims to have passed his graduation examination in 1980. It is concluded by the petitioner that although vacancies of Assistant Teachers were existing for the scale of B.A. trained teachers, the petitioner's case was not considered and other persons were granted the B.A. trained scale.

The stand of the private respondent no. 6 and 7 is that the respondents had acquired the qualification of B.A. earlier to the petitioner and as such their case for promotion of the higher scale of B.A. trained was considered prior to the petitioner.

The stand of the State is that respondent no. 8 was granted the higher scale as per the direction of this Court in a writ application. It is the State's stand that the petitioner's name does not figure in the gradation list containing the names of persons who are receiving I.A. trained scale.

Learned counsel for the petitioner submits that his name has wrongly been left out in view of the fact that he was already receiving the salary of I.A. trained Assistant Teacher and the authorities without applying their mind or without considering the fact that the petitioner has been getting the higher pay scale of I.A. trained have not considered the petitioner's case for the purpose of granting him B.A. trained scale.

Learned counsel for the petitioner also relies heavily on letter issued by the District Superintendent of Education wherein it has been stated that the petitioner is senior to several persons and he has been deprived of the scale of B.A. trained. I may make it clear here that although the petitioner was appointed much earlier to 'several persons' who have been granted the B.A. trained scale, however, his case for consideration in the higher scale of B.A. trained would only arise after he had acquired the requisite qualification which would be subject to the availability of vacancy in the scale to which he claims promotion.

However, considering the fact that the respondents are not interested in applying their minds for the one reason or the other and have not



considered the case of the petitioner, I direct that the Commissioner-cum-Secretary, Primary Education to call for a report from the District Superintendent of Education with respect to the petitioner's service and grant of higher scales from time to time. The Commissioner may also ask the respondents 3 and 4 to produce the vacancies available in the scale of B.A. trained from the year 1981 onwards and also the seniority list of Assistant Teachers in the I.A. trained scales and then decide as to whether the petitioner would be entitled to receive B.A. trained scales within a period of four months on receipt/production of a copy of this order. The petitioner may file a representation/application before the Commissioner-cum-Secretary, Primary Education bringing all the facts to his notice within a period of one week after receiving of a copy of this order.

This writ application is disposed of with the aforesaid observations."

5. This was not the end of agony of the petitioner. Even after order of this Court, the Secretary had not taken decision, thereafter, the petitioner was constrained to file a contempt petition and in contempt proceeding, by filing show cause, order impugned i.e. order dated 20-12-2010 passed by Principal Secretary was brought on record, whereby claim of petitioner was rejected. Since in compliance with the order of writ court i.e. C.W.J.C. No. 3016 of 1995, an order was passed by the authority concerned, the contempt petition was disposed of granting liberty to the petitioner to assail the said order. Thereafter, the petitioner has filed the present writ petition.

6. In this case, counter affidavits have been filed on



behalf of respondents. In the supplementary counter affidavit, the respondent/State has accepted that the petitioner in the seniority list was at serial no. 52 and persons at serial no. 58, 62, 73 & 75 were granted the benefit of B.A. trained scale, however; a plea has been taken in the supplementary counter affidavit that the persons, who were junior to the petitioner, were granted such benefit only on the basis of orders passed by this Court and in 2nd supplementary counter affidavit, the respondent no. 4 has brought on record orders passed by this Court, which is at Annexure 'C' series.

7. Sri Naresh Chandra Verma, learned counsel for the petitioner submits that at least in 2nd supplementary counter affidavit, the respondents have admitted that persons, who were junior to the petitioner, were granted the relief ignoring the case of the petitioner. He submits that ofcourse, the respondents had taken shelter of the order of this Court in number of writ petitions, but in none of the writ petitions, any specific direction was given to grant B.A. trained scale to such persons. He submits that this Court in all such cases had only directed the concerned respondents to examine the representation and pass appropriate order in accordance with law. He submits that in earlier writ petition filed by the petitioner, observation was given to examine the case of the petitioner, but petitioner's case was not considered favourably and in



discriminatory manner, the respondents, without any direction, has given the benefit to the persons, who were junior to the petitioner. He submits that Sri Ramdeo Singh and Sri Sayeed Ahmad, who were much junior to the petitioner, were granted the Graduate trained scaled w.e.f. 01-04-1981 and as such, the petitioner is entitled to get all the benefit with effect from the date on which juniors to the petitioner were granted such benefit. Alternatively, it has been argued by learned counsel for the petitioner that at least notional promotion should be granted to the petitioner with effect from the date on which juniors to the petitioner were granted benefit i.e. 01-04-1981 and thereafter, re-calculate the retiral benefit. It has been admitted that the petitioner has already superannuated w.e.f. 31-05-2006. In support of his argument, learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court reported in **2011 (1) P.L.J.R. 346 (State of Bihar Vs. Raj Kumar Prasad Singh)**.

8. On the contrary, Sri Dinbandhu Singh, learned Govt. Pleader - 9 opposing the prayer of the petitioner submits that it is not a case in which only petitioner was not given such promotion. He submits that other persons, who were senior to the petitioner, were also not given the benefit of Graduate trained scale. He has argued that only in those cases promotion was granted, in which



there was direction of this Court. He submits that only in compliance of order passed in writ petitions by this Court, such persons were granted the benefit of B.A. trained scale and as such, petitioner's case may not be equated with those persons. He has also placed reliance on a Full Bench judgment of this Court reported in **2009 (3) P.L.J.R 384 [(Ram Nath Prasad Singh -vs.- State of Bihar (Full Bench))]**. He submits that this issue has already been set at rest.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that right from the date on which juniors to the petitioners were granted the B.A. trained scale ignoring the case of the petitioner, the petitioner started to agitate the matter. Finally, in his writ petition i.e. C.W.J.C. No. 3016 of 1995, this Court directed the Commissioner-cum-Secretary, Primary Education to call for a report from the District Superintendent of Education, examine the representation and pass appropriate order in accordance with law. The order dated 25-08-2008 passed in C.W.J.C. No. 3016 of 1995 has already been quoted hereinabove. On going through the said order and examining the order passed by the Principal Secretary i.e. Annexure – 8, the Court is satisfied that the order by the Principal Secretary was passed without application of mind and in perfunctory manner. Ofcourse, in the first paragraph of the order, he has mentioned



regarding the submission of report by the District Superintendent of Education, he has not at all discussed the reason for ignoring the case of the petitioner. He simply rejected the claim of the petitioner and to show that illegality was committed, issued direction to identify such cases and cancel their appointment. The direction issued by the Principal Secretary appears to have not been even complied with. However, in 2nd supplementary counter affidavit, it has been accepted that the persons, who were much junior to the petitioner, were granted the B.A. trained scale. Only a plea has been taken that those persons were granted the benefit pursuant to the order of this Court. On going through the **Annexure 'C' series** to the 2nd supplementary counter affidavit i.e. orders passed by this Court in C.W.J.C. No. 2693 of 1981 (Girish Nandan Singh) dated 27th November, 1987, C.W.J.C. No. 917 of 1984 (Rama Shankar Prasad Sinha Vs. State of Bihar) dated 21-02-1984, C.W.J.C. No. 100 of 1984 (Rajdeo Singh Vs. State of Bihar), order dated 10-01-1984, C.W.J.C. No. 3173 of 1985 (Ramdeo Singh Vs. State of Bihar), order dated 23-07-1985 and in C.W.J.C. No. 438 of 1983 (Satya Narain Singh Vs. State of Bihar) order dated 09-02-1983, it is evident that in none of the cases any direction was given to grant B.A. trained scale. In all those cases, only direction was given to examine the representation and take decision. Meaning thereby that with a view to favour such



persons, the respondents authorities had taken shelter of those orders and ignored the case of the petitioner. On examining the record, the Court is satisfied that persons much junior to the petitioner were granted the benefit of B.A. trained scale ignoring the case of the petition. Since action of the respondents authority is evidently violative of Articles 14 & 16 of the Constitution of India, the writ petition deserves to be allowed.

10. So far as **Ram Nath Prasad Singh's case (*supra*)** is concerned, on going through the said judgment, it is evident that in the said case, issue was entirely different. The main issue was as to whether Science Teachers and Arts Teachers belonged to two different cadres in the elementary school or not, whereas, in the present case, the claim of the petitioner is to grant B.A. Trained scale.

11. The Court is in agreement with the submission of learned counsel for the petitioner, particularly; the order of this Court reported in **2011 (1) P.L.J.R. (State of Bihar Vs. Raj Kumar Prasad Singh)**. In the said case, the writ petition was allowed directing the respondents to grant benefit of B.A. trained scale with all consequential benefit. However, on appeal preferred by the State, this Court examined the matter in detail. While filing appeal, a stand was taken by the State that persons, who were junior to the writ

petitioner and were granted the benefit of B.A. trained, ignoring the seniority, their promotion was cancelled, however; this Court examining all those facts had disposed of the appeals with a direction to grant notional benefit and accordingly, fix the retiral dues. In paragraph - 21 of the Division Bench judgment, this Court has observed as follows:-

"21. Thus, in order to balance equities, this Court would direct the appellants to give notional promotion by way of grant of B.Sc. trained scale of pay to the respondent-writ petitioner with effect from 5.10.1995 and pay his retirement benefits on the basis of his last salary which he ought to have drawn, had he been granted graduate trained scale of pay alike his juniors with effect from 5.10.1995. In other words, we must clarify, the order of the learned Single Judge would remain undisturbed save and except that the respondent-writ petitioner upon being given the B.Sc. trained scale of pay with effect from 5.10.1995 would not be entitled for any arrears of salary in the said pay scale till the date of his retirement but his entire retirement benefit would be calculated by computing his last pay in B.Sc. trained teachers pay scale with effect from 5.10.1995. His entire retirement benefit including pension, gratuity, leave encashment would, therefore, be recalculated by refixing his salary in B.Sc. trained pay scale and difference of amount of retirement benefit will also be extended to him within a period of three months from the date of receipt/production of a copy of this order. As we have deprived the respondent-writ petitioner from any actually financial benefit in B.Sc. trained scale of pay from 5.10.1995 till the date of his retirement and have only allowed his notional fixation in the B.Sc. trained scale of pay we would make clear that any adverse order passed in future against Sheoshankar Prasad, Janeshwar Prasad and Bhuneshwar Prasad Yadav as with regard to their date of grant of B.Sc. trained scale of pay or financial emolument thereof will not be a ground for his lowering last pay of the respondent-writ

petition much less making recovery of higher amount of retirement benefit which he would become entitled to in view of the present order."

12. In view of principle laid down by the Division Bench of this Court in aforesaid case, the Court is of the opinion that even though the persons, junior to the petitioner, were granted monetary benefit of B.A. trained scale w.e.f. 01-04-1981, the petitioner may not get arrears w.e.f. 01-04-1981, but at the same time, he is entitled to be granted the B.A. trained scale notionally with effect from the date on which juniors to the petitioner were granted i.e. 01-04-1981 in terms of aforesaid division bench order and accordingly, the respondents are directed to recalculate the retiral benefit, fix it accordingly and pay.

13. All the formalities must be completed within a period of three months from the date of receipt/production of a copy of this order.

14. The writ petition stands allowed.

(Rakesh Kumar, J.)

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