

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1699 of 2013
IN
Civil Writ Jurisdiction Case No 14652 of 2012

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1. Kranti Kanak S/O Late Shiv Shankar Singh Resident Of Village- Anandpur, P.O.- Saraiya, P.S.- Aurai, District- Muzaffarpur
 2. Ram Shankar Kumar S/O Late Shiv Kumar Singh Resident Of Village- Sarganesh Dutt Nagar, P.O.- Bhagwanpur, P.S.- Bhagwanpur, District- Muzaffarpur
 3. Rajeev Ranjan S/O Late Krishna Kumar Singh Resident Of Village- Gariba, P.S.- Paroo, District- Muzaffarpur
 4. Pankaj Kumar Lal S/O Saroj Narayan Lal Resident Of Village- Jajuaar, P.S.- Katra, District- Muzaffarpur
 5. Kaushal Kishore Kumar S/O Ramlakhan Sah Resident Of Village- Katra, P.S.- Katra, District- Muzaffarpur
 6. Randhir Kumar S/O Late Mdan Kumar Prasad Resident Of Village- Mohamamdpur Badal, Via- Sulaut, District- Muzaffarpur
 7. Chandan Kumar Paswan S/O Late Yogendra Paswan Resident Of Village- Jarang Mallahtoli, P.S.- Gayaghat, District- Muzaffarpur
 8. Pramod Kumar S/O Late Shatrudhan Prasad Singh Resident Of Village- Makandpur, P.S.- Gayaghat, District- Muzaffarpur
 9. Gobind Prasad Chaudhary S/O Late Dashratha Lal Chaudhary Resident Of Village- Ghanshyampur, P.S.- Aurai, District- Muzaffarpur
 10. Sunil Kumar Thakur S/O Late Ramshobit Thakur Resident Of Village- Jarang Dih, P.S.- Gayaghat, District- Muzaffarpur
 11. Manibhushan Kumar S/O Late Prema Srivastava Resident Of Om Nagar, Road No.- 3, Village- Damodarpur, P.S.- Kanti, District- Muzaffarpur
 12. Manibhushan Kumar S/O Upendra Singh Resident Of Village- Narshihpur, P.S.- Musahari, District- Muzaffarpur
 13. Prabhat Kumar S/O Umeshwar Prasad Singh Resident Of Muhalla- Rampur, P.S.- Sadar, District- Muzaffarpur
 14. Taukir Ahmad S/O Md. Rafik Ahmad, C/O Naushad Alam, Near Mukrarri Masjid, Hall Campus, Chandwara, Muzaffarpur
 15. Md. Ekbal S/O Late Md. Salim Resident Of Village- Jagiya Matha, P.S.- Saraiyaganj, District- Muzaffarpur

.... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna
4. The Director, Primary Education, Government of Bihar, Patna
5. The District Education Officer, Muzaffarpur
6. Mukund Bhushan S/O Late Avadesh Kumar Mishra Resident Of Village- Laluchapra, P.S.- Paroo, District- Muzaffarpur

7. Ravi Ranjan Mishra S/O Late Umakant Mishra Resident Of Village- Raghunathpur, P.S.- Saraiya Kothi, District- Muzaffarpur
8. Ajeet Kumar S/O Late Sitaram Singh Resident Of Village- Chakkirampur Ttari, P.S.- Rannu Saiyadpur, District- Muzaffarpur
9. Prabhu Shankar Thakur S/O Late Ram Kumar Thakur Resident Of Village- Jajuaar, P.S.- Katra, District- Muzaffarpur
10. Raghvendra Kumar S/O Late Nagendra Kumar Singh Resident Of Village- Gyaspur, P.S.- Paroo, District- Muzaffarpur
11. Santosh Kumar S/O Rajdeo Ram Resident Of Village + P.O.- Bhijitha Bazar, P.S.- Sursand, District- Muzaffarpur
12. Praveen Kumar S/O Late Ragnatha Mishra Resident Of Village + P.O.- Kanta, P.S.- Gayghat, District- Muzaffarpur
13. Rajesh Ranjan S/O Late Lalbabu Singh Resident Of Village- Jarang Dih, P.S.- Gayghat, District- Muzaffarpur
14. Ansuman S/O Late Gyan Prakash Singh Resident Of Village+P.O.- Gangana, P.S.- Minapur, District- Muzaffarpur
15. Khalid Jamal S/O Late Jamaluddin Siddiqi Resident Of Village+P.O.- Mansurpur, Chamarua, P.S.- Karja, District- Muzaffarpur
16. Santosh Kumar S/O Late Krishna Harizan Resident Of Village- Aamgola, Nakawali Gali, P.O.- Ramna, District- Muzaffarpur
17. Pravin Kumar S/O Late Ram Chandra Prasad Resident Of Village+P.O.- Gaadha, Via- Manik Chowk, P.S.- Runnisaidpur, District- Muzaffarpur
18. Navin Chand S/O Late Kamaleshwar Chaudhary Resident Of Village+P.O.- Ghanshyampur, P.S.- Runnisaidpur, District- Muzaffarpur
19. Abhishek Kumar S/O Rajendra Prasad Singh Resident Of Village+P.O.- Dayalpur, P.S.- Hazipur, District- Vaishali
20. Rakesh Ranjan S/O Jai Gobind Das Resident Of Village- Raghunathpur, P.O.- Silaut, P.S.- Musahari, District- Muzaffarpur
21. Dhananjay Kumar S/O Mithilesh Kumar Resident Of Village +P.O.- Sarhanshiya, P.S.- Aurai, District- Muzaffarpur
22. Satish Prasad Verma S/O Late Tej Narayan Verma Resident Of Village- Gokhula, P.O.- Birhima Bazar, P.S.- Baruraj, District- Muzaffarpur
23. Jitendra Kumar S/O Gobind Prasad Singh Resident Of Village+ P.O.- Gijas, P.S.- Saraiya, District- Muzaffarpur
24. Naushad Ahmad S/O Abdul Advid Resident Of Village- Parati, P.O.- Unsar, P.S.- Bochaha, District- Muzaffarpur
25. Md. Manoowar Hussain Ekbal S/O Abdul Rahman Resident Of Village+P.O.- Khutahin, P.S.- Paroo, District- Muzaffarpur
26. Md. Tajuddin S/O Mannowar Akhtar Sah Resident Of Village+P.O.- Bahddinpur, P.S.- Paroo, Dist- Muzaffarpur
27. Ravi Shankar S/O Surendra Sharma Resident Of Village+P.O.- Mirapur, P.S.- Salera, District- Muzaffarpur
28. Ajeet Kumar S/O Late Krishna Sinha Resident Of Village+P.O.- Gokhula Rupauli, P.S.- Paroo, District- Muzaffarpur
29. Mukesh Kumar S/O Late Rajeshwar Prasad Sinha Resident Of- S.D.O. Road, Hazipur, P.S.- Town (Nagar), District- Vaishali

.... Respondent/s

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For the Appellant/s : Mr Tej Bahadur Singh, Sr Advocate with
Mr Pramod Kumar, Advocate

For the Respondent/s : Mr Chandra Shekhar Singh, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-09-2016

Heard the parties.

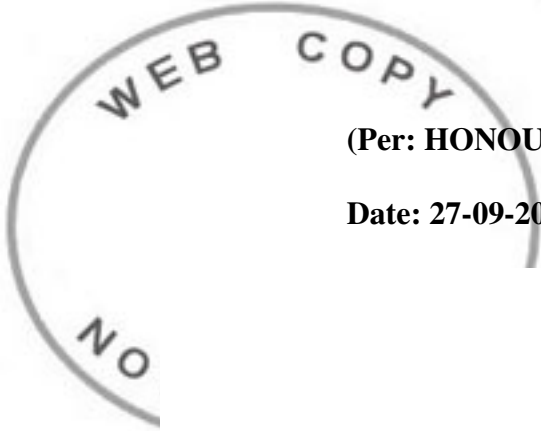
2 Delay in filing the appeal is condoned. IA No 9415 of 2013 stands disposed of.

3 A supplementary affidavit, bringing on record certain facts, has been filed with the prayer to be treated as a part of the pleadings in the case. Leave is granted. Prayer is allowed.

4 The facts, as pleaded in the supplementary affidavit, be treated as the part of the writ petition itself.

5 With consent of parties, this appeal has been heard at length for its final disposal at this stage itself.

6 The present intra-Court appeal has been filed, being aggrieved by the judgment and order dated 30.01.2013 passed in *CWJC No 14652 of 2012* (Kranti Kanak & Others –Versus- State of Bihar & Others) and analogous cases. The writ petitioners/appellants virtually want the same relief which they were already granted by the learned Single Judge. Ordinarily, there would have been no occasion to file the appeal but certain facts have intervened, which have been brought on record by the supplementary affidavit, whereby whatever



little, that was granted by the learned Single Judge by way of relief to the writ petitioners, has effectively now been denied to them.

7 The facts are not in dispute. These petitioners/appellants belong to Muzaffarpur district. They were all appointed as primary school teachers in Government schools on compassionate ground in between 1999 to 2005. They are all minimum Intermediate pass, some of them are Graduates as well, and few of them are even Post Graduates. The dispute, in the present proceeding, is from when they would become entitled to get Matric trained scale. This has two ramifications, (1) the monetary benefit associated therewith and (2) in view of the 2011 Primary Teachers Appointment Rules, they would be considered in the cadre of primary school teachers only upon being declared as a primary school trained teacher when they are granted the Matric trained status and, thus, their seniority in the cadre would be counted on the day they get the said certification. Any postponement or delay therein deprives them of their monetary benefit as well as seniority in the cadre. It appears that in the year 1999, State Government took a decision that all Teachers must be given training and, accordingly, they would get a higher pay scale upon getting the training certification. The Government then also took a decision that all untrained teachers, whether already recruited or to be recruited, would, at Government expense and at the instance of the Government, be sent for requisite training. As noted



above, these petitioners/appellants, who all belong to Muzaffarpur district and are posted therein and were recruited in between 1999 to 2005, they were not so sent for training. All untrained teachers of all other districts were sent for full time one year's course in Primary Teachers Training through Government institutions and the moment they cleared the one year training programme, they were all treated as Matric trained and not only put in that scale but were given their seniority in the cadre accordingly. When these petitioners were not being sent, they filed writ petition in this Court and it is pursuant to directions of this Court, in earlier rounds of litigation, that now the State Government decided alongwith Indira Gandhi National Open University (*IGNOU*) that they would use the aegis of *IGNOU* to provide them necessary training through correspondence course. This decision was taken sometime in the year, 2007. *IGNOU*, accordingly, designed the course which consisted of three modules, spread over for a period of two years. On completion thereof, the successful candidates were awarded Diploma in Primary Education (*DPE*). Some of the petitioners were then enrolled at the State instance with *IGNOU* for training in the session 2007-2009 and some in 2008-2010. Upon completion of the course, they were all given their *DPE* in 2010 and 2011 respectively. Ordinarily, the moment this *DPE* was granted, the petitioners/appellants would have been granted the Matric trained scale but that was not given. The reason was that



petitioners/appellants had chosen to litigate claiming that they should have been granted Matric trained scale from much prior date, that is, even prior to their passing of the DPE. Those writ petitions, being the present proceedings, were pending. It appears, in the meantime, the National Council for Teachers Education (*NCTE*) took an objection pursuant to which there was a meeting between the Principal Secretary, Human Resources Development Department, Government of Bihar and the Vice Chancellor of IGNOU which meeting took place on 01.07.2011 wherein it was decided that about 40,000 candidates, who had completed or were in the process of completing the modules for DPE programme, IGNOU would prepare a further six months module to overcome the deficiency pointed out by the *NCTE*. This six months special enrichment programme would be conducted by IGNOU accordingly.

8 From this, it would be seen that initially when the petitioners and their like joined the two years programme of DPE in the year, 2007 or 2008, the programme consisted of three modules and the total length was two years. All of them successfully completed the said programme and were given DPE, the last being in February, 2011, but they were not granted Matric trained scale inspite of this, rather pursuant to decision taken on the 01st of July 2011, it was now decided to have a further six months special enrichment programme module, and only, on completion thereof, they were now to get their



Matric trained scale. Thus, the grant of Matric trained scale got further postponed. This is a change from the judgment of the learned Single Judge. The learned Single Judge granted the relief to the petitioner that upon getting the DPE, they would be entitled to the Matric trained scale. Now the Government decision was to postpone it further by the time they completed the six months special enrichment course module. Now, the Government again sat over the matter and it is only in 2014, it sent the petitioners/appellants and their like for this six months course which all the petitioners have successfully now completed. They have been granted the Matric trained scale with effect from 2014.

9 In between, there was one further event. In 2011, the Primary Teachers Cadre Rules were amended. They provided that all primary teachers would be minimum Matric trained and their seniority would be determined from the time they got Matric trained scale. There is no place in the cadre now for untrained Teachers. The combined result of the delay caused by the State in facilitating the petitioners in getting the Matric trained certification, has cost the petitioners very dear. First, the financial benefits, which should have accrued to them at least when they got the Diploma certificates in the year, 2010 or 2011 as the case may be. That got postponed to 2014 and further their seniority in the cadre is now to be reckoned from 2014 as now the date of entry in the cadre is upon completion of

Matric trained course. They, thus, lose their entire seniority even though they were recruited in between 1999 to 2005. This has been now the grievance of the writ petitioners/appellants.

10 Learned counsel for the State submits that the Rules are clear that they will get benefits of Matric trained scale only upon completion of the requisite course. They would get their seniority from the time they completed the Matric trained course. The fact remains that they having completed the course only in 2014, they would get financial benefit and the cadre seniority only from that date and the decision of the State Government in this regard would not be said to be wrong.

11 On the other hand, Shri Tej Bahadur Singh, learned Senior Counsel appearing for the writ petitioners/appellants submits that when all the other Teachers of all other districts, other than Muzaffarpur, were sent for one year's course by the State, why were the petitioners left out? There was no fault or deficiency on the part of the petitioners. It was mere step motherly treatment by virtue of which they were left out. They had to come to this Court to enforce their right to be trained. Even thereafter, they were not sent to the one year full time course. The State negotiated with IGNOU for a two years course. Even then, petitioners pursued those courses and completed them in the year, 2009 and 2010 respectively. They were granted DPE certificate which entitled them to Matric trained scale in



the year, 2010 and some in the year, 2011, but still they were not granted Matric trained scale. Subsequently, as noticed above, NCTE then advised modification of the two years Diploma programme by IGNOU by adding six months further intensive training. This decision was taken in 2011 but again petitioners were not sent for this six months course immediately. It was only in the year, 2013 that they were sent for this course which they completed early in the year, 2014. Thus, all this delay that was caused was because of the delay, laches or step motherly treatment by the State for which the petitioners/appellants should not suffer. Petitioners/appellants were not at fault and merely because State took time to take decision and having taken decisions, slept over the matter, the petitioners/appellants cannot be deprived of their legitimate rights. It is submitted that the State should do what is just and fair and not deprive them of the benefits on technicalities.

12 We have considered the matter and the facts, as noted above. Firstly, when the Government took a decision to give training to untrained teachers, which had certain benefits attached to it, then the Government ought to have done it expeditiously and non-arbitrarily. Then why most of the people, except people from Muzaffarpur district, were sent for a one year full time course and then were granted Matric trained scale but Teachers from Muzaffarpur district were not so sent. They had not done anything to disentitle



themselves. Similarly, once they completed the two years module with IGNOU, they ought to have been granted Matric trained scale immediately but again matters were delayed. Then, at the instance of NCTE, they were then required to do further six months course. This was delayed for almost three years by the State. In our view, the petitioners/appellants cannot be made to suffer for the fault of the State. We are only reminded what Chief Justice **Chagla** said more than half a century back in the case of ***All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :***

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

13 In order to save injustice and protect the rights of the petitioners/appellants, we would, thus, hold that the judgment of the learned Single Judge would continue to operate. The petitioners/appellants would be entitled to Matric trained scale from

the day they completed the two years module. In other words, they would be deemed to be Matric trained teachers from the time the results were declared in respect of the two years course of IGNOU subject to their clearing six months course as later prescribed. They would not be treated as Matric trained either for the purposes of seniority or for financial benefits from the date they finally completed the six months course in the year, 2014 because all that delay was caused by the State in which petitioners/appellants have no role to play.

14 Thus, this appeal is, accordingly, allowed and the judgment of the learned Single Judge, to the extent above, is explained and modified.

15 Consequently, the decision of the State Government to postpone the grant of Matric trained scale and its benefits to a date after clearing the six months course would not apply to these petitioners/appellants accordingly.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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