

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.4716 of 2013**

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1. Purnima Kumari W/O Malik Prasad Sinha Resident Of Dhelwa Gosain, Barh,  
P.S. Barh, District Patna.

.... .... Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resource Development Department, Govt. Of Bihar, Patna.
3. The Director, Primary Education, Human Resource Development Department, Govt. Of Bihar, Patna.
4. The District Education Officer, Patna.
5. The District Programme Officer, Patna.
6. The Block Extension Education Officer, Barh-2, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s :      Mr. Tej Bahadur Singh, Sr. Advocate.  
                                                 Mr. Brisketu Sharan Pandey, Advocate.  
For the Respondent/s :      Mr. Kamal Kumar Singh, AC to AAG 2.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 29-02-2016**

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

2.      In the present writ petition, the petitioner has prayed for  
grant of promotion in inter and graduate trained scale.

3.      The petitioner entered into service on 10.5.1976 as  
assistant teacher on stipend and from 1.4.1977 he was given  
matric trained scale. The Superintendent of Education vide letter  
no.5734 dated 30.4.1991 has granted inter trained scale to the  
petitioner with effect from 1.4.1977 but later on that order was

rescinded on account of the fact that order was passed without following the rule.

4. The matter with regard to grant of B.A. trained scale was subject matter of Full Bench of this Court in the case of Ram Nath Prasad Singh V. The State of Bihar and others, reported in 2009(3) PLJR 384 and this Court in the Full Bench has given the guideline in what manner the panel for B.A. and B.Sc. trained scale would be prepared. By that time the petitioner superannuated from the service. When the respondent prepared the panel for entitlement of BA. trained scale, the name of the petitioner was missing on account of the fact that Finance Department, Government of Bihar has issued a notification about prohibiting the entitlement of promotion from retrospective effect. As the matter was pending before this Court in the Full Bench with regard to entitlement in what manner the promotion in B.A. trained scale will be given the fate of petitioner and similarly situated persons remained under eclipse for their no fault and their destiny for promotion remained in the State of hang in balance till the judgment of Full Bench and the benefit of promotion could not be given to the petitioner and similarly situated persons. Judgment always operates retrospectively unless it is made prospectivity as has been held by this Court and that



power only lies with the Hon'ble Supreme Court and not to this Court. The petitioner was/is entitled to B.A. trained scale but due to pendency of the case, the benefit of promotion could not be materialized. When eclipse is over, the person who is really entitled cannot be deprived from the promotion by issuing letter making the person entitled from the date of joining resulting in depriving the petitioner from promotion is an arbitrary exercise of power. It does not stand to the reason why the right of promotion has been made effective from the date of joining. This Court takes judicial notice of the fact that State Government has been giving benefit of promotion retrospectively even to those persons who have already superannuated. Suffering of the petitioner is very acute on account of the fact that he has retired from basic salary as in view of the resolution of the Finance Department vide letter no.6022 dated 18.12.1982 with effect from 1.1.1986 whereby all the scales, matric trained, inter trained and B.A, trained scales were merged and combined pay scale of Rs.1200-2040 was made. Virtually the petitioner remained in same pay scale what she was getting at the initial stage. It is travesty of the justice that a Government servant enters into service and superannuates on the same scale of pay at least petitioner is entitled to progression in salary by way of

embarking provisions of A.C.Ps in terms of A.C.P. Rule, 2003 which was subsequently modified in 2006. A person enters into service always expects that there will be revision of salary and he will get a chance of promotion in service career which is concomitant of service which is enshrined in Article 16 of the Constitution of India.

5. Counter affidavit has been filed. The State has taken a stand that the petitioner could not be given promotion with retrospective effect. In my view, the right of person which has already been matured on account of Government Rule can not be taken away by issuing letter making enforceable from the date of joining.

6. This Court is of the view that the stand taken by the State depriving the right of a person to promotion is not acceptable in view of fact that right has already matured.

7. In this view of the matter, this Court directs the State Government to consider the case of the petitioner in the light of the observation made above with respect to granting the promotion in B.A. trained scale, in alternatively in granting the benefit under 2003 ACP scheme.

8. For the convenience, it will be proper that petitioner should file a representation before the Director, Primary Education, Government of Bihar along with the order of this

Court and he will be obliged to take decision within a period of three months from the date of filing of the representation.

9. With the aforesaid observation this writ petition is disposed of.

Vinay/-

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**(Shivaji Pandey, J)**