

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6615 of 2013

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1. Madhurendra Kumar Jha S/O Late Banshidhar Jha R/O Ravitr Nagar, P.O.- Harnahi, P.S.- Sheohar, District- Sheohar
 2. Umesh Kumar Suman S/O Late Damodar Chari R/O Village- Kahtarwa, P.S. Sheohar, District- Sheohar

.... Petitioner/s

Versus

1. The Principal Secretary, Education Department, Govt. Of Bihar, New Secretariat, Vikas Bhawan, Patna
2. The Director (Primary Education), Govt. Of Bihar, New Secretariat, Vikas Bhawan, Patna
3. Regional Deputy Director Of Education, Tirhut, Muzaffarpur
4. The District Education Officer, Sheohar
5. The District Program Officer (Establishment), Sheohar
6. The Head Master Cum Drawing And Disbursing Officer, Adarsh Madhya Vidyalay, Sheohar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shivendra Kishore, Sr. Adv.

For the Respondent/s : Dr. Anil Kumar Upadhyay, S.C.20
Mr. Naresh Prasad, A.C. to S.C.20

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-04-2016

1. Heard learned counsel for the petitioners and learned counsel for the State.

2. In this case, grievance has been raised by the petitioners that they were appointed as Assistant Teachers, having qualification of Intermediate, were given the trained scale. Later on, dispute arose on entitlement of Matric trained scale as the claim was made by the State that those who are trained were given trained scale and the petitioners were wrongly given the trained scale whereas they should

have been given untrained scale.

3. Challenge was made with regard to appointment of untrained teachers and the matter went to the Hon'ble Supreme Court in *Ram Vijay Kumar & Ors. vs. State of Bihar & Ors. (1998) 9 SCC, 227 : 1997(2) P.L.J.R.(S.C.), 108*, where the Hon'ble Supreme Court has directed the Government of Bihar to hold examination to those persons who have been sent in service training within a period of six months. As the examination could not be conducted within the prescribed time, the authority has started deducting the excess amount, which was paid to them the scale of trained teacher. The action of the authority was challenged and this Court in *Chandrakant and others vs. The State of Bihar (2010) 4 PLJR, 732*, considered all aspects of the matter and decided that those who have been paid the excess amount on wrong interpretation or ignorance of Rule-91 will not be recovered from them.

4. In the present case, the petitioners were granted the trained scale and they were sent in service training in Primary Teachers Training College, Seohar, in the year 2005. When it was found that the aforesaid institution was not recognized by the N.C.T.E., in the middle of the academic year, the petitioner were withdrawn and accordingly, the institution relieved them on

14.07.2006. Thereafter, they have registered themselves in the I.G.N.O.U. and obtained the degree in the year 2010 in the first stroke. However, the headmaster of the school by the impugned orders (Annexures-1, 2 and 3) recorded that the I.G.N.O.U. has not been recognized by the N.C.T.E. and as such the excess amount which has been paid to them should be returned by the petitioners.

5. Learned counsel for the State has submitted that the Headmaster is not wrong in issuing such letters.

6. So far this case comprises of two parts; one is relating to recovery of excess amount paid to the petitioners. As per *Chandrakant's case (supra)* even if any excess amount is paid, the same is not recoverable and as such, respondent would not recover excess amount and if any amount has been recovered is not legal and sustainable in law and accordingly the same was set aside and directed that amount would be returned to the concerned person.

7. So far entitlement of trained scale is concerned, it is dependent on the nature of the institution from where the petitioners have obtained the B.Ed. degree. If the petitioners have obtained the B.Ed. degree from an institution which has been recognized by the N.C.T.E., then certainly, they will be entitled to the trained scale from the date of passing of the examination, but the petitioners have

obtained the B.Ed degree from an institution which is said to be not recognized by the N.C.T.E.

8. As the matter relates to recognition of the institution i.e. I.G.N.O.U, from where the petitioners have obtained the degree of B.Ed., let this issue be referred to the Director, Primary Education, Government of Bihar. For convenience, the petitioners would file a detailed representation, annexing the copy of the present order and other documents, which are in their favour. The Director, Primary Education, shall decide the issue after giving proper opportunity and hearing the petitioners as well as the other concerned persons and pass a reasoned order within a period of three months from the date of receipt of such representation.

9. With the aforesaid observations and directions, this petition is disposed of.

(Shivaji Pandey, J)

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