

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7991 of 2014

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1. Indu Kumari wife of Shri Ram Binod Thakur, resident of village + P.O. Baingra, Police Station- Saharghat, District- Madhubani, at present assistant teacher in Shri Jagdish High School Dhakajari, Police Station- Anrer, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Secondary Education, Education Department, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga
4. The District Education Officer, Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Sagar Singh

For the Respondent/s : Mr. AC to GP 3

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 04-08-2016

By virtue of Annexure- 7, dated 3.8.2012, the Director, Secondary Education, Government of Bihar has fixed the date of recognition of service of the petitioner as an Assistant Teacher under the untrained category from 25.1.2000. This order or decision is being challenged on the ground that the said decision seems to be erroneous now in view of what a Bench of this Court had to say in a recent decision rendered in the case of Ashok Kumar Vs. the State of Bihar and other analogous cases, which is CWJC No.10872 of 2010, decided on 22.5.2015. The adjudication and observation made by the learned Single Judge in paragraphs 66 to 70 of the said detailed

decision covers the issue raised by the petitioner in the present case.

The relevant paragraphs are quoted herein below for ready reference.

“66. The C.W.J.C. No. 21970 of 2012, C.W.J.C. No. 9178 of 2012 and C.W.J.C. No. 21974 of 2012 relate to claim of the petitioners where their services have been recognized by the State Government in the light of the report of Three-Man Committee, but their grievance is that the effective dates of recognition of their services have been wrongly fixed and they have claimed that their services should have been recognized with effect from the date of their respective appointments and the arrears of salary etc. should have been paid with effect from 01.01.1989.

67. The dispute arises out of creation of posts in a project school. As has been noted hereinabove, initially when the scheme of establishment of Project Schools came in the year 1981-82, 9 posts of Assistant Teachers were sanctioned in each project school on the basis of which, appointments were made and services of teachers in Project Schools of first phase were recognized. However, in second phase of establishment of Project Girls High Schools in Blocks, the strength was reduced to five as can be seen from Letter No. 142 dated 04.02.1989 (Supra). The Full Bench of this Court in case of **Project Uchcha Vidyalaya Shikshak Sangh (Supra)** did not approve of such reduction and held that it was an unreasonable attempt to reduce the posts by subsequent decision. The Full Bench, accordingly, held that the sanctioned strength should have been same, i.e., 9 in each project school. The Supreme Court, in case of **State of Bihar & Ors. Vs. Project Uchcha Vidya, Sikshak Sangh (Supra)** has vividly discussed the dispute relating to sanctioned strength in Project Girls High School and took into account subsequent State Government decision that the State Government had sanctioned 4 additional posts in such schools with retrospective effect. I consider it appropriate to extract Paragraph Nos. 57 to 61 of the said decision of Supreme Court, in case of **State of Bihar & Ors. Vs. Project Uchcha Vidya, Sikshak Sangh (Supra)** which are as follows:-

[“57. We have noticed that there is no dispute that in the years 1982-83 and 1983-84, no school was recognized or established. We have also noticed hereinbefore that one of the conditions for recognition was that the teachers were required to be appointed by the Vidyalaya Sewa Board. In the aforementioned

context, the letter dated 4-2-1989 is required to be considered for the purpose of this case.

58. Whereas in respect of the schools established by the State, 9 posts were sanctioned; for the schools which were selected for recognition/taken over through the agency of the three-man committee, only 5 posts were sanctioned. It has not been disputed that in the High Schools in question, students are taught from Classes VI to X i.e. five classes. It has also not been disputed that every subject has been categorised in three groups viz. language groups, humanity group and science group and other teachers were to be appointed accordingly.

59. The State is no doubt entitled to lay down qualification or sanction the requisite number of posts. It may also in certain situations provide for relaxation therefrom or lay down such terms and conditions as they may deem fit and proper. It is also permissible for the State to appoint a Screening Committee for the purpose of finding out whether the teachers satisfy the requirements laid down therein. The State is also entitled to fix the age-limit of such teachers. How many teachers were required to be appointed and the strength of the teaching staff and the non-teaching staff again is a matter of policy decision of the State. Indisputably, if somebody has any say in this behalf it will be the Bihar Senior School Education Board, a statutory authority which is statutorily enjoined to lay down the criteria for the purpose of recognition of the said schools by it. But for all intent and purport this issue has become academic. In view of the fact that the State itself has realised the difficulty which the schools would face if only 5 posts are sanctioned in each school, the Cabinet itself realised that like any school run by the Government, it is necessary to have at least 9 teachers even in the Project Schools. The strength of the teachers for such schools has not only been sanctioned, sanction therefor was given with retrospective effect and retroactive operation. Necessary funds were allocated for the said purpose. Although, thus, it was the prerogative of the State to lay down the criteria, the same has been laid down. Therefore, correctness or otherwise of the finding of the High Court that the State was bound to recognise at least 9 teachers in each school, for all intent and purport is now

academic.

60. It is furthermore not in dispute that the State for the first time in its letter dated 4-2-1989 laid down the qualifications for the teachers as also the strength thereof.

61. The validity and/or legality of the said government order dated 4-2-1989 was questioned before the High Court. The High Court, as noticed supra, set aside the said directions holding that 9 teachers were required to be appointed in each of the schools. This part of the order of the High Court does not require elaborate consideration as the State Government had now sanctioned 4 additional posts with retrospective effect.”]

68. From the observations of Supreme Court, as noted above, there remains no doubt that 4 additional posts were sanctioned with retrospective effect and not with effect from the date when such posts were sanctioned. This is not in dispute that in the light of the observations made by Full Bench of this Court, Secondary, Primary and Adult Education Department, Government of Bihar vide its Letter No. 56 dated 25.06.2000, sanctioned 4 additional posts for teachers in the present schools established in second phase. From the order impugned dated 24.06.2008 (Annexure-7), it is evident that the service of the petitioner (Shwetambar Jha) came to be recognized on the basis of his appointment made on 22.09.1981 in the subject Sanskrit. It has, however, been mentioned in the said office order dated 24.06.2008 that decision for payment of the salary with effect from 01.01.1989 or 25.01.2000 or from the date of acquisition of training qualification will be taken after the services of such teaching and non-teaching employees are found to be continuous and in such circumstance, the arrears will be paid in five equal annual instalments. The petitioner was, though appointed in the year 1981, has been treated to have been appointed against 5th post as he was untrained because in the reasoning of the Director, Secondary Education, the petitioner was found to have been appointed against a post which came to be sanctioned by virtue of the Office Order No. 56 dated 25.01.2000, his service has been recognized with effect from 25.01.2000. In my view, the Director, Secondary Education, while passing the office order dated 18.09.2012, did not take into account the fact that the additional 4 posts of second phase were sanctioned by Office Order No. 56 dated 25.01.2000 with retrospective effect which fact has been taken note of by Supreme



Court in Paragraph No. 61 of the decision in case of **State of Bihar & Ors. Vs. Project Uchcha Vidya, Sikshak Sangh (Supra)**. In my opinion, the order issued by the Director (Secondary Education) Bihar, Patna dated 18.09.2012, recognized the service of the petitioner with effect from 25.01.2000 based on erroneous consideration without taking into account the true import of Office Order No. 56 dated 25.01.2000, by which 4 additional posts were sanctioned with retrospective effect, which has been taken note of in Paragraph No. 62 of the Supreme Court decision in case of **State of Bihar & Ors. Vs. Project Uchcha Vidya, Sikshak Sangh (Supra)**. The impugned order dated 18.09.2012 (Annexure-8) is, accordingly, quashed. The Director, Secondary Education, is directed to reconsider the case of the petitioner of C.W.J.C. No. 21970 of 2012 (Shwetambar Jha) treating the post against which he was appointed to have been sanctioned with retrospective effect and consider his case for grant of recognition of his service and payment of salary accordingly with effect from 01.01.1989. Final decision in this regard must be taken within three months from the date of receipt/production of a copy of this judgment.

69. The C.W.J.C. No. 21970 of 2012 is, accordingly, allowed.

70. The issue involved in C.W.J.C. No. 9178 of 2012 (Sabita Rani) is similar to case of petitioner of C.W.J.C. No. 21970 of 2012, wherein, the petitioner has assailed the order dated 27.01.2011 (Annexure-9) passed by the Director (Secondary Education), Bihar Patna, whereby, the service of the petitioner has been recognized with effect from 25.01.2000 for the purpose of payment of salary etc., for the reason, which has been assigned in the impugned order, that the petitioner was appointed on a post which was subsequently sanctioned by Office Order No. 56 dated 25.01.2000. For the same reason, as discussed above, in case of Shwetambar Jha (C.W.J.C. No. 21970 of 2012), the order dated 27.01.2011 cannot be sustained and is, accordingly, quashed. **The C.W.J.C. No. 9178 of 2012 is allowed** with a direction to consider the petitioner's case for grant of arrears of salary etc. treating the post sanctioned through order dated 25.01.2000, to have been sanctioned with retrospective effect in the light of Paragraph No. 62 of the Supreme Court decision, as quoted above, as well as in the light of the observations of Full Bench of this Court. Such decision must be taken within a period of three months from the date of receipt/production of a copy of this judgment."

In view of the same, Annexure- 7 is quashed. Writ is allowed. The Director, Secondary Education, Government of Bihar is directed to reconsider the matter in the light of what has been decided by the learned Single judge in the case of Ashok Kumar, preferably within a period of three months from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J)

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