

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 11 of 2014

IN

Civil Writ Jurisdiction Case No 240 of 2013

Dr Amresh Thakur Son Of Late Rajdeo Thakur Resident Of Village - Sautiniya,
P.O. Sutihara, P.S. Parihar, District - Sitamarhi

.... Appellant

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department Government Of Bihar, Patna
3. The Director, Primary Education, Government Of Bihar, Patna
4. The Regional Deputy Director Of Education, Tirhut Division, Muzaffarpur
5. The District Education Officer, Sitamarhi
6. The District Programme Officer (Establishment), Sitamarhi
7. The District Programme Officer, Sarva Shikcha Abhiyan, Sitamarhi
8. The Block Education Officer, Block - Sursand, Sitamarhi
9. The Head Master, Middle School, Birrakh, Block - Sursand, Sitamarhi

.... Respondents

Appearance :

For the Appellant/s : Mr Ashhar Mustafa, Advocate

For the S t a t e : Mr Ajay Bihari Sinha, SC 19 &
Mr Suryakant Kumar, AC to SC 19

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'ABLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-01-2016

The present appeal is from the judgment and order dated 04.07.2013 passed in CWJC No 240 of 2013 whereby the claim of the writ petitioner/appellant, who was a Teacher, for grant of graduate trained scale of pay, has been rejected by the District Programme Officer, Sitamarhi which decision has not been interfered with by the Writ Court.

We have heard learned counsel for the appellant and learned counsel for the State at length and, with their consent, we are disposing of this appeal at this stage itself.

The writ petitioner/appellant, having done his Intermediate from Bihar Intermediate Education Council, as it then existed, joined as Assistant Teacher in the year 1994. He was, accordingly, granted matric trained scale. Subsequently, in 1999, he completed the graduate level course and obtained the citation of Sahitya Alankar from Hindi Vidyapeeth, Deoghar. Thereafter, in 2005, he completed his Master of Arts from Nalanda Open University and, thereafter, he got his Ph D from Lalit Naryan Mithila University in 2010, certificate whereof was granted in the year 2011. Based upon this, he was granted graduate trained scale but the District Programme Officer suo motu, allegedly having no jurisdiction in the matter, cancelled the graduate trained pay scale to the writ petitioner/appellant on the ground that in terms of Bihar Elementary Teachers Promotion Rules 2011, graduate meant a degree at graduate level granted by recognized University and Sahitya Alankar citation granted by Hindi Vidyapeeth, Deoghar, not being a recognized college and not being a recognized University, it could not be treated as a valid degree, and, therefore, the writ petitioner/appellant lacked the qualification of graduation and, thus, could not be granted



graduate trained scale of pay. The learned Single Judge has virtually noticed the earliest Division Bench judgment of this Court in the case of Ganesh Prasad Srivastava and Others –Versus- Punjab National Bank and Others since reported in 2004 (1) PLJR 387 and held that Sahitya Alankar is not recognized as legal equivalent to graduation. We will not go into the question whether on this issue, the learned Single Judge was correct or not or whether or what is the effect of Division Bench judgment because, to us, the facts are dissimilar and also quite different. Here, there is no dispute that writ petitioner/appellant has a post graduate degree from a recognized University. No one can nor has anyone disputed its validity. The writ petitioner/appellant has a doctorate degree from a recognized University of Bihar. Then to say that he cannot be granted graduate trained scale of pay would be a mockery. If we were to hold that his graduation was irrelevant or illegal or not equivalent to graduation, then we would have to hold that his post graduation and doctorate are also invalid. Those degrees have been earned by the writ petitioner/appellant on his own merit. It is no one's case and no one is contending that they are invalid too. If the writ petitioner/appellant had achieved higher qualification in the shape of MA and Ph D from recognized Universities, they cannot be either wished away or ignored. We would only like to add that whatever may be the position

earlier, it is not in dispute that at a particular point of time, Sahitya Alankar from Hindi Vidyapeeth, Deoghar was granted equivalence with graduation for the purposes of joining as teacher. It is now only by virtue of the Rules of the year 2011, effectively, the equivalence has been taken away. Preceding these Rules, it was only for the first time on 27.08.2008 that the State Government issued circular by which equivalence/validity has been withdrawn. This itself presupposes that at least up to 2008, the State was recognizing Sahitya Alankar as equivalent to graduation. Any person, who had earned this citation, cannot be denied benefit but of course any person, who got it thereafter, cannot claim equivalence.

Thus, on the reasons aforesaid and on the facts aforesaid this appeal has to be allowed. The judgment and order of the learned Single Judge as well as the order of the District Programme Officer is set aside and the writ petition is allowed with a mandamus for writ petitioner/appellant to be granted graduate trained scale of pay from the due date.

(Navaniti Prasad Singh, J)

Rajiv/AFR

(Nilu Agrawal, J)

U			
---	--	--	--