

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.506 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 15062 of 2015

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1. Baban Kumar, S/o Late Girjanandan Kumar, Assistant Teacher, Govt. Middle School, Bisrahiya, P.S. - Dhaka, District - East Champaran.
2. Indrajeet Singh, Son of Late Bhikhari Singh, Assistant Teacher, Government Middle School Bherhiyahi, P.S. - Pakaridayal, District - East Champaran.
3. Raghubansh Prasad, Son of Late Nathuni Mahto, Assistant Teacher, Government Middle School, Karsahiyai, P.S. - Dhaka, District - East Champaran.
4. Dani Pandey, Son of Late Jangi Pandey, Assistant Teacher, Government Middle School, Paharpur (Boys) P.S. - Paharpur, District - East Champaran.
5. Lalan Kumar, Son of Late Ramashray Singh, Assistant Teacher B.M.C. Makhtab, P.S. - Madhuban, District - East Champaran.
6. Braj Kishore Sharma, Son of Late Ram Bilash Singh, Assistant Teacher Government Middle School, Chandan Bara (Urdu), P.S. Dhaka, District - East Champaran.
7. Satyendra Narayan Singh, Son of Late Satyanarayan Singh, Assistant Teacher, Government Middle School, Sapahi (Urdu), P.S. - Dhaka, District - East Champaran.
8. Ratneshwar Singh, Son of Late Kapildeo Singh, Assistant Teacher Government Middle School, Gonahi, P.S. - Patahi, District - East Champaran.
9. Vijay Shankar Singh, Son of Late Ambika Singh, Assistant Teacher, Government Middle School, Harbolwa, P.S. - Chairaiya, District - East Champaran.
10. Janak Kishore Singh, Son of Late Ramanandan Singh, Assistant Teacher, Government Middle School, Roophara, P.S. Chiraiya, District - East Champaran.
11. Baidnath Pathak, Son of Late Shrikant Pathak, Assistant Teachers, Government Middle School, Sishani, P.S. - Pakaridayal, District - East



Champaran.

12. Jagannath Pathak, Son of Ramkrit Pathak, Assistant Teacher, Adarsh Government Middle School, Pipra (Boys), P.S. - Chakiya, District - East Champaran.

13. Md. Suleman Malik, Son of Late Usman Gani, Assistant Teacher, Government Middle School, Har-Bolwa, P.S. - Chairaiya, District - East Champaran.

14. Thakur Krishna Kumar, Son of Late Banshi Thakur, Assistant Teacher, Government Middle School, Tumariya Tola Raxaul, P.S. Raxaul, District - East Champaran.

15. Bhikhari Thakur, Son of Late Achhelal Thakur, Assistant Teacher, Government Prathmik Vidyalaya, Raksa Rahimpur, P.S. - Dhaka, District - East Champaran.

16. Ram Naresh Prasad, Son of Sanjay Lal Prasad, Assistant Teacher, Government Middle School, Rampur Chakki, P.S. Runnisaidpur, District - Sitamarhi.

17. Jyoti Narayan Prasad Gupta, Son of Late Jagdish Sah, Assistant Teacher, Government Middle School, Gaisnagar (Hindi), P.S. - Runnisaidpur, District - Sitamarhi.

.... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.

2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.

3. The Director (Primary Education), Govt. of Bihar, Patna.

4. The Regional Deputy Director of Education, Muzaffarpur.

5. The District Magistrate, East Champaran, Motihari.

6. The District Education Officer, East Champaran, Motihari.

7. The District Programme Officer (Establishment), East Champaran, Motihari.

8. Awadh Kishore Singh, S/o Late Ramnandan Singh, Assistant Teacher, Govt. Middle School, Narkatiya, P.S. Dhaka, District - East Champaran.

9. Kishore Kumar Singh, S/o Late Ramadhar Singh Gandhi Middle School, Barharwa Lakhansen, P.S. - Dhaka, District - East Champaran.



10. Chandeshwar Pathak, S/o Ramyodhya Pathak, Assistant Teacher, Government Middle School, Kappor Pakari, P.S. - Chiraiya, District - East Champaran.

11. Shyam Nandan Kumar, S/o Late Ramchandra Kumar, Assistant Teacher, Govt. Middle School, Bokane Kala, P.S. - Patahi, District - East Champaran.

.... Respondents

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Appearance :

For the Appellants : M/S. Siya Ram Shahi and Birendra Kuar,
Advocates.

For the Respondents : Mr. M. Nasrul Hoda, S.C. 1 and Mr. Md.
Irshad, A.C. to S.C. 1.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE
Date: 18-01-2017

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 21.01.2016 whereby, the writ application filed by the appellants claiming Matric Trained Scale as physical trained teachers was declined on the basis of the Division Bench judgment of this Court in C.W.J.C. No. 6985 of 1997(Bindeshwari Singh Vs. The State of Bihar & Ors.), decided on 26.09.2011.

The appellants were appointed as physical trained teachers in the years 1981, 1985 and 1988 having training in physical education. The appellants were placed in un-trained scale. The claim



of similarly situated physical trained teachers came up for consideration before this Court in Bindeshwari Singh's case (Supra) wherein, it was held that the primary teachers having training only in physical education and not having the qualification of B. Ed., are not entitled to matric trained scale. The relevant finds reads as under:-

“10. The learned counsel for the petitioners has relied on a new Rules, namely, “Special Elementary Teachers’ Appointment Rules, 2010” to show that the State of Bihar by this new Rules has decided to pay the trained scale to the teachers having the certificate of C.P.Ed., or having training of one year of C.P.Ed/D.P.Ed. It will be relevant to state that 2010 Rules will not be applicable to the case of present petitioners. Moreover, the definition clause 2(iv) defines “training” to include Teachers having the certificate of physical education of two years and the training of one year from the Institute recognized by the State of Bihar for limited purpose of requisite qualification for being appointed as teachers, but this provision in Rule 2(iv) or those in Rule 3(iv) do not stipulate that the teachers having qualification of physical training will also be entitled to matric trained scale. These Rules were framed for a special drive for appointment of teachers in view of directions of Hon’ble Supreme Court in Contempt Petition No. 297/2007 as one time appointment.

11. In view of the facts and circumstances of the case, looking to the consistent views of this Court on the relevant issue and observing principle of stare decisis (abide by decisions, to stand by decided cases, to uphold precedents, to maintain former adjudications), there is no option but to follow the judgment reported in Binod Singh’s case (supra) approved by the Division Bench of this Court. It is, therefore, held that the primary teachers having training only in physical education and not having the qualification of B. Ed. are not entitled to matric trained scale.”



Learned counsel for the appellants argued that the said judgment is not relevant as the State has appointed substantial number of teachers in terms of the direction of the Supreme Court and they have been placed in matric trained scale.

We do not find that the factum of appointment of the teachers in another selection process confers any right in the appellants, who have been appointed in terms of the Rules, in a matric untrained scale as physical trained teachers. Not only in Bindeshwari Singh's case(Supra) even earlier in C.W.J.C. No. 6947 of 1994 (Binod Kumar Singh & Ors.Vs. The State of Bihar & Ors.), decided on 27.06.1995, the Court has taken the view that the primary teachers having been trained in physical education and not having the qualification of B.Ed., are not entitled to matric trained scale. Therefore, the appellants who obtained physical training and have been appointed much before the Supreme Court judgment in respect to separate selection process can not claim any right to claim matric trained teacher. The appellants have been appointed in a different selection process.

Learned counsel for the appellants has relied upon the judgment passed in Civil Appeal No. 213 of 2013 (State of Punjab & Ors. Vs. Jagjit Singh & Ors.), decided on 26.10.2016 that the appellants are entitled to get same scale of pay for being discharging



the same duties as trained teachers.

We do not find any merit in the argument raised by the appellants. The Hon’ble Supreme Court in the State of Punjab & Ors. Vs. Jagjit Singh & Ors. (Supra) was seized of the matter as to whether the daily wage engaged employees, ad hoc appointees, employees appointed on casual basis and like are entitled to equal pay for the same work done by the regular employees. It was not a case where the pay-scale is contemplated to be paid to a class of employees in terms of the Rule. The classification on the basis of qualification is a well known concept and, therefore, since the appellants are not B.Ed. but only have got physical training, therefore, in terms of the judgment of Bindeshwari Singh’s case (supra), the appellants form a separate class than the persons who hold the B. Ed. Degree, which make them eligible for matric trained scale.

We do not find any merit in the Letters Patent Appeal.

Consequently, the appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-Amit.

AFR/NAFR	NAFR
CAV DATE	NA
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