

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.289 of 2015
IN
Civil Writ Jurisdiction Case No. 644 of 2014**

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Dinesh Prasad Sinha, Son of late Kamla Prasad, Resident of Mohalla- Kathatoli,
P.S- Sasaram , District- Rohtas.

.... Appellant/s

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, Patna Division, Patna.
5. The District Magistrate, Rohtas.
6. The District Education Officer, Rohtas.
7. The District Programme Officer (Establishment), Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Devendra Kumar Sinha, Sr. Advocate
Mr. Bajarangi Lal, Advocate
For the Respondent/s : Mr. S. D. Yadav, AAG-9
Mr. Prem Ranjan Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 20-09-2017

The instant Letters Patent Appeal has been filed by the appellant against the order of the Writ Court passed in C.W.J.C. No. 677 of 2014 dated 15.08.2014 whereby the Writ Court has dismissed the writ petition and a cost of Rs.5,000/- has been imposed against the appellant.

2. The brief fact relevant for adjudication of this appeal are set out below:

The appellant was appointed as Assistant Teacher in Matric



Trained Scale vide Memo No. 5593 dated 04.12.1980. He was possessing qualification of B.A., B.Ed. and as such he was eligible to be appointed as a Teacher in Graduate Trained Scale, whereas the others were appointed in Graduate Trained Scale, he was appointed in Matric Trained Scale. Aggrieved by such action, the appellant filed representations before the District Superintendent of Education, Rohtas on 05.07.1982, 29.06.1983 and 07.09.1984. The District Superintendent of Education, Rohtas vide Memo No. 1499 dated 26.06.1998 granted him Matric Trained Scale with benefit of one increment. Thereafter the case of the appellant is that he filed representations on 11.07.1998, 09.09.1998, 09.06.1999 and 15.06.2001 requesting therein to revise his pay scale by granting him parity with juniors, thereafter he filed C.W.J.C. No. 11206 of 2001, which was disposed of on 12.09.2001 with a direction to the Director, Primary Education to pass reasoned order on his representations.

3. It appears that the Director, Primary Education vide order dated 10.05.2002 rejected his claim holding it as stale one, thereafter the appellant filed another writ application bearing C.W.J.C. No. 13463 of 2002 and challenged the order of the Director, Primary Education rejecting his claim holding the same as stale. The writ petition was permitted to be withdrawn on 29.06.2010 with liberty to take internal departmental remedies and thereafter the appellant filed



C.W.J.C. no. 5664 of 2011 for a direction to grant him B.A. trained scale. The writ court noticing the fact that the writ petitioner has approached twice in past, raising the same cause for grant of graduate trained scale on the ground that he was B.A., B.Ed. at the time of his appointment, but both the writ applications failed. The writ court noticing the inordinate delay in raising the issue of appointment in Matric Trained Scale instead of Graduate Trained Scale in 1980 dismissed the writ application and imposed cost of Rs.5000/-.

4. Aggrieved by the judgment of the Writ Court, the appellant has preferred the instant appeal under Clause 10 of the Letters Patent.

5. Mr. D. K. Sinha, learned senior counsel appearing on behalf of the appellant submitted that the appellant was B.A., B.Ed. and as such he was entitled to be appointed as Teacher in Graduate Trained Scale, but he was arbitrarily denied the Graduate Trained Scale and was appointed in Matric Trained Scale. He submitted that others were granted the benefit of Graduate Trained Scale on the date of appointment, whereas this appellant was discriminated. He submitted that the appellant kept on filing representation for redressal of his grievance and on the previous occasion, the Writ Courts have remanded the matter to the Director for consideration or for pursuing



his grievance allowed the petitioner withdrawal of the writ application, thus the writ petitioner-appellant was through out vigilant and diligently pursuing his grievance and as such the writ court committed error in dismissing the writ application.

6. Counsel for the respondents placing reliance on the judgment of Full Bench in the case of **Ram Nath Prasad Singh Vs. The State of Bihar & Ors**, reported in **2009 (3) PLJR 384** submitted that after the judgment of Full Bench promotion is only permissible, if the writ petitioner-appellant falls within the consideration zone on account of seniority and against the vacancy of Graduate Trained Scale.

7. Referring to various paragraphs of the Full Bench judgment Mr. S.D. Yadav, learned Additional Advocate General No.9 submitted that the petitioner-appellant is not entitled at this stage to raise the grievance of appointment in Matric Trained Scale instead of Graduate Trained Scale, as the petitioner accepted the appointment way back in 1980 and after more than 3 decades he cannot be allowed to raise the issue of his appointment in Matric Trained Scale instead of Graduate Trained Scale, such claim is baseless, stale and suffer from the vice of delay and laches. He also submitted that filing representations as claimed by the appellant is no ground to entertain



3rd writ application and submitted that the writ court committed no illegality in dismissing the writ application.

8. We have considered the rival submissions of the appellant and the respondents and noticing the scheme of three different grades of teacher in 1984 and subsequently the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 which provided for 8 grades of teachers, we are not inclined to interfere with the judgment of the writ court. We have gone through the judgment of the Full Bench and the detail discussion in para 4 to 6 we are of the considered view that after notification dated 18.12.1984 and after framing of Promotion Rule, 1993 Graduate Trained Scale is a promotional post of the grade and as such the promotion to such post is permissible according to the seniority list of the teachers prepared in accordance with the Promotion Rules. For ready reference para 4 to 6 are quoted herein below:

“4. To understand how the Science teachers were categorized separately, we have to consider the short history of the same. We mention in this judgment mainly the annexures referred to in CWJC No. 1283/97 and LPA No.985/96. Before 1968, there was no separate quota/unit for appointment of teachers for teaching the Science subject in the schools. The teachers appointed had to teach all the subjects according to the



requirement. The Government felt the need to appoint teachers to teach Science in the schools. Teachers qualified in that subject were found necessary. By Annexure – 1 dated 30.11.1968, the Government, for the first time, directed appointment of Science teachers in all the schools for teaching the Science subject. By Annexure – 2 dated 5.1.1973, the Government decided to appoint Science teachers separately creating the post of Science teacher and reserve 25% of the total strength of teachers to be appointed as Science teachers directly in I.Sc. grade. By letter dated 26.6.1973, the Government sanctioned certain posts fixing the stipend of Rs.150/- for Matriculate Science teachers and Rs.175/- for I. Sc. trained teachers, on the basis of a UNICEF programme. The Government, by Annexure – 4 dated 10.9.1973, fixed eligibility criteria for appointment as Science teachers. The said letter was modified on 15.9.1973 (Annexure – 5) to the extent that 25% Science teachers can be appointed and in the absence of the qualified candidates, persons who have passed matriculation or higher secondary with Science subject can be considered. By Annexure – 6 dated 18.9.1975, the Government sanctioned 2500 posts of I.Sc. trained and 7700 matric trained Science teachers and were allowed directly the scale of I.Sc.



under the special employment scheme. Since teachers were necessary to teach the Science subject, it was stated that if reserved category candidates are not available, untrained reserved candidates shall be appointed and in case of non-availability, the same has to be de-reserved. Having felt that Science teachers should be appointed to teach Science instead of Arts teachers, by letter dated 5.12.1979, the Government sanctioned 9000 posts of Primary teachers, out of which 2250 posts were sanctioned for inter-trained teachers reserving 50% for Science teachers, as could be seen from Annexure – 8. Again, by Annexure – 9 dated 20.2.1981, the Government sanctioned 2300 posts of Science teachers were sanctioned separately – 1150 I.Sc. trained teachers and 1150 graduate trained Science teachers. By Annexure – 10 notification dated 18.12.1984, the Government, by virtue of the powers conferred under Section 8 of the Bihar Non-Government Elementary School (Taking-Over of Control) Act, 1976 published guidelines with regard to appointment and promotion of teachers in supersession of all previous rules and the teachers were divided into three grades viz.

1. Matric trained teachers,
2. Inter trained teachers, and
3. Graduate trained teachers.



It is also provided that the Science teachers in Grade-3 shall be Headmasters in primary schools. By Annexure – 11 dated 30.9.1986, 6475 posts of teachers were sanctioned, out of which 1200 were kept apart for inter-trained teachers and 1200 for graduate trained teachers. It was specifically stated that 50% of the posts are reserved only for Science teachers. On 18.12.1986, 4075 posts of teachers were sanctioned, out of which 1200 posts were kept apart for inter-trained teachers and 1200 were for graduate trained teachers. There also 50% posts were reserved for Science teachers and the remaining posts were reserved for matric trained teachers.

5. Statutory rules viz. The Bihar Taken Over Elementary School Teachers Promotion Rules 1993 (in short, the Promotion Rules 1993), were also framed in exercise of the powers conferred by the provisions of Article 309 of the Constitution of India, by notification dated 9.1.1993 with retrospective effect from 1.1.1986, which would show that 50% of the total posts are reserved for inter-trained and graduate trained Science teachers alone and that the Science teachers have got separate and independent identity. In Rule 2 of the Promotion Rules 1993, Grades 1 to 8 are defined as under: —



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- (2) 'Grade' means scale.
- (3) 'Grade-1' means Matric Trained Basic Scale-(1200-2040).
- (4) 'Grade-2' means Matric Trained Senior Scale-(1400-2600).
- (5) 'Grade-3' means Matric Trained Selection Grade-(1640-2900).
- (6) 'Grade-4' means trained Arts Graduate Scale Rs.(1640-2900) or Trained Science Graduate Scale (1640-2900).
- (7) 'Grade-5' means Trained graduate Senior Scale Rs. (2000-3500).
- (8) 'Grade-6' means Trained graduate Selection Scale Rs. (2200-4000).
- (9) 'Grade-7' means Middle School's Headmaster basic Scale Rs. (2000-3500).
- (10) 'Grade-8' means Middle School's Headmaster Senior Scale Rs.2200-4000).

For Grade 4, Arts Graduate Scale and trained Science Graduate Scales are separately shown. With regard to promotion, Rule 4 of the Promotion Rules 1993 states as follows:

“4. Conditions for promotion:- The promotion of a teacher may only be considered on fulfilling the following:-

- (1) He fulfills the minimum prescribed period of service for promotion;
- (2) He possesses minimum prescribed



educational qualification and training for promotion;

(3) There must be a vacancy meant for the category to which he belongs S.C., S.T or general according to latest rules regarding reservation;

(4) He must be eligible for consideration for promotion on the basis of the seniority list against the available vacancies;

(5) His service is satisfactory.”

The minimum educational and training qualifications are mentioned in Rule 5. Availability of posts is stated in Rule 6 and Rule 7 states how the draft seniority list for promotion is to be published. Rule 7 reads as follows: —

7. Draft of seniority list for promotion:-

By the end of the month of January of each year, the draft of the following seniority list, based on the position that existed on 31st of December of the previous year, shall be prepared according to the standard laid down in rule-8 by District Superintendent of Education in the following manner:-

(1) Seniority list no.1 (which shall be for promotion to grade-3). In this list, firstly those trained graduate teachers who have completed minimum 12 years of service in grade-2, shall be placed; thereafter those matric trained teachers, who have completed



minimum 18 years of service in grade-2 shall be placed;

(2) Seniority list no.2 (which shall be for promotion to Grade-4)—(i) This list shall be prepared separately for arts and science teachers. (ii) The teachers shall be placed in this list in the following order:-

- (a) Trained graduate working in Grade-3;
- (b) Trained graduate working in Grade-2;
- (c) Trained graduate working in Grade-1 and who have completed minimum 8 years of service in Grade-1.

(3) Seniority list no.3 (which shall be for promotion to Grade-6)—(i) This list shall not be prepared separately for arts and science teachers but for both a consolidated list shall be prepared;

(ii) In this list, firstly those trained Post-graduate teachers who have completed minimum 12 years of service in Grade-5 shall be placed. Thereafter those trained graduate teachers who have completed 18 years of service in Grade-5 shall be placed.

(4) Seniority list no.4 (which shall be for promotion to grade-7 and to grade-8)—

(i) This list shall not be prepared separately for Arts and Science teachers but for both a consolidated list shall be prepared.

(ii) In this list teachers shall be placed in



the following order:-

(a) Trained Post-graduate teachers working in Grade-6;

(b) Trained post-graduate teachers working in Grade-5;

(c) Post graduate trained teachers working in Grade-4 and who have completed minimum 5 years of service in Grade-4:

Provided graduate trained teachers of SC and ST category shall be placed after post graduate teachers if post-graduate teachers of these categories are not available upto 31st December 1994;

(iii) From this list teachers working in Grade-4 and Grade-5 may be promoted to Grade-7 and teachers working in Grade-6 may be promoted direct to Grade-8.||

It clearly shows that seniority list No.2 has to be prepared separately for Arts and Science teachers for promotion to Grade 4, whereas for seniority list No.3, which is

for promotion to Grade 6, only a consolidated list shall be prepared. Seniority list No.4 which is for promotion to Grade 7 and 8, is also to be prepared on the basis of a combined list.

6. In CWJC Nos.3475/88, 6594/88 and 1239/91, a Division Bench of this Court by common judgment dated 8.4.1993 held that the notifications



issued under Section 8 of the Act provide separate scale for Science teachers and not invalid as the State has jurisdiction to issue executive instructions under Article 162 of the Constitution of India. The writ petitions filed by the Arts teachers for parity with Science teachers irrespective of grade were dismissed. In the said case, the petitioners questioned the promotion of Science teachers as Headmasters as those Science teachers were working in higher grades at the time of promotion. It was further directed that in the vacancies of posts with higher grade available for Art teachers, promotions shall be effected immediately. Such instructions, in the absence of any rule, have also got the force of law. The above decision was upheld on merit by the Supreme Court while dismissing SLP (Civil)- CC 5618/96 on 28.10.1996. Anyway, the notification considered in the above case was replaced by the Promotion Rules 1993 and it made a clear distinction between Science teachers and Arts teachers and proposed that two separate seniority lists for Arts and Science teachers shall be prepared for promotion to Grade 4. A consolidated list has to be created for promotion in Grades 6 to 8.”

9. In view of the discussion of the Full Bench judgment quoted herein above, we find no merit in the submission of Mr. Sinha,



learned senior counsel appearing on behalf of the appellant. In the totality of the facts situation, we do not find any error in the impugned order of the Writ Court, however, we find that the imposition of cost of Rs.5,000/- in the facts of this case is unjustified, accordingly, we allow the appeal to the extent that imposition of cost of Rs.5000/- by the Writ Court is modified. The other part of the finding of the Writ Court stands approved and the appeal is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

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