

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10141 of 2017

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1. Nawal Kishore Prasad Gupta, Son of Sri Vishwanath Prasad Gupta, Resident of Village and P.O.- Majhaulia, P.S.- Sakra, District- Muzaffarpur, presently posted as Headmaster, Middle School, Haripur Krishna, Anchal- Sakra, District- Muzaffarpur.
 2. Akhilesh Kumar, Son of Sri Hiralal Chaudhary, resident of Village- Gangoi, P.O. Lalu Chapra, P.S.- Paroo, District- Muzaffarpur, presently posted as Headmaster, Middle School, Balaur, Bhatgama, Anchal- Gaighat, District- Muzaffarpur.
 3. Sanjeet Kumar, Son of Sri Vishwanath Prasad Singh, resident of Village and P.O. Bahilwara Govind, P.S.- Saraiya, District- Muzaffarpur, presently posted as Headmaster, Middle School, Bhatauna, Anchal- Marwan, District- Muzaffarpur.
 4. Vinay Kumar Thakur, Son of Sri Kapildeo Thakur, resident of Village- Ambara Tej Singh, P.O.- Rewa Basant, P.S.- Saraiya, District- Muzaffarpur, presently posted as Headmaster, Middle School, Pakri Pakohi Girls, Anchal- Marwan, District- Muzaffarpur.
 5. Md. Nasim, Son of Md. Fakhruddin, resident of Village- Ganj Gaurihar, P.O. Khalique Nagar Gaurihar, P.S.- Sakra, District- Muzaffarpur, presently posted as Headmaster, Up-graded Middle School, Ganj Gaurihar Urdu, Anchal Sakra, District- Muzaffarpur.
 6. Md. Fakhruddin, Son of Abdus Sattar, resident of Village- Shahpur Junaid, P.O. Shahpur Maricha, P.S.- Sakra, District- Muzaffarpur, presently posted as Headmaster, Up-graded Middle School, Dhiranpatti Urdu, Anchal- Mushahari, District- Muzaffarpur.
 7. Lal Bahadur Sahani, Son of Sri Bhagya Narayan Sahni, resident of Village and P.O. Muhabbatpur, P.S.- Deoria, District- Muzaffarpur, presently posted as Headmaster, Middle School, Sahebganj Boys, Anchal- Sahebganj, District- Muzaffarpur.
 8. Satish Kumar Singh, Son of Sri Rameshwar Singh, resident of Village and P.O. Narma, P.S.- Hathauri, District- Muzaffarpur, presently posted as Headmaster, Up-graded Middle School, Garahan, Anchal- Bochahan, District- Muzaffarpur.
 9. Ram Niwas Singh, Son of Sri Ratneshwar Prasad Singh, resident of Village and P.O. Bhadai, P.S.- Hathauri, District- Muzaffarpur, presently posted as Headmaster, Middle School, Marwan, Anchal- Marwan, District- Muzaffarpur.
 10. Sanjeev Kumar Singh, Son of Sri Krishna Madhav Prasad Singh, resident of Village and P.O. Narma, P.S.- Hathauri, District- Muzaffarpur, presently posted as Headmaster, Middle School, Kaparpuri, Anchal- Kanti, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Muzaffarpur, District- Muzaffarpur.
5. The District Programme Officer (Establishment), Muzaffarpur, District- Muzaffarpur.
6. The Treasury Officer, Muzaffarpur, District- Muzaffarpur.



.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Mangalam, Advocate
For the State : Ms. Binita Singh, S.C. 28
Mr. Nishant Kumar Jha, A.C. to S.C. 28

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-08-2017

Heard learned counsel for the petitioners and the State.

2. The petitioners have moved the Court for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the letter dated 19.04.2017 issued under the signature of the Respondents no. 5 and contained in his memo no. 2263 dated 19.04.2017 whereby and where under the Respondent no. 5 has been pleased to direct to revise the pay-fixation of petitioners in the light of Finance Department Resolution No. 630 dated 21.01.2010 as also for recovery of excess payment, if any, paid to the teacher.*

*(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authority to consider the petitioners’ case for promotion to the post of Trained Graduate Pay-Scale and the Headmaster of Middle Schools in view of the provisions contained under the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 on the ground that if the writ petitioners were appointed as an Assistant Teacher in 1994 and the aforesaid Promotion Rules, 1993 was in vogue before it was repealed by the Bihar Taken Over Elementary School Teachers Promotion Rules, 2011, the Respondents cannot deny the benefits for which the writ petitioners were entitled under 1993 Promotion Rules.*

*(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities for grant of*



Trained Graduate Pay-Scale to the petitioners with effect from the date when they had completed 8 years of service in Grade-1 from the date of their initial appointment and for their promotion to the Grade-7 with effect from the date when they would complete five years of service in Grade-4 and to pay all the consequential monetary benefits for which the writ petitioners would be entitled under the facts and circumstances of the case.

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3. The petitioners, who were trained teachers were promoted as Headmaster. Pursuant to the implementation of the 6th Pay Revision Recommendation, though were granted one increment, later on, a controversy was raised with regard to one Hemant Kumar, the Headmaster of Middle School, Turki Bazar, Minapur and upon him being heard, a general order was passed that all such Headmasters, who had been given increment, due to the same being wrong, their pay be re-fixed and recovery be made of the amount paid. Learned counsel submitted that upon consideration by the authorities themselves, the petitioners had been given the benefit, and even if, any benefit which was given was required to be withdrawn, principles of natural justice required that at least a show cause/ notice be given to the petitioners so that they could defend the payment made to them. He submitted that admittedly only one Hemant Kumar was noticed and heard, who is not a petitioner in the



present writ application. It was further submitted that even the order of recovery without any notice is illegal and requires to be interfered with. Learned counsel submitted that on merits, they are ready for re-fixation of their pay but their claim should be considered in terms of the 1993 Rules which stipulates that if they are working in Matric Trained Scale and have the qualification of Graduate Trained teacher then after eight years, they would be entitled to get the pay scale of Headmaster. It was submitted that the petitioners having been appointed in the year 1994 and there also being an order passed by a Full Bench of this Court in the case of **Ram Nath Prasad Singh v. State of Bihar** reported as **2009 (3) PLJR 384**, that prior to framing of fresh Rules, cases of all persons, who became eligible in terms of the 1993 Rules, had to be considered. It was submitted that though the new Rules came in the year 2011, but the case of the petitioners, which was required to be considered as per the 1993 Rules, was not done. Learned counsel submitted that the authorities may comply with such direction and they shall also cooperate with the authorities in the said exercise.

4. Learned counsel for the State submitted that though he has no instructions on merits, but on the ground of violation of principles of natural justice, of the petitioners not being heard before passing of such stringent order, he is unable to defend or counter the



same.

5. In view of the aforesaid, the order contained in Memo No. 2263 dated 19.04.2017, stands set aside on the short point of there being violation of principles of natural justice, to the extent of consequential action taken against the present petitioners. Their matters shall be reconsidered by the authorities in accordance with law in terms of the relevant Rules as well as the order of the Court in the case of **Ram Nath Prasad Singh** (supra).

6. The petitioners shall represent before the respondents no. 4 and 5 within three weeks from today, along with a copy of this order and the concerned respondents shall take a final decision within two months thereafter. If no such representation is filed within the time stipulated, the authorities shall proceed and pass final orders on the merits of the matter, in accordance with law and observations made in this order. It is made clear that the Court has not expressed any opinion on merits.

7. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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