

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.756 of 2015

IN

Civil Writ Jurisdiction Case No. 6139 of 2007

- =====
1. The State of Bihar through the Secretary, Human Resources Department, Government of Bihar, New Secretariat, Patna
 2. The Director, Primary Education, Bihar, Patna
 3. The DDC -cum - Chairman, Establishment Committee, Rohtas
 4. The District Superintendent of Education, Rohtas
 5. The District Education Officer, Rohtas

.... Appellants

Versus

1. Ram Ashis Tiwari son of late Paras Nath Tiwari, resident of village - Karari, P S - Sheosagar, District - Rohtas
2. Chandan Bhusan Rai, son of late Sidheshwar Rai, resident of village-East Belari, P S - Natwar, District -Rohtas
3. Satendra Kumar Choudhari, son of late Ram Chandra Choudhari, resident of village - Boknaw, P.S. - Sanjhauli, District - Rohtas
4. Markandey Singh, son of late Parmanand Singh, resident of village - English Chapha, P.S. - Sanjhouli, District - Rohtas

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anjani Kumar Singh, A.A.G.-IV
For the Respondent/s : Mr. Arbind Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-08-2017

Heard learned Additional Advocate General – IV



and learned counsel representing the private respondents.

Since the writ application of the private respondents was allowed by the learned Single Judge vide his order dated 31.03.2011 which had the effect of quashing of Annexure-6 and Annexure-9 of the writ application, the State Government is aggrieved and have challenged the impugned order in the Letters Patent Appeal.

The main thrust of the argument on behalf of the State is that the decision of the respondents dated 22.07.2006 contained in Annexure-6 and the order of the Director, Primary Education, contained in Annexure-9 dated 07.02.2007, seems to be in order, because the various notifications and their interplay will have to be understood in the correct perspective. Since the training is integral to an untrained teacher in acquiring higher pay scale, therefore, the benefit of higher pay scale, which was given to the private respondents who were petitioners before the writ court on mere completion of 12 years of service, was an incorrect decision. The steps taken by the then District Superintendent of Education to withdraw the benefit, since these private respondents had not acquired training or they could acquire



the benefit only on completion of 12 years, from the date of training, learned Single Judge committed an error by interfering with the order withdrawing the benefit of higher pay scale.

From the detailed arguments made by the learned Additional Advocate General-IV including reliance in a decision rendered in the case of **Arvind Kumar Vs. State of Bihar** since reported in **2003(2) PLJR 599**; in support of LPA seems to be based on a kind of misplaced understanding of the two diverse provisions relating to grant of pay scales.

Learned Single Judge, while quoting from the finance department resolution dated 18.12.1989, took note of the fact that, in terms of schedule-II to the said notification, Matric Trained, Intermediate Trained, Intermediate Untrained and Graduate Untrained teachers had been given a uniform pay scale of Rs. 1200 – 2040/-. In the said notification itself the next senior scale provided against scheme for stagnation on completion of 12 years is Rs. 1400 – 2600/-, in other words, mere completion of 12 years of service by any of the category of teachers mentioned above would entitle them to the next senior scale of Rs. 1400 – 2600/- which is a scale



made available under the stagnation scheme and is not a scale against grant of substantive promotion. On reading of the 1993 Rules, which were placed before us read with the decision of the learned Single Judge in the case of Arvind Kumar (*supra*), the underlying issue was replacement scale due to grant of substantive promotion. Those substantive scales cannot accrue to a person unless he acquires training. There is absolutely no dispute on such a proposition emerging not only from the rule but even what the learned Single Judge has said in the case of Arvind Kumar (*supra*).

In the present case, the private respondents have been extended the benefit of the next higher scale after completion of 12 years of service which in no manner alters their status or position as an untrained teacher with higher qualification since they are all clubbed with Matric Trained, Intermediate Untrained or Intermediate Trained Teachers. The learned Single Judge, therefore, rightly quashed the impugned order and allowed the writ application. The benefit of stagnation earned by the private respondents by virtue of the length of service cannot be taken away on the fallacious argument that they have to first qualify in training and then



wait for 12 years to earn a next higher pay scale.

The order and judgment of the learned Single Judge does not suffer from any vice as he has correctly interpreted the scheme.

The appeal is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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