

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10110 of 2017

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1. Lalan Kumar Singh, son of Nityanand Singh resident of Village + P.O. - Keshopur, P.S. - Jhajha, District - Jamui.
 2. Saroj Kumar Mandal, son of Arjun Mandal resident of Village + P.O. - Fatehpur, P.S. - Jhajha, District - Jamui.
 3. Arvind Paswan, son of Sahdeo Paswan resident of Village - Machhindra, P.O. - Keshopur, P.S. - Jhajha, District - Jamui.
 4. Babita Kumar wife of Chandan Kumar Singh resident of village + P.O. - Simullah, P.S. - Jhajha, District - Jamui.
 5. Md. Samsuddin Ansari son of Md. Nazrul Haque resident of Village - Purankee Dih, P.O. + P.S. - Simultallah, District - Jamui.
 6. Nand Kishore Yadav son of Hulas Yadav resident of village - Pairhaa, P.O. - Sahiya, P.S. - Jhajha, District - Jamui.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The District Programme Officer (Establishment), Jamui.
4. The District Education Officer, Jamui.
5. The Block Education Officer, Jhajha, District - Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. Prabhat Ranjan Singh, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 06-02-2018 Six petitioners have filed the present writ application for a direction to the respondents to pay the arrears of salary as well as the current salary.

On 17.11.2017 six weeks time was granted to the respondents to file counter affidavit. In the order dated 17.11.2017, it was made clear in case no counter affidavit is filed the Court will proceed and decide the writ application on the basis



of pleadings and the principles laid down by the Apex Court in the case of Smt. Naseem Bano vs State of U.P. and Others: AIR 1993 SC 2592.

The respondents have not chosen to file counter affidavit, under the aforesaid circumstance, the Court has to decide the present application on the basis of uncontroverted pleading in the writ application.

In the writ application, there is averment that the petitioners were appointed as “Shiksha Mitra” and thereafter they continued as “Panchayat Teacher/Prakhand Teacher” in view of 2006 Rules, whereby the Shiksha Mitras were absorbed as Panchayat Teacher w.e.f. 1st July, 2006. The statement made in paragraph 6 indicate that at the time of their engagement as Shiksha Mitra there was no eligibility like Intermediate qualification for appointment as Shiksha Mitra. The subsequent enhancement of qualification and requirement of passing of intermediate examination within 33 months is inapplicable in the case of petitioners, as the subsequent amendment in the qualification after absorption under the Rule cannot operate with retrospective effect to nullify the absorption under 2006 Rules. There is also averment to the effect that various writ applications were disposed of by this Court wherein the Court has taken into



consideration the subsequent amendment in the Rule held out that there is no ground to stop salary. The petitioners have also made averment that they have already completed 14 years and as such at this juncture the petitioners cannot be denied salary on the ground of amended provisions of Rule.

Since there is no counter affidavit, the Court is constrained to decide the present writ application on the basis of pleading available on the record.

The undisputed fact that the petitioners were initially appointed on contractual basis as Shiksha Mitra and their absorption as Panchayat Teacher by operation of Rule 2006, entitle the petitioners for payment of salary so long the petitioners are discharging their duties. The question as to the applicability of the amended Rule, the law is well settled that the rule cannot operate with retrospective effect to undo the appointment or absorption already made.

Under the aforesaid facts and circumstances, the Court finds substance in the submission of the learned counsel for the petitioners that the subsequent amendment in the Rule will not be applicable to either nullify the absorption of the petitioners or to stop salary of the petitioners. Accordingly, the writ application is allowed, the order as contained in Annexure-1 (at page 18) is



quashed and the respondents are directed to ensure payment of arrears as well as current salary forthwith.

With the aforesaid, the writ application stands allowed in the manner indicated hereinabove.

(Anil Kumar Upadhyay, J)

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