

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 732 of 2015

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Kanchan Kumar, Son of Sri Nityanand Devansu, Resident of Shobha Sadan, Road No. 25B, West Rajeev Nagar, P.S.- Rajiv Ngar, District -Patna presently posted as an Assistant Teacher, Primary School, Pathak Toli, Anchal Chapra Town, District Saran at Chapra.

.... 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, Education Department, Government of Bihar, Patna.
4. The District Magistrate, Saran at Chapra, District Saran at Chapra.
5. The District Education Officer, Saran at Chapra, District - Saran at Chapra.
6. The District Program Officer (Establishment), Saran at Chapra, District - Saran at Chapra.
7. The Headmaster, Primary School, Pathak Toli, Anchal Chapra Town, District - Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam,
Ms. Anita Kumari and
Mr. Bhagwati Prasad, Advocates

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-02-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following
reliefs:

*“(I) For issuance of an appropriate writ in
the nature of MANDAMUS, commanding and*



directing the Respondent Authorities for grant of Trained Teacher Graduate Pay-Scale to the petitioner with effect from 31.12.2012 on which date several persons junior to the petitioner were granted the aforesaid pay-scale, whereas the petitioner was denied on the ground that at the relevant time he was lodged behind the bars and for a further direction to pay the consequential monetary benefits.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding the directing the Respondent Authorities to provide to the petitioner his due seniority in the Matric Trained Pay-scale as if the petitioner was also granted Trained Graduate Pay-Scale with effect from 31.12.2012 along with his juniors, so that the petitioner may not suffer in future because of this non-consideration.

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

3. The petitioner basically is aggrieved by the fact that despite him being granted the Trained Graduate Pay Scale in the subject of Arts by the competent District Promotion Committee on 31.12.2012, actual monetary benefits of the same could not be availed of him for the reason that after such promotion, the person is required to be given a place of posting and upon him joining, payment is started. It was his grievance that despite similarly situated persons and persons junior to him having been given posting with effect from 30.09.2013, the petitioner was being denied such posting forcing him to move the Court.



4. Learned counsel for the petitioner submitted that except for the fact that he was in custody on the day the postings were being considered, even after his release on 28.11.2013, followed by his joining on 30.11.2013, not posting the petitioner on a Graduate Trained post, he has been denied payment of the said scale for no legal or valid reason.

5. From the materials on record, especially the 3rd supplementary counter affidavit filed on behalf of the Director, Primary Education, Government of Bihar, in which copy of Memo No. 175 dated 24.01.2018 has been annexed, indicates that the respondents no. 5 and 6 have posted the petitioner. Pursuant to the same the petitioner has joined. The order also discloses that the reason for the petitioner not being posted was that at the relevant point of time, when the case of others were being considered, the petitioner was under incarceration.

6. Learned counsel for the petitioner submitted that once the authorities have finally posted him, his benefits cannot be restricted to notional consideration for the period when juniors came to be posted till the period he actually joined, for it was neither within his capacity to have a posting and also because there was no other mitigating or justifiable reason to deny him such posting, at least from the day he was released and had joined in the school.



7. On a direct query of the Court to learned counsel for the State as to whether this was the only factor which was against the petitioner, learned counsel for the State could not show any other reason and in fact admitted that this was the only reason. On a further query of the Court as to why at least from the day when the petitioner came out of jail and had joined the school, appropriate posting was not given to him, learned counsel for the State is unable to provide any answer.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner is entitled to consequential benefits of actual payment of Graduate Trained Scale, at least from the date he was released and had joined in the school i.e., 30.11.2013. It is well settled that if there is any bar in granting any relief to a person, the same has to be kept in abeyance till the time the bar is not removed. In the present case, except for his incarceration in a case, which was relating to domestic violence, there is no departmental debarment and once the petitioner came out of custody and had also joined the post, at least from that day he would be entitled to such benefit, moreso, for the reason that similarly situated and also persons junior to him have been given the benefit.

9. Accordingly, the writ petition stands allowed.



10. Let the payment in Graduate Trained Scale be made to the petitioner with effect from 30.11.2013 within two months from the date of production of a copy of this order before the respondents no. 5 and 6.

(Ahsanuddin Amanullah, J.)

P. Kumar

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