

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1870 of 2015

In

Civil Writ Jurisdiction Case No.2892 of 2013

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1. The State of Bihar.
 2. The Principal Secretary, Education Department, Government of Bihar, Patna.
 3. The Director, Primary Education, Bihar, Patna.
 4. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Begusarai.
 5. The Regional Deputy Director of Education, Munger Division, Munger.
 6. The District Education Officer, Begusarai.
 7. The District Programme Officer, (Establishment), Begusarai.
 8. The Block Education Officer, Bachhawara Anchal, Distt - Begusarai.
 9. The Block Education Officer, Birpur Anchal, Distt - Begusarai.
 10. The Block Education Officer, Garhpura Anchal, Distt - Begusarai.
 11. The Block Education Officer, Chhaurahi Anchal, Distt - Begusarai.
 12. The Block Education Officer, Tehara Anchal, Distt - Begusarai.
 13. The Block Education Officer, Matihani Anchal, Distt - Begusarai.
 14. The Block Education Officer, Begusarai Anchal, Distt - Begusarai.
 15. The Block Education Officer, Mansoorchak Anchal, Distt - Begusarai.
 16. The Block Education Officer, Balia Anchal, Distt - Begusarai.
 17. The Block Education Officer, Barauni Anchal, Distt - Begusarai.
 18. The District Account Officer, Begusarai.

... .. Appellant/s

Versus

1. Brajesh Kumar S/o Late Ganesh Sahu R/o Vill - Kamaruddinpur, P.S. - Begusarai Muffasil, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Makardahi, Anchal - Barauni, Distt - Begusarai.
2. Rashmi Kumari Daughter of Ramchandra Sahu R/o Vill - Naulagarh, P.S. - Bhagwanpur, , Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Mirganj, Anchal - Begusarai, Distt - Begusarai.
3. Krishna Kant Chaurasia S/o Vishundeo Prasad Chaurasia R/o Vill & P.O. - Birpur, P.S. - Birpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Ratauli, Anchal - Begusarai, Distt - Begusarai.
4. Dilip Kumar Sharma S/o Govardhan Sharma R/o Vill - Mirjapur Bandwar, P.S. - Begusarai Muffasil, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Matihani, Anchal - Matihani, Distt - Begusarai.
5. Vijay Kumar Arya S/o Radha Krishna Prasad R/o Vill & P.O. - Tajpur, P.S. - Bhagwanpur, Distt - Begusarai, At present posted and working as an Assistant



- Teacher in Govt. Middle School Dhabilapur, Anchal - Mansoorchak, Distt - Begusarai.
6. Shiva Kant Chaudhary S/o Late Devi Chaudhary R/o Vill - Bari Balia, P.O. & P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Hussainchak, Anchal - Balia, Distt - Begusarai.
 7. Ram Ratan Pandit S/o Ramdhani Pandit R/o Vill & P.O. - Begusarai, P.S. - Sahebpur Kamal, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Durakpur, Anchal - Sahebpur Kamal, Distt - Begusarai.
 8. Binod Kumar S/o Late Jagdish Sah R/o Vill - Ajhaur, P.O. - Ajhaur, P.S. - Chandpura, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Suja, Anchal - Begusarai, Distt - Begusarai.
 9. Nand Kumar S/o Rameshwar Prasad Yadav R/o Vill - Paguraha, P.O. - Rajaur, P.S. - Garhpura, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Kumharso, Anchal - Garhpura, Distt - Begusarai.
 10. Niraj Kumar S/o Bhuneshwar Chaurasia R/o Vill - Lakhua, P.O. Rampur Samathu, P.S. & Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Milki, Anchal - Chhaurahi, Distt - Begusarai.
 11. Gulam Nabi S/o Md. Nasir R/o Vill - Fulwaria, P.O. - Dularpur, P.S. - Teghara, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Fulwariganj, Anchal - Teghara, Distt - Begusarai.
 12. Rina Kumari Daughter of Ram Charitra Singh R/o Vill & P.O. - Dularpur, P.S. - Teghara, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Upgraded Middle School Dularpur, Anchal - Teghara, Distt - Begusarai.
 13. Chandra Bhushan Sharma S/o Late Mahesh Sharma R/o Vill & P.O. - Shahpur, P.S. - Begusarai Muffasil, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Chhitraur, Anchal - Matihani, Distt - Begusarai.
 14. Anil Kumar S/o Late Surya Narayan Sah R/o Vill - Singhpur, P.S. - Nayagaon, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Sankh, Anchal - Begusarai, Distt - Begusarai.
 15. Prabhat Kumar S/o Late Chandra Kumar Rai R/o Vill - Narepur Tola Dharampur, P.O. & P.S. - Bachhawara, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Upgraded Middle School Sabaura, Anchal - Barauni, Distt - Begusarai.
 16. Md. Shamimuddin S/o Md. Juber R/o Vill - Mobarakpur Hasanpur, P.O. - Karichak Chhapaki, P.S. - Birpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Upgraded Urdu Middle School Karichak, Anchal - Begusarai, Distt - Begusarai.
 17. Md. Naushad Alam S/o Late Moinuddin R/o Vill - Mobarakpur Hasanpur, P.O. - Babhangama, P.S. - Birpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Upgraded Urdu Middle School Laruara, Anchal - Begusarai, Distt - Begusarai.
 18. Sanjay Kumar Anshumali S/o Subalal Anshumali R/o Vill & P.O. - Naulagarh, P.S. - Bhagwanpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Naulagarh, Anchal - Birpur, Distt - Begusarai.



19. Prabhat Kumar S/o Late Baleshwar Paswan R/o Vill - Bhawanandpur, P.O. - Panapur, P.S. - Birpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Primary School Chandwara, Anchal - Begusarai, Distt - Begusarai.
20. Shiv Kumar Singh S/o Late Ramashray Singh R/o Vill - Parra, P.O. - Saraunja, P.S. - Birpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Primary School Muradpur, Anchal - Birpur, Distt - Begusarai.
21. Yogendra Kumar S/o Late Deo Suraj Mahto R/o Vill - Chhoti Balia, P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Primary School Puwari Rajaura, Anchal - Begusarai, Distt - Begusarai.
22. Kumari Nilam Daughter of Raghuvansh Singh R/o Vill - Barbigi, P.O. - Hussain, P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Primary School Makardahi, Anchal - Barauni, Distt - Begusarai.
23. Naresh Prasad Singh S/o Shri Kant Lal Singh R/o Vill - Murali, P.O. - Bhawanipur, P.S. - Gopalpur, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Noorjamapur, Anchal - Balia, Distt - Begusarai.
24. Ragini Kumari Daughter of Dinesh Kumar R/o Vill - Pansalla, P.O. - Bhairwar, P.S. - Begusarai Muffasil, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Anu Pokharia, Anchal - Begusarai, Distt - Begusarai.
25. Manoj Kumar Singh S/o Late Pram Sagar Singh R/o Vill - Rajaura, P.S. - Begusarai Muffasil, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Upgraded Middle School Parra, Anchal - Birpur, Distt - Begusarai.
26. Ram Prakash Paswan S/o Late Anik Paswan R/o Vill - Balia Bazar Patel Chauk, P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Lakhminia, Anchal - Balia, Distt - Begusarai.
27. Pushpa Kumari Daughter of Shri Munilal Bhagat R/o Vill - Chhoti Balia (Chakmarwan Tola), P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Balia, Anchal - Balia, Distt - Begusarai.
28. Wakil Prasad Rajak S/o Late Deo Narayan Rajak R/o Vill - Sondipi, P.S. - Balia, Distt - Begusarai, At present posted and working as an Assistant Teacher in Govt. Middle School Sadipur, Anchal - Balia, Distt - Begusarai.
29. The District Magistrate, Begusarai.
30. The District Treasury Officer, Begusarai.
31. The Headmaster cum Drawing and Disbursing Officers of the Petitioner's School, Distt - Begusarai.

... .. Respondent/s

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with

Letters Patent Appeal No. 1031 of 2016

In

Civil Writ Jurisdiction Case No.2328 of 2015

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1. The State Of Bihar



2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Education Department, Govt. of Bihar, Patna.
4. The Director, Primary Education, Govt. of Bihar, Patna
5. The Regional Deputy Director of Education, Patna. null null
6. The District Education Officer, Patna.
7. The District Programme Officer (Establishment), Patna.

... .. Appellant/s

Versus

1. Shivdani Prasad S/o late Ram Prit Ram, Resident of Village and P.O- Salimpur , PS- Bakhtiarapur, District Patna Presently working as Assistant Teacher, Primary School, Chanaki, Dhanrua, District Patna.
2. Nawal Kishore Singh S/o late Janak Singh Resident of Village- Akauna, PS Punpun, District Patna Presently working as Assistant Teacher , Primary School, Dumari Hindi, Punpun, District Patna.
3. Sharadendu Mishra Son of late ram Padarath Mishra Resident of Village- New ManiChak, PS Masaurhi, District Patna, At Present posted as Assistant Teacher, middle School, Sai Dhanarua, District Patna.
4. The Bihar Secondary School Examination Board through its Secretary, Patna.
5. The District Magistrate , Patna.
6. The District Account Officer, Patna.
7. The Treasury Officer, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 1053 of 2016

In

Civil Writ Jurisdiction Case No.2269 of 2015

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1. The State of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Joint Secretary ,Education Department, Govt. of Bihar, Patna.
4. The Director, Primary Education , Govt, of Bihar, Patna.
5. The Regional Deputy Director of Education , Patna. null null
6. The District Education Officer, Patna.
7. The District Programme Officer (Establishment), Patna.

... .. Appellant/s

Versus

1. Sanjay Kumar Ambastha S/o Late Maheshwari Prasad Resident of Mahabir Asthan Lane, Chowk Sikarpur, PS- Chowk, Patna City District - Patna presently working as Assistant Teacher, Government Middle School, Kasba Karimabad, Anchal - chowk Patna City, District- Patna.
2. Arun Rajak S/o Jodin Lal Rajak, Resident of Sri Krishna Vihar Colony, Beur PS- Beur District- Patna at present working as Assistant teacher, Primary School, Bhelwara, Chamar Toli, Sampat Chak, PS- Sampat Chak, Patna.
3. Satya Prakash Kumar son of Mishri Ram Resident of Ashok Nagar East, PS- Kankarbagh, District- Patna , at present posted as Assistant teacher, Primary School, Sampatchak (SC), Block- Phulwari Sharif, Patna.



4. Ramanuj Prasad S/o Shyam Narayan Prasad R/o Laxmi Nagar(E), Khemni Chak, New Jaganpura, Subhash Nagar PS- Ram Krishna Nagar, District- Patna at present posted as Assistant Teacher, Government Middle School, Chakpool, Sampatchak, Patna.
5. Umakant Singh Son of Ram Pravesh Singh Resident of IOC Road, Sipara, PS- Beur, District-Patna, present posted as Assistant Teacher, Government Middle School, Sampatchak, District- Patna.
6. Ravi Ranjan kumar S/o late Braj Kishore Prasad. R/o Dundi Bazar, P.S- Chaowk, Patnacity, District - Patna , at present posted as Asstt.Teacher, Primary School, Nathuchak, Patna. Sadar, Patna.
7. Surendra Kumar S/o Late Shyamdeo Paswan R/o Gandhi Nagar, Boring Road, House No. A18A, P.S Srikrishnapuri, District- Patna at present posted as Asstt. Teacher, Primary School, Station Road Fatuha, Patna
8. Mahesh Kumar S/o Late Shiv Nandan Kumar R/o Village- Chak Daulat, P.S- Lakhanpara , District- Patna at present posted as Assistant Teacher at Middle School, Dumari, Fatuha, District- Patna.
9. Vinod Kumar S/o Naresh Paswan R/o village- Gowasa Sheikhpura, P.S.- Pandarak, District- Patna at Present post as Asstt. Teacher at Madhya Vidyalaya, Sonaru, Fatuha, District- Patna.
10. Shiv Pukar Prasad S/o Ram Swarath Choudhary R/o New Bishunpur Pakari, Yadav Path, P.S.- Beur, District- Patna at present posted as Assistant Teacher at Primary School, Allauddinchak, Punpun, District- Patna..
11. Prabhat Kumar Sinha S/o Late Ishwari Prasad R/o Mogalpura, Lala Toli, P.S- Mogalpura, Patnacity at present posted as Assistant Teacher at Primary School Lal Imali, Malsalami, Patnacity, District- Patna.
12. Madan Kumar S/o Late Jai Narayan lal R/o Nitya Nand Ka Kuan, Lodikatra, P.S- Khajekalan, Patnacity, District- Patna at Present posted as Assistant Teacher as Madhya Vidyalaya, Daulatpur, Fatuha, District- Patna,.
13. The Bihar School Examination Board through its Secretary, Patna.
14. The District Magistrage, Patna.
15. The District Account Officer, Patna.
16. The Treasury Officer, Patna.

... .. Respondent/s

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with
Letters Patent Appeal No. 1062 of 2016
In
Civil Writ Jurisdiction Case No.5807 of 2014

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1. The State Of Bihar, through the Principal Secretary, Department of Educaiton, Govt. of Bihar, Patna.
2. The Director, Primary Education Department, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education Muzaffarpur, Division, Muzaffarpur.
4. The District Education Officer, District- Vaishali.
5. The District Programme Officer (Establishment), District- Vaishali.

... .. Appellant/s

Versus

1. Birendra Rajak, s/o Late Mauje Rajak, village- Arnia, P.O. + P.S.- Jandaha, District Vaishali, presently posted at New Primary School Dubha, Harijan Tola, Sahdai Bujurg, District- Vaishali.



2. Amod Chaudhary , S/O Late Gauri Chaudhry, village + P.O.- Nawnagar, P.S.- Bidupur, District- Vaishali, presently Posted at New Primary School Chainpur, Baghel, Sahdai Bujurg, District Vaishali.
3. Sukhdev Ram, S/o Sri Rameshwar Ram, village- Harpur osti, P.O. + P.S.- Mahua, District- Vaishali, presently posted at Upgraded Middle School, Parsaunia, P.O.- Mahua, District-Vaishali.
4. Kailash Paswan, S/o Sri Kalicharan Paswan, village- Chehra Khurd , P.O.- Bakshama, P.S.-Goroul, District- Vaishali, presently posted at Middle School, Fatehpur, District- Vaishali.
5. Yogeshwar Ram. s/o Sri Lakhan Ram, Village- Chaknashir, P.O- Sukki, P.S.- Patepur, District- vaishali, presently posted at New Primary School, Dabhaich, Indira Awas Colony, Patepur, District- Vaishali.
6. Baban Kumar, S/o Krishna Prasad Paswan, village- Choti Yusufpur, P.S.- Hajipur, P.S.- Industrial Area Hajipur, District- Vaishali, Presently Posted at New Primary School Sindhia, Kamalpur, Katharia, Block- Bidupur, District- Vaishali.
7. Vinod Ram, s/o Chinilal Ram, village- Bastikhojpur, P.O.- Pastara, P.s.- Baligaon, District Vaishali, presently posted at New Primary School, Kuria Chowk, Patepur, District- Vaishali.
8. Jairam Sahni, s/o Sri Nandlal Sahni, Village - Chak Bhairo , P.O.- Bhan Borhan, P.S. Jandaha, Presently posted at New Primary School Chak Abdulganni Singiahi, Jandaha, District - Vaishali.
9. The Bihar School Examination Board, Patna through the Secretary.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.Raza Ahmed, Sr. Advocate
For the Respondent/s	:	Mr. Vinod Kanth, Sr. Advocate Mr. Ray Shivajee Nath, Sr. Advocate Mr. Ray Saurabh Nath, Advocate Mr. Alok Anand, Advocate Mr. Avanindra Kumar Jha, Advocate Mr. Purushottam Kumar Jha, Advocate
For the Interveners	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Ranjeet Kumar Yadav, Advocate Mr. Umesh Kumar Mishra, Advocate Mr. Abhinav Srivastava, Advocate Mr. Ujjawal Bhushan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 17-01-2018

Since in all the Letters Patent Appeals common question of fact and law are involved, with the consent of the parties, they



have been heard together and are being disposed of by this common judgment.

2. These Letters Patent Appeals have been preferred by the State of Bihar under Clause 10 of the Patna High Court Rules against the judgment and order dated 13.05.2015 passed by the Writ Court whereby and whereunder while disposing of the batch of writ petitions involving the issue of construction of expression 'compartmental candidates' and whether compartmental candidates are entitled to be treated alike the candidates who have passed the examination in first attempt or compartmental candidates should be treated to have passed the examination in the second attempt. The Writ Court on consideration of various aspects and on examination of the word 'compartmental' defined in Chambers Dictionary and various other materials, held out that compartmental examination is in continuation of the main examination and the result of the compartmental examination is to be treated as the result of the examination held in 2004 and as such the Writ Court concluded that the candidates who were allowed to sit as compartmental examinee of 2004 examination in the year 2007 would be treated to have passed in the first attempt itself.

3. Mr. S.Raza Ahmed, Senior Counsel appearing on behalf of the State assailed the judgment of the Writ Court and



submitted that in view of the judgment of the Division Bench in the case of **Chandra Kant & Ors. Versus The State of Bihar & Ors: 2010 (4) PLJR 732**, the candidates who passed the training examination in the first attempt would be entitled to matric trained scale with effect from 1.10.2003 and those who passed in the second attempt would be entitled to trained scale from the date they appeared and passed the training examination.

4. Mr. Raza submitted that in the present case the candidates who appeared in training examination in 2004 failed in one or two papers and they were allowed to sit in the compartmental examination which was held in 2007 and as such the compartmental examination in which the writ petitioners appeared shall be treated as second attempt and as such the candidates who appeared in the compartmental examination of 2004 or next examination are only entitled to the benefit of matric trained scale with effect from the date they appeared in the subsequent examination as in the present case the compartmental examination was held in the year 2007 and as such they are not entitled to matric trained scale with effect from 1.10.2003. Mr. Raza submitted that under the Rules and in terms of the judgment of the Division Bench in Chandra Kant (supra) passing of training examination is the crucial date for entitlement of matric trained



scale. The benefit of cut off date of 1.10.2003 is applicable to only those candidates who passed in the main examination in the first attempt and not in the compartmental examination as trained pay scale is only admissible to trained teachers and by no stretch of imagination the entitlement of matric trained scale will be counted for compartmental candidates with effect from 1.10.2003 as admittedly the writ petitioners have passed the compartmental examination held in the year 2007.

5. Referring to the aforesaid facts and circumstances, Mr. Raza submitted that the Writ Court has committed error in construing the candidates who appeared in the compartmental examination of 2004 held in 2007 training examination to have passed in first attempt. Referring to the resolution of the State Government dated 5.1.2015 Mr. Raza submitted that the benefit of matric trained scale with effect from 1.10.2003 is only admissible to the candidate who appeared and passed the examination in the year 2004 and it does not bestow to the candidates who appeared in the compartmental examination of 2004 which was held in the year 2007.

6. Mr. Vinod Kanth, Mr. Chittranjan Sinha, Sr. Advocates and other Advocates who appeared on behalf of the respondents-writ petitioners submitted that the present appeals are



wholly misconceived. Referring to the discussion of the decision of the Writ Court, learned counsel appearing on behalf of the writ petitioners, respondents in the present batch of Letters Patent Appeals submitted that the expression 'compartmental' is always relatable to the main examination irrespective of the examination held in 2004 or 2007 as the compartmental examination was of the year 2004. Learned senior counsels submitted that the distinction between the 'compartmental examination' and the 'subsequent examination' as second attempt was understood by the respondents-appellants while conducting the 'compartmental examination'. They submitted that in 2007 compartmental examination was conducted for those candidates who failed in one or two papers whereas next examination of the failed candidates who were found not entitled to appear in the compartmental examination was held for all the papers in the subsequent 2007 examination and as such the respondents have themselves adopted two yardsticks while holding 2007 compartmental examination of 2004 for those candidates who failed only in one or two papers. In other cases the failed candidates were required to appear in all the papers in 2007 examination and distinction drawn by the respondent-appellants herein is clinching on the point that the compartmental examination was treated as part of the main



examination of 2004 and as such, the writ court has committed no error in construing the candidates who appeared and passed the compartmental examination as the candidates passed in the first attempt.

7. The issue with regard to training of the untrained teachers appointed on the recommendation of the Bihar Public Service Commission has a chequered history. After amendment in the rule in the year 1991 recruitment process has undergone changes and under the amended rules appointment of trained or untrained was permissible if they qualify in the examination conducted by the Bihar Public Service Commission and as such trained as well as untrained teachers were appointed on the recommendation of the BPSC. The issue with regard to appointment of untrained teacher was raised in a writ petition which travelled upto the Apex Court and the Apex Court on consideration of the entire facts and circumstances held out that the State is required to ensure training of untrained appointed on the recommendation of the BPSC. The judgment of the Apex Court in **Ram Vijay Kumar & Ors. Vs. The State of Bihar & Ors.: (1998) 9 SCC 227** was the background on which the untrained were sent for training and for the first time training examination for in-service candidates was held in 2004 and result



was subsequently published. Considering the decision of the Apex Court in **Ram Vijay Kumar's** case and **Chandra Kant's** case (supra) a decision was taken by the State to extend the benefit of trained pay scale to the candidates who appeared in the examination and in the first attempt passed the examination with effect from 1.10.2003. In fact, the expression 'trained teacher' and entitlement for induction in matric trained scale as per 1993 Promotion Rules is the date when individual is inducted in the matric trained scale on passing training examination.

8. Since the respondents- appellants have made a departure in extending the matric trained scale not from the date of passing matric training but with effect from 1.10.2003, the court has to examine the rational behind fixing the cut off date 1.10.2003. On scrutiny of the decision of the Apex Court and the judgment of this Court in the case of **Chandra Kant** (supra), it is seen that the cut off date of extension of benefit of matric trained scale is exception to the rule of granting of matric trained scale from the date anterior to actual passing of the training examination. The rational behind fixing this date is attributable to the failure of respondents in complying the orders of the Apex Court in the case of **Ram Vijay Kumar**, it was incumbent upon the State to send the untrained candidates for training and conduct



training examination at the earliest but they consumed their own time in holding examination and publishing the result. It is well settled that the State cannot take advantage of its failure to hold the examination within time and deny the benefit of trained scale. Reference in this connection may be made to the judgment of the Bombay High Court in the case of **All India Groundnut Syndicate Vs. Commissioner of Income Tax: AIR 1954 Bom. 232**. Similar view was expressed by the Apex Court in the case of **State of Maharashtra Vs. Jagannath Achyut Karandikar: AIR 1989 SC 1133** where the Apex Court held out that one cannot suffer on account of lapse of the respondents in holding the examination regularly.

9. In **All India Groundnut Syndicate vs. Commissioner of Income Tax: AIR 1954 Bom. 232**, Hon'ble Mr. Justice Chagla, Chief Justice has laid down the principle that one cannot take advantage of his own default, which reads as follows:

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person we take it that the



Income-tax Department is included in that definition can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

10. In fact the Apex Court in the case of **State Of Maharashtra vs Jagannath Achyut Karandikar : AIR 1989 SC 1133**, in similar fact situation has held out that failure of the Government to hold examination for several years person who has not exhausted all his chances, could not be denied of his seniority as it is unreasonable and arbitrary to penalize such person for the default of the Government to hold examination every year. Paras 9 and 10 of the judgment is quoted below for ready reference.

9. This is a question of construction of the rules which form part of the scheme prescribing a condition for promotion. We do not have to reflect upon the rules of interpretation since they are well settled. They are now like the habits of driving which have become ingrained. They come to our assistance by instinct. We are to use the different rules meticulously to give effect to the scheme as we use the clutch, brake and accelerator for smooth driving. These rules are to be harmoniously construed. We should not concentrate too much on one rule and pay too little attention on the other. That would lead us astray and result in hardship. We must avoid such



construction. Rule 2 of the 1962 Rules no doubt states that a candidate who does not pass the examination at the end of nine years' service will lose his seniority. But this rule cannot be read in isolation as the High Court did. It has to be read along with the other rules since it is a part of the scheme provided for promotion. Rule 5 requires the Government to hold the examination every year. This rule is the basis of the entire scheme and the effect of other rules depends upon holding the examination. If examination is not held in any year, the rule 2 cannot operate to the prejudice of a person who has not exhausted all his chances. The person who has not exhausted the available chances to appear in the examination cannot be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year. That does not also appear to be the intent or purpose of the 1962 Rules.

10. If the examination is not held in any year, the person who has not exhausted all the permissible chances has a right to have his case considered for promotion even if he has completed 9 years' service. The Government instead of promoting such persons in their turn made them to wait till they passed the examination. They are the persons falling into the category of "Late Passing". To remove the hardship caused to them the Government wisely restored their



legitimate seniority in the promotional cadre. There is, in our opinion, nothing improper or illegal in this action and indeed, it is in harmony with the object of the 1962 Rules.

11. In view of the aforesaid decision of the Bombay High Court and the Supreme Court, we have no hesitation in holding that since the respondents-appellants herein were in default in holding the examination, there was justification to grant the benefit of trained scale from 1.10.2003 i.e. anterior to the date of actual passing of the examination.

12. The second limb of argument in the present case is whether the candidate who appeared and passed the compartmental examination is treated to be a candidate passed in the first attempt or in second attempt. As discussed hereinabove, it is admitted factual position that in 2007 the respondents have conducted examination, compartmental as well as regular. Those who failed only in one or two papers have to appear in the compartmental examination whereas those who failed in more than two papers were directed to appear in the entire subjects of examination in the regular examination 2007. Thus, the respondents have maintained that the candidates appeared at the compartmental examination stands on different footing than those who appeared at the regular examination. The compartmental



examination of 2007 was in fact compartmental examination of 2004 and as such the result is to be treated as the result of 2004. In academic pursuit and in academic parlance the candidates passed in the compartmental examination are treated to have passed in the academic session of the main examination in which the candidates appeared as compartmental candidates.

13. On perusal of the judgment of the writ Court, we find that the writ court has examined the dictionary meaning, popular meaning and contextual meaning of the compartmental and on consideration of the entire facts and circumstances held out that the compartmental examination is to be treated as part of the main examination and the candidates who passed the compartmental examination are entitled to count his academic achievement as of 2004 examination. The candidates who passed the compartmental examination, under the aforesaid circumstances, were held out as the candidates who passed in the first attempt and are entitled to matric trained scale with effect from 1.10.2003. The elaborate discussion of the writ court for allowing the benefit to the writ petitioners treating them to have passed the 2004 examination does not call for any indulgence as the compartmental examination is always relatable to the main examination. The examination held in 2007, compartmental examination, is required to be treated as



examination of 2004 and such candidates passed out in compartmental examination cannot be treated as passed in the second attempt but in view of the aforesaid circumstances when the State itself has distinguished the case of compartmental candidate from the candidate who passed in the second attempt in regular 2007 examination, we find no error in the judgment of the writ court.

14. Accordingly, we uphold the judgment of the writ court and dismiss these Letters Patent Appeals.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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