

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1101 of 2015

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1. Mahmood Alam Son of Late Seikh Yunus, Resident of Village + P.O. - Bhelahi, P.S. - Mahishi, District - Saharsa.
 2. Sohail Ahmad, Son of Late WasiAhmad Rahmani, Resident of Village - Baghaili, P.O. - Mahrampur, P.S. -Triweniganj, District - Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Bihar, Patna.
2. Director Primary Education, Bihar, Patna.
3. District Magistrate, Saharsa.
4. District Programme Officer (Establishment), Saharsa.
5. District Education Officer, Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 17-07-2018

Heard learned counsel for the petitioners and State.

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

“(i) That, for issuance of appropriate writ order or direction of writ in the nature of mandamus commanding the respondent to grant notional promotion on the post of headmaster to the petitioner No. 1 and further grant the petitioner No. 1 the pay scale of B.A. trained from 26.05.1996 as the petitioner has joined as Matric trained teacher on 26.05.1998 and thereafter in pursuance to regulation 1993 the petitioner was entitled to B.A. trained scale on his completion of 8 years as trained teachers since the petitioner



was M.A. trained teacher as such the petitioner entitled to at least the B.A. trained scale from 26.05.1996 and since the petitioner was M.A. passed as such after five years from 26.05.1996 the petitioner was entitled to head master scale from 26.05.2001 as per the regulation 1993.

(ii) That, for issuance of appropriate writ order or direction of writ in the nature of mandamus commanding the respondent to grant notional promotion on the post of headmaster to the petitioner No. 2 and further a declaration be given by way of mandamus that the Petitioner No. 2 is entitled to B.A. trained scale from 18.04.2003 since the petitioner joined in service as Assistant Teacher on 28.02.1981 and the petitioner was allowed Matric trained scale on 18.04.1995 as such since the petitioner was B.A. Hons at the time of his appointment and since the petitioner was given matric trained scale on 18.04.1995 as such after completion of 8 years as matric trained teacher the petitioner was entitled to the scale of B.A. trained teacher from 18.04.2003 and thereafter the petitioner was entitled to head master scale from 18.04.2008 after his completion of his five years as B.A. trained teachers.

(iii) That a declaration be given that the petitioner no. 2 since working from 28.02.1981 and petitioner no. 1 working as Matric trained teacher since 26.05.1988 as such a declaration be given that the petitioner is entitled to B.A. trained scale and head master scale as per the regulation 1993 and not under regulation 2011 as such a suitable direction be given to the respondent to grant the petitioners B.A. trained scale and head master scale from the date as aforesaid as per the regulation 1993.

(iv) That any other relief or relief's to which the petitioner be found entitled in law be granted to them."

3. Learned counsel for the petitioners submitted that on



the basis of their initial appointment and having acquired higher qualification later on, they should be given due promotion in the pay scale of B.A. Trained and to the post of Headmaster in terms of the then existing Regulation dated 08.07.1993. It was further submitted that the case of the petitioners cannot be considered with reference to the 2011 Regulation since the right had already accrued in favour of the petitioners under the 1993 Regulation much prior to coming into effect of the 2011 Regulation. Learned counsel further submitted that at the time when they were appointed, there was only one unified district of Saharsa from which later on the district of Supaul was carved out and thus, the petitioners were appointed in the unified district of Saharsa and Supaul. It was further submitted that after creation of a new district of Supaul from Saharsa, the petitioners as well as similarly situated persons were asked for their option with regard to them being posted in a particular district and the petitioners had given their option for Saharsa and on that basis they had been posted in the district of Saharsa. Learned counsel submitted that it was never their transfer from Supaul to Saharsa but it was their retention in the district of Saharsa upon creation of a new district Supaul.

4. In the counter affidavit, the stand is that because of the provisions of the Transfer Rules, 2006 of inter-district transfer, seniority of a teacher will be determined on the basis of the date of



joining in the new district cadre; the petitioners having been transferred to the district of Saharsa in the year 2005, their seniority shall be counted from that date.

5. At this stage, the Court put a specific query to learned counsel for the State to explain as to how, in law, the Rules which itself have come into force in the year 2006, would govern the concluded Transfer Rules of a prior date i.e., 2005, moreso in view of the fact that in the Transfer Rules, 2006, there is no provision for its operation with retrospective effect, and thus, in law, it has to be presumed that whenever transfer takes place, the person who is being transferred retains his seniority which is on the basis of his initial date of joining. In the present case, nothing has been brought by the respondents to even indicate that there was any Rule existing prior to 2006 relating to determination of seniority upon transfer stipulating that it shall be on the basis of joining in the new district cadre, the petitioners' transfer to Saharsa from Supaul would not take away the seniority of the petitioners from the date of their initial appointment on 26.05.1998 and 28.02.1981, respectively. At best, their seniority upon acquiring higher degree may be counted from the date of their acquiring such degree but just because they have been transferred from one district to the other, would not be enough for their original seniority on the basis of their appointment/acquiring of higher degree



to be taken away. Further, the entire basis for the action of the authority being the Transfer Rules, 2006 which, as has been noted earlier, came into effect prospectively, the stand of the respondents that because for the first time a seniority list was prepared in the year 2010, the 2006 Rules were applicable, the petitioners would be given seniority only from the date of their transfer to Saharsa, appears to be erroneous. Once there were no Rules governing the field of transfer, the petitioners having been transferred from Supaul to Saharsa would have to be given benefit of their initial date of appointment together with the dates on which they may have acquired further qualification for any additional benefit. Thus, for all practical purposes, when the 2006 Rules came, and for the first time, the consideration was in the year 2010, the seniority of the petitioners has to be counted from their date of initial appointment together with the dates on which they may have acquired additional qualification for being eligible for such promotion. Further, such exercise could not have been done on the basis of their transfer in the year 2005, from Supaul to Saharsa.

6. On this particular issue, there was absolutely no reply from learned State Counsel. However, he fairly submitted that the Transfer Rules, 2006 does not have any retrospective clause.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the stand



taken in the counter affidavit and submissions of learned counsel for the petitioners and State, the Court finds that the stand taken by the authorities of counting the seniority of the petitioners from the date they have joined in the district of Saharsa is not tenable. Once the stand is that prior to the Transfer Rules, 2006, there was no Rule operating in the field, in law, it shall be presumed that whenever a person is transferred from one place to the other on an equivalent post, he retains all the benefits of the post on which he was initially appointed unless otherwise provided under some Rule or Statute or Circular of the State Government. In the present case, learned counsel for the State has not been able to controvert this position or even show to the Court that there was a Rule existing in the year 2005 which also provided that upon transfer, seniority will be determined on the basis of the date of joining in the new district cadre. Further, the Court finds that the contention of learned counsel for the petitioners that in the particular facts of this case, when they were appointed in the unified district of Saharsa and upon bifurcation they have been retained in the district of Saharsa as per their choice/option, the case would not come under any transfer category as, in law, it would be deemed that they are in the same district in which they were appointed. Thus, in such view of the matter also, their seniority has to be counted from the date of their initial appointment in the unified



district of Saharsa and the time when they acquired higher qualification for being considered for promotion. Moreover, the contention of learned counsel for the petitioners is correct that since they were already possessing the eligibility for consideration for grant of B.A. Trained Scale and promotion to Headmaster under the 1993 Regulation, which was in force on the date of such consideration, the subsequent 2011 Regulation would not be applicable in their case as the consideration has to be on the basis of the law existing at the relevant time and the subsequent change in law or fresh law cannot be made applicable from a prior date unless the same specially states with regard to its retrospective effect. In the present case, the 1993 Regulation was operating and later on when the 2011 Regulation came into effect, automatically the 193 Regulation stood superseded, but rights having crystallized prior to coming into effect of the 2011 Regulation, the consideration of the case of the petitioners has to be under the Regulation which was in force at the relevant time which admittedly was much prior to coming into effect of the 2011 Regulation and, thus, obviously, such consideration had to be under the 1993 Regulation.

8. For the reasons aforesaid, the writ petition succeeds. The authorities are directed to consider the case of the petitioners counting their seniority from date of initial appointment along with



the respective dates on which they acquired the higher qualification for promotion and subsequent benefit. Such order be passed within one month from the date of production of a copy of this order before the respondent no. 5.

9. As the petitioners have been wrongly denied the benefit of such promotion and their cases have been considered on totally erroneous and wrong notion of them being transferred to another district, i.e., Saharsa and also under the Transfer Rules, 2006, which is not applicable in the case of the petitioners, the Court deems it appropriate to grant them all consequential benefits of promotion, from the date their juniors were promoted, and to which they are found entitled in terms of the discussions in this order.

(Ahsanuddin Amanullah, J)

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