

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20552 of 2011

1. BIHAR RAJYA RAJKIYA BUNYADI VIDYALAYA SIKSHAK SANGH THROUGH IT'S JOINT SECRETARY SAROJ KUMAR SINGH SON OF SRI BAIDYA NATH SINGH RESIDENT OF VILLAGE - KORAWAN, P.S. - MASAUHI, DISTRICT - PATNA AT PRESENT WORKING AS ASSTT. TEACHER , GOVERNMENT BASIC ABHYASHALA MAHENDRU, PATNA
2. RAMESH CHANDRA RAMAN SON OF LATE SAHDEO PRASAD YADAV, ORGANISING MINISTER, BIHAR RAJYA RAJKIYA BUNYADI VIDYALAYA SANGH RESIDENT OF VILLAGE - RAM NAGAR, P.S. - K. HAT, DISTRICT - PURNEA AT PRESENT WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, RAJI GANJ, RANI PATRA, PURNEA
3. MAHESH KUMAR SON OF LATE KASHI TANTI RESIDENT OF VILLAGE - KHUSHHAL CHAK, P.S. - BAHADUR, DISTRICT - PATNA AT PRESENT WORKING AS IN-CHARGE HEADMASTER, GOVERNMENT BASIC SCHOOL, GONPURA, PATNA
4. RAM PRASAD SINGH YADAV SON OF LATE RAM CHHAPIT SINGH YADAV RESIDENT OF VILLAGE - KURKURI, P.S. - PALIGANJ, DISTRICT - PATNA AT PRESENT WORKING AS ASSTT. TEACHER , GOVERNMENT BASIC SCHOOL, SADAQAT ASHRAM , PATNA
5. MD. ISHRAR AHMAD SON OF MD. RAZA KARIM RESIDENT OF VILLAGE - CHARUANWAN, P.S. - SEIKHPURA SARAI, DISTRICT- SEIKHPURA AT PRESENT WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, KIRANPUR, LAKHISARAI
6. RAJMANI MAHTO SON OF LATE SURENDRA PRASAD MAHTO RESIDENT OF VILLAGE - BINGAMA, P.S. - PATORI, DISTRICT - SAMASTIPUR AT PRESENT WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, PARRAUN, WEST CHAMPARAN
7. DR. YADUBANSH YADAV SON OF LATE SANTOSHI YADAV SECRETARY OF BIHAR RAJYA RAJKIYA BUNYADI VIDYALAYA SIKSHAK SANGH, DIVISIONAL UNIT KOSHI, AT PRESENT RESIDING AT JAIPAL PATTI, P.S. - MADHEPURA, DISTRICT - MADHEPURA AT PRESENT WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, AMARI, MADHEPURA
8. KUMAR GUNANAD SINGH SON OF SRI RAM KRIPAL SINGH, SECRETARY OF BIHAR, RAJYA RAJKIYA BUNYADI VIDYALAYA SIKSHAK SANGH, DISTRICT UNIT, SAHARSA CUM-SUPOUL RESIDENT OF VILLAGE - KHURASAN, P.S. - SALKHUA, DISTRICT - SAHARSA AT PRESENT WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, SUHATH, SAHARSA
9. HARI SHANKAR JHA SON OF LATE YADUNAND JHA, SECRETARY, DISTRICT UNIT, BIHAR RAJYA RAJKIYA



BUNİYADI VIDYALAYA SIKSHAK SANGH, SAMASTIPUR
RESIDENT OF VILLAGE - GOHI, P.S. - WARIS NAGAR,
DISTRICT - SAMASTIPUR AT PRESENT WORKING AS
ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL, TANRA,
SAMASTIPUR

10. OM PRAKASH YADAV SON OF SRI JALESHWAR YADAV
RESIDENT OF VILLAGE - SUBHA NAGAR, P.S. -
KAHALGAON, DISTRICT - BHAGALPUR AT PRESENT
WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC
SCHOOL, GOPALPUR KODWAR, GOGHA, KAHALGAON,
BHAGALPUR
11. AKHILESHWAR PRASAD SON OF LATE JAGDISH PRASAD
RESIDENT OF VILLAGE - RAHIMA, P.S. - BARH, DISTRICT -
PATNA AT PRESENT WORKING AS ASSTT. TACHER, R. K. K.
GOVERNMENT BASIC SCHOOL, PATNA CITY, PATNA
12. SANJAY KUMAR SON OF SRI TARKESHWAR PRASAD
SINGH RESIDENT OF VILLAGE - BAIKUNTHPUR, P.S. -
VAISHALI, DISTRICT - VAISHALI AT PRESENT WORKING
AS ASSTT. TEACHER, GOVERNMENT BASIC SCHOOL,
NARAYANPUR, VAISHALI
13. KRISHNA KUMAR SON OF LATE JAI LAL YADAV,
SECRETARY, DIVISIONAL UNIT OF BIHAR RAJYA RAJKIYA
BUNİYADI VIDYALAYA SIKSHAK SANGH, DARBHANGA
RESIDENT OF VILLAGE - BALABAKHAR, P.S. -
PHULPARAS, DISTRICT - MADHUBANI AT PRESENT
WORKING AS ASSTT. TEACHER, GOVERNMENT BASIC
SCHOOL, SAGARPUR, PUNDOUL, MADHUBANI
14. BINOD KUMAR SINGH SON OF LATE SATYA NARAYAN
SINGH, SECRETARY, DIVISIONAL UNIT OF BIHAR RAJYA
RAJKIYA BUNİYADI VIDYALAYA SIKSHAK SANGH
RESIDENT OF VILLAGE - JHITKAHI, P.S. - SHYAMPUR
BHATAHAN, DISTRICT - SEOHAR, AT PRESENT WORKING
AS ASSTT. TEACHER , GOVERNMENT BASIC SCHOOL,
MAHUAWA, WEST CHAMPARAN

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
HUMAN RESOURCES DEVELOPMENT DEPARTMENT, BIHAR,
PATNA
2. THE PRINCIPAL SECRETARY, FINANCE DEPARTMENT, BIHAR
3. THE DIRECTOR (PRIMARY EDUCATION), BIHAR, PATNA
4. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, PATNA
DIVISION, PATNA
5. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, MAGADH
DIVISION, GAYA
6. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, TIRHUT
DIVISION, MUZAFFARPUR
7. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, MUNGER
DIVISION, MUNGER
8. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, KOSHI
DIVISION, SAHARSA



9. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, BHAGALPUR DIVISION, BHAGALPUR
10. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, SARAN DIVISION, CHAPRA
11. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, DARBHANGA DIVISION, DARBHANGA
12. THE REGIONAL DEPUTY DIRECTOR OF EDUCATION, DARBHANGA DIVISION, DARBHANGA
13. THE DISTRICT EDUCATION OFFICER, PATNA
14. THE ACCOUNTANT GENERAL, BIHAR, PATNA

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tiwari, Advocate
For the Respondent/s : Mr. Anwar Karim, AC to GP-10.
For the Accountant General: Mr. Uday Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

12 04-10-2018

1. Heard Mr. Dilip Kumar Tiwari learned counsel for the petitioners and counsel appearing on behalf of the State.

2. The case of the petitioners in the instant case is that respondent Director has arbitrary fixed the scale on 1st ACP and 2nd ACP as Rs. 5000-8000 and Rs. 5500-9000.

3. Mr. Tiwari referring to Annexure-1 vide resolution dated 8.2.1999 submits that matric revised pay scale was fixed as Rs. 4500-7000 and graduate trained has been fixed in the revised pay scale is Rs.5500-9000. He submitted that Matric pay scale and Intermediate trained pay scale merged after resolution dated 8.2.1999 that is pay scale of Rs. 4500-7000. Referring to the above, he submits that under ACP Rules when cadre promotion were available, the ACP is admissible on the promotional post and as such Annexure-10 is an erroneous



decision as there was no pay scale of Rs. 5000-8000/- for first promotional post of Matric trained/ Graduate trained, it should have been Rs. 5500-9000. Earlier vide Annexure-9 the Regional Deputy Director of Education pursuant to the notification of the Finance Department dated 03.09.2005 has decided to grant 1st ACP from Matric trained Rs.5500-9000 and Rs. 6500-9000 in the Graduate trained scale as 2nd ACP. From perusal of Annexure-9, it is evident that on completion 12 years under ACP rules Matric and Intermediate trained teachers were entitled to pay scale of Rs.5500-9000/- whereas Matric and Intermediate untrained teachers were eligible for grant of pay scale of Rs. 5000-8000/-. Mr. Tiwari submitted that in the case of similarly circumstanced others, the respondents have granted the benefit of the 1st ACP in the pay scale of Rs.5500-9000/- and 2nd ACP in the pay scale of Rs. 6500-10500/- and for the aforesaid purpose he has placed reliance on Annexure- 15, 16, 17 and 19 and such teachers were also granted grade pay of Rs. 4800/-.

4. The scheme of ACP was adopted for the purpose of doing away stagnation, the benefit of ACP is available only in the event individual is holding the qualification and eligibility for grant of promotion but on account of non-availability of the



promotional post the promotion is not available to the incumbent then he is entitled to financial up-gradation. Two promotional up-gradation is available under the ACP, now third promotion avenue is available under MACP. It is clarified here that in the event promotion in the regular cadre is granted ACP is not available, it is only available as stagnation measure. Petitioner in the present writ application has assailed Annexure-10 whereby the Director has fixed the pay scale on 1st ACP in Matric trained Scale as Rs. 5000-8000 which does not the correspondence scale Graduate trained Scale which is 1st promotional post of the Matric / Intermediate trained Scale. Prima facie the Court is of the view that Annexure-10 is misconceived and is not based on appreciation of the scheme. Accordingly, Annexure -10 cannot sustain, it is quashed. The matter is remitted back to the Director Primary Education, who shall examine the claim of the petitioner afresh and if the petitioner has not been granted the regular promotion then he is entitled to grant of 1st and 2nd ACP in the pay scale of Rs. 5500-9000/- and 6500-10500 should be extended to the petitioner with appropriate grade pay. Respondents have to work out the entitlement of the petitioner for grant of 1st and 2nd ACP from cadre to cadre for the purpose of ensuring financial up-



gradation. In the event they find that the benefit of ACP admissible to the petitioner in terms of the ACP rules, they have to work out the entitlement of the petitioner on the basis of principle of post to post up-gradation of pay scale. Necessary decision in this regard may be taken by the respondent within a maximum period of four months from today. While taking decision respondents are required to consider the case of the petitioner at par with similarly circumstanced other teachers if they have been granted similar benefit, following the litigation policy of 2011 and the Judgment of full Bench of this Court reported in 2018 (2) PLJR, 929.

5. With the aforesaid the writ petitions stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

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