

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4466 of 2016

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1. Prahlad Singh, aged about 58 years, S/o Sri Hardeep Singh, At present High School, Kaurar, P.S. Medical Gaya, Distt- Gaya. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Depttment, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Deputy Secretary, Finance Department, Government of Bihar, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4478 of 2016

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1. Raj Mohan Singh S/o Sri Ramchandra Singh, Higher School, Maharajganj, District- Aurangabad Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Deputy Secretary, Finance Department, Government of Bihar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4622 of 2016

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1. Rajendra Rai S/o Brij Bhushan Rai, + High School, Katiknagar, Buxar, P.S. Nawanagar, Distt. – Buxar Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Deputy Secretary, Finance Department, Government of Bihar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4720 of 2016

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1. Jai Prakash Mandal S/o Late Bhagwat Mandal, Headmaster, High School, Ishipur, P.S. Ishipur, Distt. - Bhagalpur Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna



3. The Principal Secretary, Finance Department Government of Bihar, Patna
4. The Deputy Secretary, Finance Department Government of Bihar, Patna
.... Respondent/s
with

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Civil Writ Jurisdiction Case No. 4916 of 2016

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1. Krishnanand Tiwari S/o Ramdish Tiwary + 2 High School, Nabinagar,
Aurangabad, Distt. - Aurangabad Petitioner/s
Versus
1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Principal Secretary, Finance Department Government of Bihar, Patna
4. The Deputy Secretary, Finance Department Government of Bihar, Patna.
.... Respondent/s
- =====

Appearance :

(In CWJC No.4466 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. AJEET KUMAR- SC28

(In CWJC No.4478 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. J.P. KARN- AAG4

(In CWJC No.4622 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. GP16- RAJESH SINGH

(In CWJC No.4720 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. ANJANI KUMAR- AAG6

(In CWJC No.4916 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. S. RAZA AHMAD- AAG9

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 10-05-2018

Heard learned counsel for the petitioners and the
respondents.

2. The petitioners in these writ applications have
challenged the legality and validity of the order contained in Memo
no. 279 dated 29.01.2016, whereby the respondents have treated the



petitioner as fresher recruit on the post of Head Master and they have not given pay protection to the petitioners.

3. On behalf of the respondents, following stand have been taken in para. 7 and 8 of the counter affidavits, which is quoted for ready reference:

“7. That on receipt of the aforesaid request of the Accountant General Bihar, the matter was duly considered on the basis of the provisions of the Rules and circulars and after due considerations necessary guidelines were sent to the Accountant General Bihar vide letter no. 3480 dated 26.12.2014, whereby the issues were clarified as follows:-

(i) The appointment to the post of the headmaster of assistant teachers have been made through examination and they have not been given promotion.

(ii) The pay of such appointed teachers shall be protected if the pay scale of headmaster i.e. P.B.-to+54 is less than previous post.

(iii) Since the teachers are getting the benefits from the State Government Funds, therefore they shall not be treated fresh recruit and Schedule-2 is not allowed to them.

(iv) Since such employees have been appointed to the post of headmaster on the basis of their previous post and accordingly



they shall be allowed old pension Rule.

8. That after issuance of the aforesaid letter the Accountant General Bihar again requested the department vide letter no. 3659 dated 06.02.2015 to clarify, whether the candidates who were in previously in the service of Central Government or other State Government shall be allowed protection of their pay or not. On receipt of the aforesaid request the matter was duly considered and it was found that under the provisions of Bihar Service code only pay of employees fo State Government shall be protected. In the aforesaid provision for the protection of pay of Central Government employees or the employees of other State government has not been provided. After due consideration it was found proper that the teachers of Central Government or other State Government who have been appointed to the post of headmaster shall be treated as a fresh recruities and they shall be allowed the initial scale of Schedule-2 concerned with the post and further they shall not be allowed the protection of their pay, which they have allowed in the service of the Central Government or other State Government Services. Accordingly necessary guidelines have been issued vide letter No. 279 dated 29.01.2016.”

4. From the averments made in the aforesaid paragraphs, it appears that there are two objections in the aforesaid



paragraph respondents have drawn distinction between appointment and promotion and on that basis their objection in the matter of pay protection is as follows:

Firstly; the pay protection is available in the matter of promotion and not in the matter of appointment. The petitioners were directly appointed as Headmaster and therefore, pay protection is not available.

Secondly; the petitioners were drawing salary in the previous post, which was not less than the post of Headmaster and as such pay protection is not available.

Reading in between the line it appears that the third objection in the instant case is that pay protection is available to the employees of State Government and not the teachers, who were appointed as headmaster, drawn from different States or from the Central Government employment.

5. Mr. Vishwambhar Prasad, AC to AAG-5 submits that petitioners are not entitled to the benefit of pay protection, because they were sent to Jharkhand under the allocation of service pursuant to bifurcation of State of Bihar and after cessation relationship of master and servant of the petitioners with State of Bihar, they are not entitled to pay protection as an allocation of service of the petitioners to the State of Jharkhand. Bihar Service



Code is not applicable in the case of petitioners.

6. After considering the aforesaid objection, the Court finds that the objection of the State of Bihar that in the matter of appointment, pay protection is not available is totally misconceived, if it is a case of appointment, it is not only the case of petitioners, but all who were teachers in the State of Bihar were also appointed as Headmaster, therefore, they cannot take two different stand treating the appointment of headmasters from the teachers from the State of Bihar, as promotion and appointment of teachers belonging to State of Jharkhand and other State, as appointee and not promotes. The second objection does not merit any consideration for the reasons that pay protection is always admissible with reference to available pay package and it is not depending upon the fact whether the pay scale of the headmaster, is lower or higher. The third objection that petitioners do not belong to State of Bihar and, therefore, they are not entitled to grant of pay protection is also misconceived. It is to be kept in mind that the petitioners have not voluntarily opted for their allocation to the State of Jharkhand when the State of Bihar was bifurcated by the act of Parliament under the scheme of apportionment. The services of the petitioners were transferred and allocated to the State of Jharkhand and, therefore, they cannot be treated as class different from the erstwhile teachers who were considered by the respondents for grant



of pay protection on promotions, as they have been posted after allocation of their service to the State of Jharkhand not on their own volition, and as such they may not be subjected to any condition, which may be adversely affect their position including the pay protection, which is available to the similarly circumstanced teachers prior to bifurcation, those whose service was allocated to the State of Jharkhand bifurcation.

7. The Court cannot ignore the fact that at the time of bifurcation, they were assured protection. They may not be subjected to any adverse consequences of allocation of their services to the State of Jharkhand. The other issue raised by the State that they have not opted mutual transfer is totally misconceived. In case of mutual transfer of an individual at his own sweet will and joining the service of State of Jharkhand runs to the contrary, the present petitioners were subjected to compulsory allocation of their services, and as such they cannot be made to suffer adversely. The submission of the State that Bihar Service is not applicable to the case of petitioner is also misconceived.

8. Considering the totality of the facts situation and the fact that these petitioners were in the same service condition prior to bifurcation and if their counter parts after bifurcation are extended pay protection, this Court does not find any justification to deny the



pay protection to the teachers, like petitioners who were erstwhile employees of the State of Bihar, but they were transferred to the State of Jharkhand on bifurcation under the compulsory allocation scheme. The Court further makes it clear that benefit of pay protection is only available to those teachers, who were initially appointed in the State of Bihar and by virtue of bifurcation their services were apportioned to the State of Jharkhand.

9. The respondents are hereby directed to extend the benefit of pay protection like their counter parts teachers of State of Bihar and petitioners may be extended pay protection. The entire exercise in the matter of calculating the pay protection has to be completed by the respondents within a period of 60 days from the date of receipt/production of a copy of this order.

10. With the aforesaid, these writ applications stand allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.06.2018
Transmission Date	

