

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1293 of 2015

In

Civil Writ Jurisdiction Case No.3098 of 2015

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1. Umesh Singh Son of Late Kapildeo Singh, Resident of Village- Chak Fateh, Post- Kajri Bujurg, P.S. Jandaha, District Vaishali.
 2. Pankaj Kumar, Son of Late Haridwar Singh, Resident of Village- Akhityarpur Paterha, Post- Ahtiyarpur Paterha, P.S.- Sarai, District- Vaishali
 3. Harinandan Prasad Singh, Son of Shri Gulab Singh, Resident of Village- Rupasipur, Post- Jandaha, P.S.-Jandaha, District- Vaishali,
 4. Lal Babu Bhakt, Son of Shri Ram Khelwan Bhakt, Resident of village- Bihwarpur, Post Madhurapur, P.S. Bidhupur, District Vaishali
 5. Sanjay Kumar Singh, Son of Shri Thakur Rajendra Singh, Resident of Village - Kharika, Post- Deshri, Anchal and P.S. Bidhupur, District- Vaishali,
 6. Babban Das, son of Shri Dukhan Das, Resident of Village- Rampur- Nausahan, Post- Hajipur, P.S. Industrial Area Hajipur, District Vaishali,
 7. Subhash Choudhary, Son of Late Babulal Choudhary, Resident of Village- Arania, Post-Jandaha, P.S. Jandaha, District- Vaishali,
 8. Md. Jainul Abedin, son of Late Md. Sattar, Resident of Village- Wajitpur, Post- Wajitpur Saidat, district- Vaishali
 9. Ajit Kumar Singh, son of Sri Yadubir Singh, Resident of village- Hasanpur, Post-Hasanpur Gurd, P.S. and Block- Mahnar, District Vaishali,
 10. Badri Prasad Gupta, son of Shri Jag Narayan Gupta, Resident of Village- Hathsarganj, Post- Hajipur, P.S. and District- Hajipur,
 11. Ganesh Ram, son of Shri Pyare Ram, Resident of Village and Post- Lawapur Narayan, Mahnar, District- Vaishali
 12. Garib Nath Choudhary, Son of Late Bhola Choudhary, Resident of Village and Post- Adalpur, P.S. Jandaha, District- Vaishali,
 13. Ranjit Kumar Choudhary, Son of Late Parmeshwar Choudhary, Resident of Village and Post - Salaha, P.S.- Jandaha, District - Vaishali.
 14. Ganesh Kumar, son of Late Ram Lakhan Singh, Resident of village - Dumari Chak, Post - Bakhari, P.S.- Rajapakar, District - Vaishali.
 15. Pradeep Kumar, son of Late Mauji Lal Bhagat, Resident of Village - Alawalpur, Post - Dharhara, District - Vaishali.
 16. Manju Kumari, Daughter of Shri Ramishwar Rai, Resident of village - Karnpura, Post - Jathuwa, P.S.- Gangabridge, District - Vaishali.
 17. Shobha, Daughter of Sri Satyanarayan Thakur, Resident of Mohalla - Wagmali, P.S.- Hajipur Town, District- Vaishali.
 18. Satyendra Kumar Singh, Son of Late Krishna Ballabh Singh, Resident of village - Raudipokhar, Post - Bhataro, P.S.- Lalganj, District- Vaishali.



19. Sanjay Kumar, son of Sri Baleshwar Bhakt, Resident of village -
Pachiskurwa, P.S.- Hajipur, P.S.- Hajipur, District- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Joint Secretary, Government of Bihar, Department of Education, Patna.
4. The Director Primary Education, Government of Bihar, Patna null null
5. The District Programme Officer (Establishment), Vaishali District - Vaishali.
6. Rajendra Choudhary, Son of Sri Jayeshwar Choudhary, Resident of Village - Kajari Bujurg, Post- Mukundpur Math, P.S. Jandaha, District- Vaishali.
7. Surendra Prasad, son of Sri Raj Narain Singh, Resident of village - Sheoganj, Post - Bidupur, P.S.- Rajapakar, District- Vaishali

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Tej Bahadur Singh, Sr. Advocate Mr. Brisketu Sharan Pandey, Mr. Prince Kumar Mishra, Advocates
For the Respondent/s	:	Mr. Sriram Krishna, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 14-05-2018

The appellants have put to challenge, in the present *intra* Court appeal under Letters Patent of this Court, an order dated 18.05.2015, passed by a learned single Judge of this Court in CWJC No. 3098 of 2015, whereby the writ petition filed on behalf of the appellants seeking quashing of sub-clause (3) of Clause 4 of the Government Notification No. 12 dated 05.01.2015, has been dismissed, with an observation that



recovery of benefits of higher pay-scale will have to be effected.

2. In order to appreciate the issue involved, brief facts of the case, which are not in dispute, can be taken note of.

3. The appellants were appointed as teachers in Elementary Schools in 1994. They were untrained. A question had arisen as to whether they could be appointed at all as teachers in the absence of teachers' training. The matter had travelled up to the Supreme Court. The Supreme Court, dealing with the question of appointment of untrained teachers in its decision rendered in case of **Ram Vijay Kumar and Ors. vs. State of Bihar and others reported in (1998) 9 SCC 227**, issued following direction to the State Government:-

“4. Keeping in view the facts and circumstances of the case, we are not inclined to interfere with the impugned judgment of the High Court but having regard to the fact that the High Court has found merit in the grievance of the petitioners we consider it appropriate in the interests of justice to give the following directions regarding appointment on the posts of Assistant Teachers which have not been filled on the basis of this selection made on the basis of the advertisement dated 8-10-1991 and which fall in the general category:



(i) The Commission shall conduct a special selection for the purpose of appointment on these unfilled posts from amongst applicants who had submitted their applications.

(ii) The selection shall be confined to applicants possessing teachers' training qualifications obtained from Government/Private Teachers' Training Institutions.

(iii) The selection shall be made by holding a preliminary test and a written examination of the candidates who qualify in the preliminary test.

(iv) In case the number of persons found suitable for appointment in such special selection exceeds the number of posts for which recruitment was to be made on the basis of the advertisement dated 8-10-1991, the surplus number of candidates who have been found suitable for appointment would be adjusted against posts to be filled on the basis of subsequent selection.

(v) The special selection which is to be conducted in pursuance of these directions shall be completed by the Commission by 31-12-1997.

5. From the affidavit of Shri Deepak Kumar it appears that although appointment of Assistant Teachers on the basis of the



impugned selection was made in August 1994 no steps have been taken so far by the State Government for imparting training to the untrained teachers. All that has been said in the affidavit of Shri Deepak Kumar is that the training period of two years is being reduced to one year and the syllabus for the one-year course is yet to be prepared. This lackadaisical approach in the matter of imparting training to persons who are required to teach students is indefensible. It is, therefore, directed that the State Government shall take immediate steps to finalise the syllabus and that the training courses for training of the untrained teachers should commence from 1-10-1997. It must be ensured that all the untrained teachers who have been appointed as per the aforementioned selection are duly trained within two years' time."

4. For the first time, the examination as contemplated in Supreme Court's decision in case of **Ram Vijay Kumar and Ors.** (supra), was held by the State Government in 2004. The appellants participated in the examination but failed in entirety. Result of the examination was published in 2005. After 2004, another test was held in 2007, in



which they appeared and passed.

5. A Division Bench of this Court in case of **Chandra Kant vs. State of Bihar** reported in **2010 (4) PLJR 732**, had occasion to deal with the dispute in respect of grant of trained scale to untrained teachers upon examining the effect of Supreme Court's decision in case of Ram Vijay Kumar (supra) and other attending circumstances. The Division Bench held in paragraphs 30 to 32:-

“30. Coming to the last issue, we find merit in the submission advanced on behalf of the appellants that due to inability of the State Government to hold the required examination within a reasonable time, the appellants who were successful, have suffered undue hardship. In that view of the matter, when the examination could not be held within two years in spite of directions of the Apex Court and even later, as per directions of this Court, we are of the view that the State Government which has the necessary powers, must take steps to relax Rule 11 of the Rules as a one time measure within a reasonable time and take a prompt decision to grant matric trained scale to the teachers who have passed the in-service training examination in June, 2005 from any date which may be found suitable and reasonable so as not to affect such teachers adversely for the unusual delay in holding the training examination. It would be reasonable and appropriate to grant matric trained scale to such teachers as indicated above from any reasonable date, may be from the date when the period of two years fixed by



the Apex Court for completing the training of such teachers expired without compliance or even from 1.10.2003, i.e. when actual payment in Matric trained scale was stopped. Keeping in view the requirements of Article 14 of the Constitution, benefit of advancing the date for grant of Matric trained scale, as indicated above will also be made available to such teachers who may pass the training examination in the second attempt. For them the date will vary but benefit should be on same lines as given to those who have passed in the first attempt.

31. We, accordingly direct the respondents to take appropriate decision in the light of observations and directions indicated above within three months from today.

32. We have no hesitation in holding that in the light of law laid down by the Supreme Court and by this Court, no recovery shall be made of the alleged excess payment made to the untrained teachers on account of payment to them in matric trained scale. In the present case the excess payment was made by the authorities on account of wrong interpretation or ignorance of Rule 11 of the Rules and the employees concerned had no means of knowing that they were getting payment by mistake. On that principle, as enunciated in the case of Syed Abdul Qadir vs. The State of Bihar (supra), we restrain the respondents from making any recovery from the appellants. It is made clear that this order shall be applied by the respondents in case of appellants as well as all other similarly situated teachers appointed as untrained teachers after coming into force of 1991 Rules.



6. In compliance of the said Division Bench decision, the State Government came out with a resolution dated 29.07.2011, which is there at annexure -3, clause 2(ka) of which read thus:-

“2.(क) उच्च योग्यताधारी प्रशिक्षित शिक्षक जिन्होंने प्रथम प्रयास में प्रशिक्षण परीक्षा उत्तीर्ण कर लिया हो उन्हें दिनांक-01.10.2003 के प्रभाव से तथा दूसरे प्रयास में उत्तीर्ण होने वाले अप्रशिक्षित शिक्षकों को परीक्षा में शामिल होने की तिथि (जो दिनांक-01.10.2003 के बाद हो) से मैट्रिक प्रशिक्षित का वेतनमान स्वीकृत किया जाए । इसके फलस्वरूप शिक्षक नियुक्ति नियमावली 1991 की कंडिका को **One time measure** के रूप में शिथिल माना जायेगा ।

इस कोटि में शिक्षकों के द्वारा मैट्रिक प्रशिक्षित वेतनमान में लिये गये अतिरिक्त वेतन की वसूली नहीं की जायेगी ।” (emphasis supplied)

7. It is evident thus, that the State Government, in the light of the decision of Division Bench of this Court in case of **Chandra Kant** (supra), took a conscious and specific decision that those untrained teachers who had passed training examination in their first attempt would be entitled for scale of trained teachers with effect from 01.10.2003 and others who pass/passed such examination in their second or subsequent attempt would be entitled for such scale from the date of their appearing at the examination. It also prescribed that it shall be one time measure and to that extent the relevant provision under Rule 11 of the Bihar Elementary School Teachers Appointment



Rules, 1991 would stand relaxed.

8. The Education Department of the State Government of Bihar came out with another resolution, dated 20.09.2013 to the effect that such untrained teachers appointed in the year 1994 shall be given matric trained scale notionally from 05.09.1999 till 30.09.2003 and they will be getting benefit of pay scale of trained teachers from 01.10.2003 as was contemplated earlier. Sub-clause (ga) of Clause 4 of the said resolution stipulated that other conditions as mentioned in the resolution No.790 dated 29.07.2011 would remain intact. We must mention here that one of the conditions in the resolution dated 29.07.2011, was that no recovery shall be made of excess payment made to the untrained teachers, while declaring them entitled to the trained scale with effect from 01.10.2003.

9. So as to fully comply with the direction issued by this Court in case of **Chandra Kant**(supra), taking into account two earlier resolutions dated 29.07.2011 (supra) and 13.09.2013 (supra), the Education Department again came out with a resolution issued vide memo No. 296 dated 16.01.2015, sub-clause (iii) of Clause 4 of which reads thus:-

“(4) (iii) बिहार प्रारम्भिक विद्यालय नियुक्ति नियमावली 1991 के अन्तर्गत नियुक्त उच्च योग्यताधारी अप्रशिक्षित (अनुकम्पा सहित) शिक्षक जिन्होंने शिक्षक प्रशिक्षण परीक्षा 2004 में सम्मिलित होकर उत्तीर्ण नहीं हुए , अथवा वैसे



शिक्षक जो शिक्षक प्रशिक्षण परीक्षा 2004 में सम्मिलित नहीं हुए और वर्ष 2007 में आहूत शिक्षक प्रशिक्षण परीक्षा में सम्मिलित होकर प्रशिक्षण परीक्षा में उत्तीर्ण हुए, उन्हें प्रशिक्षण परीक्षा में सम्मिलित होने की तिथि (दिनांक 31.07.2007) से मैट्रिक प्रशिक्षित वेतनमान दिया जाय।"

10. Evidently, it stipulated that those untrained teachers who either, could not clear the Teachers' Training Test held in 2004 or failed to appear in the said test and subsequently cleared the test held in the year 2007 shall be entitled for matric trained scale with effect from the date when they appeared in the examination on 31.07.2007. Learned Single Judge, in the impugned order, upon reading the resolution dated 16.01.2015, which is at Annexure-5 of the writ application has made following observations while dismissing the writ application:-

"2. Petitioners want quashing of some of the clauses of Annexure-5 on the ground that they had appeared in the training examination in the year 2004 but had failed. They have ultimately passed the training examination when they appeared in the second examination held in 2007. The circular taking into consideration two previous Division Bench decisions has clearly laid down that only those teachers would be entitled to matric trained scale, who have passed 2004 examination in toto, from 1.10.2003 and those who have passed the said examination conducted in the year 2007 from 31.7.2007. Since petitioners have passed the examination held in the year 2007, their passing cannot co-relate back to 2004 on



mere attempt at the examination held in the year 2004. Such teachers will have to be given benefit from 31.7.2007. If they have derived any benefit of a pay-scale prior to that period, recovery will have to be effected subject to the final outcome of the review petition.

11. The appellants are aggrieved by the observation made by the learned Single Judge to the effect it has been said that if the appellants had derived any benefit of a pay scale prior to the period, i.e. , 31.07.2007, recovery will have to be effected subject to final outcome of a review petition.

12. Upon careful perusal of Annexure-5, it transpires that the State Government proposed to file a review against an order of this Court dated 08.08.2012, passed in MJC No. 4075 of 2011. There is no material to suggest whether any review application was ever filed on behalf of any of the parties. We shall, therefore, be ignoring the said part as mentioned in resolution dated 16.01.2015. The decision of the State Government as contained in the resolution dated 16.01.2015, to the extent it provides that untrained teachers who passed the teachers training test held in 2007 in their second attempt shall be entitled for the trained scale with effect from the date the test was held cannot be faulted with as the decision is apparently in light of this Court's decision in case of Chandra Kant (supra).



13. The only grievance which the appellants can raise in the present appeal that in view of the clear language used in resolution dated 29.07.2011 (Annexure-3), 13.9.2013(Annexure-4) and 15.01.2015 (Annexure-5) read with Division Bench decision of this Court in case of Chandra Kant (supra), learned Single Judge ought not to have made any observation for recovery of the amount, said to have been paid to the petitioners in excess against their salary by giving trained pay scale instead of untrained pay scale.

14. Mr. Tej Bahadur Singh, learned Senior counsel appearing on behalf of the appellants is correct in his submission that in case of **Chandra Kant** (supra), this Court made clear observation in paragraph 32 as has been quoted above, that no recovery shall be made of alleged excess payment made to untrained teachers on account of payment to them in matric trained scale. It is clear from the resolution dated 16.01.2015, (Annexure-5) that the same was issued in the light of the Division Bench decision of this Court in case of **Chandra Kant** (supra). In the resolution dated 29.07.2011, it was mentioned in most unambiguous terms that no recovery of excess payment made to untrained teachers on the basis of trained pay scale shall be made. The State Government in



subsequent resolution dated 13.09.2013 (Annexure-4) reiterated the decision of non-recovery of excess payment. In subsequent resolution dated 16.01.2015, there is no specific mention of the earlier decision of the State Government not to recover the amount said to have been paid in excess against salary of the appellants and similarly situated persons. However, it is clear from the said document that it was being issued in the light of the Division Bench decision in case of Chandra Kant(supra) in which it was specifically held that no recovery shall be made of the excess payment.

15. In view of the discussion as above, we are of the considered view that since it was not stipulated in any of decisions of the State Government to recover the amount paid in excess and since it was clearly held in case of **Chandra Kant** (supra), that no recovery of excess payment should be made in the light of Supreme Court's decision in case of **Syed Abdul Qadir Vs. The State of Bihar and ors** reported in (2009) 3 SCC 475, the learned Single Judge has committed an error by making the observation that amount paid in excess shall be liable to be recovered.

16. In view of the above discussions and Supreme Court's decisions as noted above, the impugned order of learned



single Judge deserves to be set aside.

17. The impugned judgment and order dated 18.05.2015, passed in CWJC No. 3098 of 2015 is, accordingly, set aside to the extent it has been held that excess payment made to the appellants shall be liable to be recovered.

18. We hold that no recovery of excess payment shall be made in the facts and circumstances of the present case. The impugned judgment and order of the learned Single Judge stands modified accordingly.

19. The Letters Patent Appeal stands disposed of.

20. There shall, however, be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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