

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5152 of 2016

Dr. Sunita Kumari, aged about 50 years, W/o Dr. H.N.P. Singh, Headmistress of S.M. Girls Higher Secondary School, Mirzanhat, At+P.S. & District-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

Civil Writ Jurisdiction Case No. 5511 of 2016

Ravindra Kumar Yadav S/o Mohan Lal Yadav Headmaster, Kunkun Devi High School, Fulkaha, Nawabganj (Araria), P.O. Nawabganj, P.S. Fulkaha, District - Araria, Pin - 854336 (Bihar).

... .. 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

Civil Writ Jurisdiction Case No. 5208 of 2016

Seema Chaudhary W/o Prof. Binod Kumar Choudhary Headmistress, Project Ram Janki Girls Senior Secondary School, Mahadeiya, P.S. Minapur, District - Muzaffarpur.

... .. 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 Civil Writ Jurisdiction Case No. 5152 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. P.K. Verma- Aag5

(In Civil Writ Jurisdiction Case No. 5511 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

: Mr. Helal Ahmad, Advocate

For the Respondent/s : Mr. Sita Ram Yadav, G.P. No. 16

(In Civil Writ Jurisdiction Case No. 5208 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. Madhuresh Prasad- Gp12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

10 26-09-2018

1. Heard learned counsel for the petitioners and counsel appearing on behalf of the State.

2. This matter was heard on different dates as it would be apparent from the order-sheets dated 5.9.2018 Mr. Prabhat Kumar Verma, learned Additional Advocate General No.3 referring to the rules 50 and 78 of the Bihar Service Code has explained the position that pay protection is available to the teachers who were appointed as Headmaster under the Bihar Service Code. The order dated 5.9.2018 contains the details of the scheme which is available to the teachers of Bihar who applied in response to the advertisement for appointment as headmaster and in fact appointed as headmaster. The same benefit was also admitted by the respondent applicable to the teachers who were initially appointed in the State of Bihar and later on transferred under compulsion to the State of Jharkhand due to bifurcation of the State of Bihar.

3. Learned counsel appearing on behalf of the



petitioner in CWJC No. 5152 of 2016 Dr. Sunita Kumari has submitted that petitioner have applied in response to the advertisement for appointment as headmaster. Prior to the joining on the post of headmaster in response to the advertisement in the State of Bihar. Petitioner was drawing salary in the erstwhile employment and such her expectation on appointment as headmaster in the State of Bihar was pay protection. He referred to the judgment of Apex Court reported in (2014) 3 SCC 471 to contend that petitioner is entitled to pay protection. He relied on paragraph 9 of the judgment in the case of Krishna Kant Tiwari Vs. Kendriya Vidyalaya Sanghtan. Paragraph 9 of the aforesaid judgment reads as follows:-

“ We have considered the rival submissions. The Circular/Memorandum which is relied upon, states in paragraph 2 that the issue of pay protection of the candidates recruited through Public Sector undertakings, etc. has been engaging the attention of the Government for quite some time. Paragraph-3 thereafter states that these orders take effect from the 1st day of the month in which the Office memorandum is



issued i.e 1st August 1989. Once it is stated that the order takes effect from 1st August 1989, the clause will have to be given its plain meaning it is drafted. Therefore, the employees who were drawn from Public Sector Undertaking, like the appellant who was in the Madhya Pradesh Government service earlier, will be entitled to pay protection from that date i.e. 1.8.1989. He will, however, not get the pay protection prior to that date, interpreted this way, it will not amount to giving any retrospective effect to the Memorandum.”

4. Pay protection in that case was available under the Memorandum issued on 1st August 1989. The position in the present case is quite different. Under the scheme of the Bihar Service Code as indicated in the previous order dated 5.9.2018 was available to the teachers, the same benefit is only available to the teachers covered by the Bihar Service Code and the same benefit is not available to the teachers from other organization including Kendriya Vidyalaya Sangthan. The pay protection under the Kendriya Vidyalaya Sangthan or Navodaya Vidyalaya



is available to teachers of Navodaya Vidyalaya and Kendriya Vidyalaya Sangathan, it cannot be applied in the case of appointment of Headmaster under the service of the State of Bihar. Mr. Helal Ahmad next contended with reference to rule 3 of the Bihar Service Code that under Rule-3 of Service Code the pay protection is available to the petitioner. Rule 3 of the Bihar Service code reads as follows:-

“3. (a) Nothing in these rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law, or by the terms of any contract or agreement subsisting between such person and the Government.

(b) Nothing in these rules shall operate to confer on any person any right or privilege in respect of any matter for which specific provision is made by the terms of any contract or agreement between himself and the Government.

(c) Any omission from these rules of any order applying to particular appointments or to particular individuals



which is believed to be still in force may be brought to the notice of Govt. in the Finance Department through proper channel and until the said order is so confirmed or otherwise rectified, it shall be treated as superseded and not in force.

(Comments.- Right and Privileges as a result of terms of contract or agreement into between a person and the Govt. Shall not be affected by the rules in this Code.)”

5. The scheme of Rule 3 is not at all available in the instant case as it is only in relation to the existing contract or agreement between the person and the government which has no application in the present case. The petitioner who belongs to Navodaya Vidyalaya cannot claim that there is agreement or contract between the petitioner and the State Government and in that view of the matter the Court is not inclined to grant any indulgence to the petitioner for benefit of pay protection in terms of Rule 3 of the Bihar Service Code.

6. In view of the above the writ petition does not merit any consideration, it is accordingly, dismissed.

7. In view of the discussion above the Court does not



find any merit in the writ petition no.5208 of 2016 filed by the petitioner Seema Choudhary and CWJC No. 5152 of 2016 filed by petitioner Dr. Sunita Kumari, who belongs to Kendriya Vidyalaya Sangthan as the benefit of pay protection under Bihar Service Code is not available to the teachers who has come from Kendriya Vidyalaya Sangthan. Accordingly, the writ petition does not find merit consideration. It is dismissed accordingly.

(Anil Kumar Upadhyay, J)

T.Kr./-

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