

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1638 of 2015

In
Civil Writ Jurisdiction Case No.5455 of 2015

1. Shailesh Kumar Son of Late Tej Narayan Prasad Singh Resident of village - Sorathi, Post office - Daidaha, Police Station - Dinara, District - Rohtas
2. Binod Kumar Son of Deepak Kumar Resident of Mohalla - Takia (Sasaram), P.S. Sasaram, District - Rohtas
3. Avinash Kumar Pandey Son of Late Srikant Pandey Resident of village - Pipara Khurd, Post office - Babhani, Police Station Kargahar, District - Rohtas
4. Prabhakar Kumar Singh Son of Late Rajendra Prasad Singh Resident of village Post Office and Police Baddi, District - Rohtas
5. Ajay Kumar Singh Son of Late Shiv Bachan Singh Resident of village Post office and Police Station - Kochas, District - Rohtas
6. Pramod Kumar Tiwari Son of Late Bigo Prasad Tiwari Resident of Village - Sawan Dihri, Post office Balthari, Police Station - Kochas, District - Rohtas
7. Harendra Kumar Son of Late Kanhaiya Pandey Resident of village - Sonhar, Post Office Jhanuwa, Police Station Sheo Sagar, District - Rohtas
8. Rakesh Kumar Son of Late Chhabinath Singh Resident of village - Chaukhanda Chitauli, Post office Samardiha, Police Station - Sasaram, District - Rohtas



9. Krishna Kant Tiwari Son of Late Narvadeshwar Tiwari Resident
of village - Kumbhau, Post office, Moresarai, Police Station -
Sheo Sagar, District - Rohtas
10. Vankatesh Kumar Pandey Son of Late Chandrama Pandey
Resident of village - Thori Pandeypur, Post Office and Police
Station - Murar, District - Buxar

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources
Development, Ministry, Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The District Education Officer, Rohtas
4. The District Programme Officer, Rohtas
5. The District Account officer, Rohtas

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. S.B.K. Manglam, Adv. Mr. Ravi Ranjan, Adv. Mr. Bhagwati Prasad, Adv.
For the Respondent/s	:	Mr. Jai Prabhat Kishore, AC to SC-13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-02-2018

Seeking exception to an order dated 24.7.2015 passed
by the learned Writ Court in C.W.J.C. No.5455 of 2015 rejecting
the prayer made by the petitioners for quashing a resolution dated



2.1.2015 and a memo. issued thereafter bearing Memo. No.340 dated 11.2.2015, the appeal has been filed and the issue pertains to grant of benefit of Matric Trained pay-scale to the petitioners initially with effect from 1.10.2003 in pursuance to a letter, Annexure 4, dated 29.7.2011 issued by the Special Secretary to the Government of Bihar and the subsequent withdrawal of the same and recovery of the benefit by the impugned order.

The learned Writ Court has dismissed the writ petition solely on the ground that the petitioners underwent the In-service Matric Trained Teachers' Training in the year 2007 and passed the examination in the year 2007 and, therefore, they cannot get the benefit of a pay-scale retrospectively from a date when they had not qualified in the training and had not passed the examination. However, grievance of the petitioners is that after they were appointed on various dates, as are indicated in Annexure 2 to the writ petition, the 1st training was organized with effect from 3.7.2000 and the petitioners, even though were eligible to participate in this training, were not sent for training by the competent authority.

Accordingly, it is stated that all such persons who were appointed prior to 3.7.2000 will be entitled to the benefit of the Matric Trained pay-scale which was initially granted to them



by virtue of Annexure 4 dated 29.7.2011 with effect from the date it was originally granted, i.e. 1.10.2003 and its withdrawal retrospectively is not proper.

Learned counsel for the State refuted the aforesaid contention and argued that for obtaining the pay-scale in question, undergoing the training and passing the examination immediately after the training is a condition precedent and as the petitioners underwent the training only in the year 2007 and passed the examination in the 1st attempt thereafter, they are not entitled to the benefit with effect from 1.10.2003, but only prospectively from the date they completed the training and qualified in the examination. However, learned counsel for the petitioners emphasized that when the petitioners were entitled and eligible to participate in the training which was held by virtue of the communication, Annexures 6 and 7 dated 3.7.2000 and if the departmental error resulted in the training not being given to them, they cannot be blamed and taking note of all these factors withdrawal of the benefit granted vide Annexure 4 to the writ petition without any just cause or reason, it is the case of the petitioners, is illegal.

Having heard learned counsel for the parties and on a perusal of the counter affidavit filed by the respondents on 31st of



January, 2018, particularly the averments made from para 5 onwards, we find that the District Education Officer, Rohtas, in pursuance to various communications, had selected 19 teachers for the training as directed by the District Superintendent of Education, Rohtas and the writ petitioners were also required to be sent for training, but it appears that due to non-compliance due to delayed instruction being sent, this situation has arisen.

A perusal of para 5 of the counter affidavit filed by the respondents goes to show that due to some communication error, some of the petitioners, who were appointed prior to 3.7.2000, could not be sent for training. In para 6 of the counter affidavit filed, it is clear that petitioner No.1, Shailesh Kumar, was appointed on 26.4.1999. Petitioner No.3, Avinash Kumar Pandey, was appointed on 3.2.2000, petitioner No.4, Prakhakar Kumar Singh, was appointed on 3.2.2000, petitioner No.5, Ajay Kumar Singh, was appointed on 16.7.1999 and petitioner No.7, Harendra Kumar, was appointed on 21.6.2000. Thus, all of them were appointed well before the communication was made on 3.7.2000 for sending the persons for training and if on account of the fault of the Department in not sending these petitioners for training the benefit which was granted to them by virtue of the order, Annexure 4 passed on 29.7.2011 cannot be withdrawn on account of the fact



that they underwent the training in the year 2006-2007. It is the fault of the Department which prevented these petitioners from being sent for training which cannot be used against them to deny the claim. That apart, we find that for the first time the training course and the examination were conducted in the year 2007 after 2003 and when the petitioners were appointed prior to 2004 and were eligible to participate in the training, error on the part of the departmental authorities in not selecting and sending them for training cannot be a ground for denying the benefit to them. Taking note of all these factors, on 29.7.2011 the Special Secretary had granted benefit to the petitioners who were appointed much before 3.7.2000. That being the factual position, we see no reason to permit the State Government to annul the decision dated 29.7.2011 and effect recovery of the amount by changing the date for grant of pay-scale from 2003 to 2007.

For the reasons discussed and indicated hereinabove, we are satisfied that the order passed by the learned Writ Court and the departmental authorities, impugned in the writ petition, cannot be upheld. We are constrained to observe so after taking note of the averments made by the State Government itself in their counter affidavit now filed before us on 31st of January, 2018, particularly para Nos.5 and 6 of the same which read as under:



"5. That it is humbly stated that since the matter relates to the district of Rohtas, the answering respondent had called for a report from the District Education Officer, Rohtas and in pursuance thereof it has been reported/intimated by the DEO, Rohtas vide his letter no.- H-24 dated 23.01.2018 that the file/records relating to relieving of teachers for training is missing however, it has been informed that vide office order contained in memo no.-2676 dated 03.07.2000 (annexure-6 of the writ application), altogether 19 teachers were selected and sent for in-service training by the then District Superintendent of Education, Rohtas and the writ petitioners were sent for in-service training in the year 2006 whereas, the writ petitioners were also required to be sent for training on time and it appears that due to non-compliance of departmental guideline such situation has arisen.

6. That however, from the facts stated in the writ application and perusal of annexure-1 series & annexure-2 it would be evident that 8 out of 10 writ petitioners were appointed in the year 1999-2000 (not in 1990-2000 as stated in the para-4). It is further stated that only 5 out of 10 writ petitioners were in service whereas, 3 out of 5 were appointed just few months before, when 19 teachers were sent for in-service training vide annexure-6 of the writ application on 03.07.2000, whose date of appointment are as follows:-

- i. Petitioner no.-01- appointed on 26.04.1999
- ii. Petitioner no.-03- appointed on 03.02.2000
- iii. Petitioner no.-04- appointed on 03.02.2000
- iv. Petitioner no.-05- appointed on 16.07.1999
- v. Petitioner no.-07- appointed on 21.06.2000

7. That in view of facts stated in above said paragraph, only petitioner no.-01 & 05 were required to be sent along with 19 teachers who were sent for training vide annexure-6 of the writ application."

Keeping in view the aforesaid, we allow this appeal in part, quash the order passed by the learned Writ Court so far as it



pertains to petitioner Nos.1, 3, 4, 5 and 7 and allow their writ petition and quash the order dated 2.1.2015 and Memo. No.340 dated 11.2.2015 so far as it pertains to these petitioners and direct that the order issued vide Annexure 4 to the writ petition dated 29.7.2011 passed by the Special Secretary shall continue to be made effective and all benefits conferred on the petitioners based on this order.

The consequential effect of this order be made available and granted to the petitioners within a period of 45 days from the date of receipt/production of a copy of this order.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.02.2018
Transmission Date	

