

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17054 of 2017

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1. Sharda Kumari, Wife of Sri Arun Kumar Jha, Resident of Village- Madhuban, P.O.- Kalwari, P.S.- Kanti, District- Muzaffarpur, presently posted as an Assistant Teacher, Middle School, Kalwari, Anchal-Kanti, District- Muzaffarpur.
 2. Chandrakanti, Wife of Sri Ram Shankar Prasad Tiwary, Resident of Village- Bathnaha, P.O.- Aas Nagar, P.S.- Kathaiya, District- Muzaffarpur, presently posted as an Assistant Teacher, Middle School, Kaparpura, Anchal-Kanti, District- Muzaffarpur.
 3. Tanweer Suraiya, Wife of Washir Alam, Resident of Village and P.O.- Pagahiya, P.S.- Saraiya, District- Muzaffarpur.
 4. Khursida Khatoon, Wife of Syed Safi Akhtar, Resident of Village and P.O.- Kolhua Paigambarpur, P.S.- Ahiyarpur, District- Muzaffarpur, presently posted as an Assistant Teacher, Upgraded Middle School, Kolhua Paigambarpur Hindi, Anchal-Kanti, District- Muzaffarpur.
 5. Nita Kumari, Wife of Sri Chandrika Prasad Singh, Resident of Village and P.O.- Chapra Dharampur Yadu, P.S.- Kanti, District- Muzaffarpur, presently posted as an Assistant Teacher, Upgraded Middle School, Tarma, Anchal-Kanti, District- Muzaffarpur.
 6. Chandu Kumari, Wife of Sri Krishna Nandan Sharma, Resident of Village- Anantpur Gangaulia, P.O.- Ajijpur, P.S.- Saraiya, District- Muzaffarpur, presently posted as an Assistant Teacher, Upgraded Middle School, Bahilwara, Gangaulia, Anchal-Saraiya, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Muzaffarpur, District- Muzaffarpur.
5. The District Programme Officer (Establishment), Muzaffarpur.
6. The Treasury Officer, Muzaffarpur, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam, Advocate
Mrs. Anita Kumari
For the Respondent/s : Mr. Madanjeet Kumar -GP20

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 11-05-2018

Heard learned counsel for the petitioners and State.

2. The petitioners have filed the present writ application challenging the order as contained in Memo no. 2263



dated 19.04.2017 passed by the District Programme Officer (Establishment), Muzaffarpur (respondent no.5).

3. Learned counsel for the petitioners submits that the respondents have directed for recovery of benefit, which accrued to the petitioners in terms of 1993 Rules and 2011 Promotion Rules. He submits that on completion of Kalabadhi in terms of Rule 1993, the petitioners are entitled to Graduate Trained Scale i.e. Grade-4 on completion of 8 years of service. He submits that the petitioners are also entitled to the benefit under 2011 Rules, but the respondents are acting arbitrarily and they have denied the legitimate dues of the petitioners, which accrued in terms of 1993 and 2011 Rules.

4. On behalf of respondents, with reference to para 5 to 7 following stands have been taken. Learned counsel for the respondents submits that in view of the stand taken in para.5 to 7 of the counter affidavit, the respondents have treated the petitioners and others on similar line and there is no arbitrariness in the decision taken by the respondents.

5. Para. 5 to 7 are quoted herein below for easy reference:

“5. That the short fact of the case is that all the petitioners are appointee as Assistant Teachers of the year 1987 or 1988. They were promoted in Graduate Trained Pay Scale in the year 2011



under the provisions contained in Promotion Rule 2011. That time the promotion Rule 1993 was not in existence. They had already been granted senior pay scale in Grade Pay Rs. 4600 and so after the promotion in the same Grade Pay Rs. 4600 no pay fixation with the benefit of one additional increment was required under the provision contained in Finance Department Resolution No-630, Dated – 21.01.2010 but the petitioners and similarly situated teachers had wrongly been granted one additional increment with pay fixation. This is why the aforesaid Memo No – 2263, Dated 19.04.2017 was issued in order to rectify the wrong pay fixation.

6. That it is relevant to mention here that the aforesaid Memo No – 2263, Dated – 19.04.2017 has already been challenged in CWJC No. – 10141/2017 Nawal Kishore Prasad Gupta and others in the Hon'ble High Court, Patna in which the order was passed by the Hon'ble Court on dated 07.08.2017 and in the light of the aforesaid order dated 07.08.2017 a Memo No. – 5389, Dated – 03.11.2017 was issued by this deponent by which it was stated that no promotion with retrospective effect is admissible and no additional increment in case of promotion in same Grade Pay is admissible in the light of Finance Department Letter No. – 447, Dated – 23.01.2017.

7. That from the aforesaid averment it is clear that the petitioners are not entitled for one additional increment after promotion in same



Grade Pay and they are not entitled for promotion with retrospective effect under the provision contained in Rule 8 & 9 of Teachers Promotion Rule 2011. The Promotion Rule 2011 has already been annexed with present writ application. That it is humbly submitted that in the order dated 06.12.2017 passed by this Hon'ble Court in the present case recovery pursuant to Annexure-5 i.e. Memo No. – 2263, dated 19.04.2017 has been stayed and that this Memo No. - 2263 has already been quashed and Memo No. – 5389 dated 03.11.2017 by this deponent has been issued by which it appears that, the petitioners have tried to conceal the fact and tried to mislead the Hon'ble Court.”

6. Considering the aforesaid facts situation indicated hereinabove, the Court is of the view that whatever the petitioners are entitled to in terms of 1993 and 2011 Rules, their legitimate entitlement cannot be denied by the respondents. The Rules are framed by the State government for implementation and those who have acquired right and expectation in terms of Rule is entitled to the benefit which is available under the statutory rules.

7. Considering the aforesaid, the Court directs the respondents to work out the entitlement of the petitioners for grant of benefit under 1993 and 2011 Rules within a maximum period of 60 days from the date of receipt/production of a copy of this order



notwithstanding the Annexure-5.

8. It goes with saying that monetary benefit available comes under 1993 and 2011 Rules must reach the petitioners within a maximum period of one month from the date of such decision.

9. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2018
Transmission Date	

