

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10322 of 2014

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1. Ram Naresh Singh (Retired) son of late Jhuri Singh, Resident of village- and Post- Kathej, PS- Mohania, District- Kaimur
 2. Ram Krishna Rai (working) son of Sankat Mochan Rai, Resident of village- Ruian, Post- Daroli, PS- Bhabhua, District- Kaimur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Government of Bihar, Patna
3. The Education Commissioner Bihar, Patna
4. The Regional Deputy Director of Education, Patna
5. The District Education Officer of Bhabhua, Kaimur
6. The District Programme Officer, Kaimur (Bhabhua)

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10424 of 2014

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1. Kameshwar Singh son of late Gangadhar Singh, Resident of Village- Sonhar, P.S.- Shivsagar, District- Rohtas
 2. Keshav Prasad Singh, son of late Jhilu Singh, Resident of Village- Dahrak, P.S.- Ramgarh, District- Kaimur
 3. Chaudhary Ram Dhani Singh son of late Chaudhary Chaman Singh, Resident of Village- Mohanpur, P.S.- Bhagwanpur, District- Kaimur
 4. Hirdya Narayan Chaudhary son of Deo Muni Chaudhary R/O Village- Saroser, PS- Kochar, District- Rohtas
 5. Ramji Chaubey son of late Praduman Chaubey R/o village- Dhandhania, PS- Bhabna, District- Kaimur
 6. Ram Eqbal Singh son of late Ram Cheej Singh R/O Village- Kurhani, PS- Nuon, District- Kaimur
 7. Jagdish Singh son of Late Chandra Deo Singh, R/O Village- Chaurasi, PS- Sanjhauli, District- Rohtas
 8. Chandradhar Chaudhary son of Sudarshan Chaudhary, R/O village- Gurian, PS- Nuon, District- Kaimur
 9. Krishna Kumar Singh son of Kalpnath Singh, R/O village- Bhainpur, PS- Bhabhua, District- Kaimur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Government of Bihar, Patna
3. The Education Commissioner, Bihar, Patna
4. The Regional Deputy Director of Education, Patna
5. The District Education Officer of Bhabhua, Kaimur
6. The District Programme Officer, Kaimur (Bhabhua)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13
		Mrs. Sunita Kumari, AC to AAG-13



CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 22-11-2018

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

Pursuant to the order dated 1.11.2018, a counter affidavit has been filed on behalf of respondent no. 2. The statements made in paras 6 to 9 of the counter affidavit are relevant for the purpose of the present writ petition which are quoted below:-

“6. That it is submitted that in the instant writ petition, the order dated 30.04.2014 (Annexure-12) passed by the RDDE Patna Division has been impugned, which is in connection with teachers/petitioners of Kaimur District who were initially in the year 1982 (31.01.1982) Annexure-1 had been appointed on stipend basis in the erstwhile district of Rohtas and were later in the year 1994 vide Annexure-3 had been granted B.Sc. Trained scale with retrospective effect by the District Superintendent of Education Rohtas cum Bhabhua, but it was later (i.e. after carving of Kaimur district in 1998 from the erstwhile district of Rohtas) that in view of certain observation given by this Hon’ble Court in CWJC No. 14331/2013 (Badri Nath Singh), that the said grant of B.Sc. Trained scale to the petitioners were examined afresh and it was after holdingg that the earlier grant of B.Sc. Trained scale to the petitioners in the year 1994 was not in accordance with law hence was cancelled by the District Education Officer, Kaimur vide order dated



29.11.2013 (Annexure-9) which had at last also been upheld by the RDDE Patna Division vide memo no. 514 dated 30.04.2014 (Annexure-12) holding that grant of B.Sc. Trained scale to the petitioners was illegal as the same had been given on out of turn basis.

7. That it is submitted that in view of the law decided by the Hon'ble Full Bench in Ram Nath Prasad Singh: 2009(3) PLJR 384, fresh separate seniority list for Science and Arts teachers is required to be prepared in accordance with promotion Rule 1993 and consequential promotion were to made on the said basis and thereafter a common seniority list is to be prepared for promotion so that both Arts and Science teachers could become headmaster based on such common seniority list as proscribed in the Promotion Rule 1993.

8. That in view of the aforesaid legal position particularly in connection with the issue in question, that the concerned District Education Officer Kaimur, has been asked to submit report with regard to the further developments under taken in matters of granting promotion to teachers in graduate trained scale, in terms of the law laid down in the case of Ram Nath Prasad Singh.

9. That it is submitted that the required report has yet not been received from the concerned district office.”

From the counter affidavit it is now admitted position that the judgment of the Full Bench is binding and the respondents



are required to act upon the judgment and direction issued by the Full Bench. In view of the above, the orders contained in Annexures 9 and 12 have lost their significance and accordingly the same are held to be inapplicable. The State respondents are now required to take decision afresh in the light of the judgment of the Full Bench in the case of Ram Nath Prasad Singh reported in 2009(3) PLJR 384.

So far as the recovery is concerned, in view of the law laid down by the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334, recovery is not permissible. Accordingly, the respondents are required to take decision ignoring Annexures 9 and 12 which have been held to be inapplicable.

With the aforesaid, both the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2018
Transmission Date	NA

