

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.192 of 2015

In
Civil Writ Jurisdiction Case No.14878 of 2008

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1. Bihar Sharirik Shiksha Shikshak Mahasangh, through its Executive Member Ram Naresh Naresh, son of late Nityanand Jha, resident of village-Mahisari, P.S. Ujiarpur, District-Samastipur
 2. Ram Narayan Mahto, son of late Shree Mahto, Resident of village- Angauli, P.S. Bibhutipur, District-Samastipur
 3. Yugeshwar Mahto, Son of late Gulat Mahto, resident of village-Surauli, P.S. Bibhutipur, District- Samastipur
 4. Narendra Kumar Jha, son of Sri UNarendra Jha , resident of village- Mahisari, P.S. Ujiarpur District-Samastipur
 5. Maheshwar Mishra, son of late Jainath Mishra, resident of village Mahisari, P.S. Ujiarpur District Samastipur
 6. Bindeshwar Mishra, Son of late Jainath Mishra, resident of village Mahisari, P.S. Ujiarpur District Samastipur
 7. Vishwanath Prasad, son of Shri Ram Lakhan Mahto, resident of village-Boriya P.S. Bibhutipur District Samastipur
 8. Shiv Shankar Mahto son of Late Sitaram Mahto, resident of village Damodarpur P.S. Bibhutipur District Samastipur
 9. Ramdeo Yadav, Son of Late Mehi Yadav Resident of village Damdarpur P.S. Bibhutipur, District Samsastipur
 10. Dharmendra Kumar , Son of late Anuplal Singh, resident of village Surauli, P.S. Bibhutipur, District-Samastipur
 11. Hare Krishna Ishwar, son of late Mahendra Ishwar Resident of Village Shahpur P.S. Bibhutipur District Samastipur
 12. Ram Charitra Prasad Son of late Rameshwar Mahto Resident of Village Boriya P.S. Bibhutipur district Samastipur
 13. Rambali Prasad Singh, son of Shri Rambabu Prasad Singh, Resident of village Rautganna P.S. Bibhutipur District Samastipur
 14. Rajendra Prasad Son of late Ram Bahadur Prasad Singh, resident of village Sirsi, P.S. Bibhutipur District Samastipur
 15. Shravan Kumar Pathak son of late Jai Narayan Pathak, Resident of village Kariyan, P.S. Shivajinagar, District Samastipur
 16. Bir Bahadur Mahto son of late Triveni Mahto Resident of village Malpur, P.S. Dalsingsarai District Samastipur
 17. Ramabtar Singh, son of late Ram Kehlawan Singh Resident of village-Kerai, P.S. Bibhutipur District Samastipur
 18. Sanjay Kumar, Son of late Ram Julum Chaurasiya resident of village-Chaita, P.S. Ujiarpur District Samastipur
 19. Krishna Chandra Pandey, Son of late Bahadur Pandey, resident of village-Chaira, P.S. Ujiarpur, District Samastipur
 20. Rajeshwar Lal, Son of late Devki Nandan Lal Resident of village-Surauli, P.S. Bibhutipur District Samastipu
 21. Dhruvath Mishra, son of late Vishwanath Mishra, resident of village Chakbiduliya, P.S. Bibhutipur District-Samastipur
 22. Hridayanath Mishra, son of late Vishwanath Mishra resident of village Chakbiduliya, P.S. Bibhutipur District-Samastipur



23. Sitaram Shashi, Son of Shri Ram Krishna Mahto, resident of village-Gangauli, P.S. Bibhutipur District-Samastipur
24. Ram Padarath Mahto son of late Anup Lal Mahto, Resident of village-Boriya, P.S. Bibhutipur District Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Primary Education, Government of Bihar, Patna
3. The Principal Secretary, Art, Culture & Youth Department, Government of Bihar, Patna
4. The Director (Primary Education)-cum-Joint Secretary, Human Resources Department, Government of Bihar, Patna
5. The District Superintendent of Education, Samastipur Respondent/s

Appearance :

For the Appellant/s : Mr. Tuhin Shankar
For the Respondent/s : Mr. Abbas Haider, SC 6
Mr Ravish Chandra, AC to SC 6

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 21-02-2018

Heard counsel for the appellants and counsel for the State.

2. The primary reason for preferring the present appeal against the order of the learned Single Judge dated 13.08.2014 is because the learned Single accepting the position emerging from a Division Bench decision rendered in **Uma Shankar Thakur Vs. the State of Bihar, reported in 2010 (2) PLJR 247** held that physical trained teachers would be entitled to matric trained basic scale but they shall not earn increments till they acquire a B.Ed. degree.



3. The relevant portion of the Division Bench decision i.e. paragraphs 5 and 6, has been reproduced by the learned Single Judge as part of the order and we are also tempted to do so and it reads as follows:

“5. However, on consideration of the submission this much is obvious that the petitioner was appointed as Teacher in 1985. At the time of appointment his qualification was B.A. with Physical Training. He was not allowed the matric trained scale and as such he made a grievance. The grievance of the petitioner was fulfilled vide Annexure-2 to the writ petition and he was allowed Matric trained scale with effect from 1.1.1986. The pay scale was revised but revised pay scale was not allowed to the petitioner and as such he filed representation, Annexure-5, which has been rejected, as stated in the counter affidavit. Annexure-B is the Government. Order dated 17.2.1981 which is with respect to appointment of a trained teacher in Primary School. Clause 7 of the said Order makes the position clear. It says that B.A. Physical trained teachers shall be treated as Matric trained teachers for the purpose of payscale but he will not be entitled to increment till he acquires the qualification of B.Ed. He will remain in the basic pay scale of the matric trained teachers. It is a Circular/Order of the Government which has been annexed by the respondents in their counter affidavit. The Circular, as has been indicated above makes the position clear. It is undisputed fact that the petitioner is getting the scale of matric trained but he is not getting the revised pay scale. The Circular/Order, as indicated, puts restriction with respect to grant of increment till acquiring the qualification of B.Ed but it does not say that such teachers will not be entitled to revised pay scale of the matric trained. However, he will not be entitled to increment in the revised pay scale as has been indicated in Annexure-B until he acquires the B.Ed. But it cannot be logically said that the petitioners will not be entitled to revised pay scale. Not granting revised pay scale to the petitioner of Matric trained is against the Circular/Order of the Government itself.

6. Thus, we find merit in the case of the petitioner. Accordingly, this application is allowed. The respondents are directed to pay the revised pay scale to the petitioner.



With respect to the other claim such as the time bound promotion etc. the petitioner will be at liberty to raise the same and the respondents are bound to consider it”.

4. Submission is made on behalf of the appellants that the learned Single Judge has gone beyond the lis and decided an issue beyond the ambit of the prayer made in the writ application. Court's attention was drawn to the prayer made in the writ application where there was no mention of increments still this aspect has been decided against the appellants.

5. The submission so made on behalf of the appellants is fit to be rejected on the face value for the reason that the decision of the learned Single Judge has been based upon the Division Bench decision of Uma Shankar Thakur (supra). Paragraphs 5 and 6, which have been reproduced in earlier part of the order, itself indicate that such teachers will not be entitled to increments till they acquire a B.Ed. degree. Therefore, the adjudication made by the learned Single Judge was integral to the issue and declaration made by the Division Bench and if the Division Bench has clearly held that beyond the matric trained scale increments are not payable till physical teachers acquire a B.Ed. Degree, thus, the learned Single Judge has done no wrong by only repeating or pointing out what had been earlier adjudicated by the Division Bench in its order, noted in the earlier part of the order.



6. It is not open to the appellants to accept a declaration made by the Division Bench only in part which suits them and not accept the other part of the declaration.

7. After going through the entirety of the order of the learned Single Judge it is noted that the learned Single Judge has based his decision entirely on the decision of Uma Shankar Thakur (supra). Therefore, the submission that there was no occasion for the learned Single Judge to say anything on increment part is an unfair submission to make.

8. The judgment does not suffer from any infirmity. The Division Bench decision has to be taken in entirety and not piecemeal.

9. In view of the above position, the appeal has no merit. It is dismissed. There will be, however, no order as to costs.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	AFR
CAV DATE	NA
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