

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1205 of 2015

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Ramayan Prasad S/o Sri Gangadhar Prasad Yadav R/o village - Jalalpur - 1, P.O.
Rasulpur, P.S. Doriganj, District - Saran

.... Petitioner/s

Versus

1. The State of Bihar, through its Principal Secretary cum Commissioner,
Department of Education, State of Bihar, Patna
2. The Director (Primary Education), Education Department, State of Bihar, New
Secretariat, Patna
3. The Director (Research and Training), Education Department, Bihar, Patna
4. The District Magistrate, Saran
5. The District Education Officer, Saran
6. The District Programme Officer (Establishment), Saran
7. The Block Development officer, Sonpur, District Saran
8. The Block Education Officer, Sonpur, District Saran
9. Mr. Vijay Kumar Singh S/o Dharikshan Singh R/o village - Anjani, P.O.
Anjani, P.S. Parsa, District – Saran
10. The Regional Deputy Director of Education, Saran Division, Chhapra

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar, Advocate
For the State	:	Mr. Binay Kr. Pandey, AC to GA 2
For the Respondent No. 9	:	Mr. Satish Narain Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-08-2018

Heard learned counsel for the petitioner; State and
respondent no. 9.

2. The petitioner has moved the Court for the following
reliefs:

*“ I. To direct the respondent authority excluded
the name of the which candidates their name
included in the promotion list of the B.A. trained
scale prepared by the Respondent no. 5 on the
basis of who obtained the one year training*



during service period after enforcement of NCTE Act and who has not fulfilled the criteria of promotion on the post of B.A. Trained Teacher as per concerned rule. As per NCTE Act one year teacher training service is not valid teacher training.

II. To further direct to the respondent authority declared the seniority on the basis of concerned Act by which an untrained teacher may be given Grade 1 from the date of which he becomes trained. And / or any other appropriate relief(s) to the petitioners for which she may found entitle under the fact and circumstances of the case.”

3. The petitioner was appointed on 09.12.1999 as Trained Assistant Teacher getting Matric Trained Scale. The respondent no. 9 was appointed as Untrained Assistant Teacher getting the Untrained Matric Scale, on 19.09.1994. Thereafter, the petitioner got various increments but, in effect, the petitioner remained senior to the respondent no. 9 as the respondent no. 9 was still in the Untrained Matric Scale. Both the petitioner and respondent no. 9 were appointed under the Bihar Primary School Teachers Appointment Rules, 1991 (hereinafter referred to as the ‘1991 Rules’). When the respondent no. 9 was appointed, the stipulation was that upon them becoming trained, they would also be granted the Matric Trained Scale. However, despite them having completed the training



in the year 1998, when no examination was held, the matter travelled till the Hon'ble Apex Court, which had directed for holding of examination within a certain period. However, when the examination was not held, the respondent no. 9 and similarly situated persons were granted the trained scale with effect from 01.10.2003 in terms of the resolution of the State Government in the Department of Human Resources Development bearing No. संकल्प झापांक-7/वेतन-14/07/-790 dated 29.07.2011. Later on, when such scale was withdrawn, the persons affected, including the respondent no. 9, had moved the Court and there was direction for the State to consider the matter with regard to granting such scale to them keeping in mind the fact that it was the responsibility of the State Government to hold examination for which such persons were not responsible. Thereafter, the matter was again brought before the Court in M.J.C. No. 4075 of 2011 which was disposed off by order dated 08.08.2012 giving discretion to the State Government to decide the date from which Matric Trained Scale would be paid to persons like the respondent no. 9. Pursuant thereto, the State Government came out with a fresh resolution bearing Memo No. संकल्प झापांक:7/वे0 14/07-1400 dated 13.09.2013 of the Education Department. According to the same, the respondent no. 9 and similarly situated persons were granted Matric Trained Scale from 05.09.1999, though notionally, and only with effect from 01.10.2003,



the actual payment was allowed. This has led to the controversy as to whether by such shifting back of the date of grant of Matric Trained Scale would make the respondent no. 9 and similarly situated persons senior to the petitioner and those similarly situated to him.

4. Learned counsel for the petitioner submitted that there is no controversy with regard to the date of appointment but even though the petitioner was appointed after more than five years of the respondent no. 9 being appointed, but he being appointed on the Matric Untrained Scale and the petitioner being appointed on the Matric Trained Scale, he has been senior to the petitioner right from his entry into service. Learned counsel submitted that even if the date of grant of Matric Trained Scale is shifted back to 05.09.1999, the same being notional till 30.09.2003, the actual seniority of the respondent no. 9 has to be counted from 01.10.2003 and on this ground alone, when undisputedly, the petitioner is in the scale from 09.12.1999 itself, he has to be granted seniority over the respondent no. 9. It was further submitted that the notional grant of Matric Trained Scale from 05.09.1999 to 30.09.2003 would not confer on the respondent no. 9, the status of a Matric Trained Teacher from 05.09.1999 and the same shall be from the date he actually got payment of such scale, i.e., 01.10.2003. Learned counsel referred to the Bihar Taken Over Elementary School Teachers Promotion Rules,



1993 (hereinafter referred to as the '1993 Rules'), especially Rule 13 (3), which clearly stipulates that an untrained teacher may be given Grade 1 from the date on which he becomes trained. Learned counsel submitted that such Grade 1 scale having been actually granted to the petitioner from 01.10.2003, that would be the date for consideration of promotion in terms of the 1993 Rules which admittedly is the only Rule under which such promotion has to be granted. It was submitted that the resolution of the State Government was restricted to grant of Matric Trained Scale but did not make any changes in the 1993 Rules relating to promotion. Learned counsel further drew the attention of the Court to paragraph no. 6 of the order dated 08.08.2012 in M.J.C. No. 4075 of 2011 in which the Court has observed that the State Government shall apply its mind with reference to all the relevant facts and fix the date for grant of Matric Trained Scale to the concerned teachers on the basis of other observations keeping in mind that no adverse effect is caused upon seniority of the concerned teachers by fixing of the date for grant of Matric Trained Scale. Thus, it was contended that only notionally the date has been shifted to 05.09.1999 but for the purposes of seniority it has to be taken as 01.10.2003 so as not to disturb the seniority among the teachers.

5. Learned counsel for the State submitted that in terms of the State Government's resolution No. 1400 dated 13.09.2013,



which was in terms of various orders of the Court, the respondent no. 9 was notionally given the Matric Trained Scale from 05.09.1999 and with actual monetary benefit from 01.10.2003 which necessarily means that he would be presumed to have got the Matric Trained Scale with effect from 05.09.1999, i.e., prior to the petitioner even entering into service. It was submitted that the promotion being guided in terms of the seniority in the Matric Trained Scale, the respondent no. 9 would become senior due to the aforesaid resolution of the State Government.

6. Learned counsel for the respondent no. 9 submitted that the contention of the petitioner that in terms of the order dated 08.08.2012 in M.J.C. No. 4075 of 2011, the seniority of the concerned teachers would not be adversely affected, would not include the petitioner, for the reason, that the reference to the concerned teachers is only in respect of those who were appointees of 1994 Batch in the untrained scale. It was submitted that even the reference to various Batches of 1994, 1999 and 2000 in the resolution No. 1400 dated 13.09.2013, is only with regard to untrained teachers and not with regard to trained teachers under which category the petitioner was directly appointed. Learned counsel submitted that in that context, the orders passed by the Hon'ble Supreme Court dated 05.09.1997 in the case of **Ram Vijay Kumar v. State of Bihar** reported as (1998) 9



SCC 227, reference of which has been made both in the order dated 23.09.2010 in the case of **Chandra Kant vs. State of Bihar** reported as **2010 (4) PLJR 732** and its modification dated 08.08.2012 in M.J.C. No. 4075 of 2011 with regard to grant of Matric Trained Scale to such teachers from any reasonable date which has also been indicated, that it could be from the date when the period of two years fixed by the Hon'ble Apex Court for completing the training of such teachers expired without compliance. Learned counsel submitted that as the Hon'ble Supreme Court had passed the order on 05.09.1997, the State Government being mindful of the observation of the Court in M.J.C. No. 4075 of 2011 has granted the benefit of trained scale to the respondent no. 9 and other similarly situated persons with effect from 05.09.1999, i.e., two years from the date of the order of the Hon'ble Apex Court dated 05.09.1997. Learned counsel submitted that even otherwise, the reasoning of the Division Bench of this Court in the case of **Chandra Kant** (supra), read with the order of the Hon'ble Supreme Court in the case of **Ram Vijay Kumar** (supra) as also the order of the Hon'ble Supreme Court in the case of **State of Maharashtra v. Jagannath** reported as **AIR 1989 SC 1133** clearly spells out the reason why the Matric Trained Scale is also legally due to the respondent no. 9 and other similarly situated, inasmuch as, it has been held that because of the fault of the Government, the



employee cannot suffer and if there is any requirement of passing any examination which has to be conducted by the State, which fails to do so, no penal consequences can visit such employee.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition. The basic contention of the petitioner is that when he was appointed on 09.12.1999, it was on Trained Assistant Teacher post, for which the scale was Matric Trained and the same was higher to the respondent no. 9, though appointed on 19.09.1994, but as Untrained Assistant Teacher, who was getting the Untrained Matric Scale. This contention may have been valid and good, but only till the time when the orders of the Division Bench of this Court and the Hon'ble Supreme Court resulted in a fresh resolution by the State Government by which the benefit of such scale was extended to the teachers of 1994 Batch in which the respondent no. 9 was also recruited granting them Matric Trained Scale with effect from 05.09.1999 notionally and with full monetary benefit from 01.10.2003, as the respondent no. 9 along with others had cleared the first examination held after completion of training by them in the year 1998. This decision by the State Government, based on sound logic and in terms of the orders of the Division Bench of this Court and the Hon'ble Supreme Court, clearly cannot be said to be



arbitrary, unreasonable or illegal. The Court also does not find merit in the stand taken on behalf of the petitioner that the reference in the order dated 08.08.2012 in M.J.C. No. 4075 of 2011 that no adverse effect would be caused upon seniority of the teachers by fixing of date for grant of Matric Trained Scale would include the petitioner. All such orders were passed on the petition filed by the persons of the 1994 Batch, similarly situated to the respondent no. 9 and who were untrained. The petitioner being a trained teacher appointed in the year 1999 was not even in the zone of consideration in all those transactions, and thus, the reference to the concerned teachers would, but obviously, be restricted to all similarly situated persons to the respondent no. 9 and would not include the petitioner who falls in a different category as he was already appointed and getting the Matric Trained Scale. Another factual aspect which the Court would notice here is that the respondent no. 9 was already getting the Matric Trained Scale provisionally in terms of the resolution of the State Government in the Department of Finance bearing No. 3805 dated 25.06.1999 with effect from that day as he had already completed the training in the year 1998 itself. The same was withdrawn and later on not only restored but made effective from 05.09.1999 with regard to such persons who had cleared the training examination in the first attempt, in which category the respondent no. 9 also stands included.



The Court also finds that the contention of learned counsel for the respondent no. 9, that on the basic principle of having been appointed five years prior to the petitioner, he should not suffer for the lapses on the part of the State Government in not holding the examination, finds support from the judgment of the Hon'ble Supreme Court relied upon by him in the case of **State of Maharashtra v. Jagannath** (supra). Further, the Court would add here that admittedly the respondent no. 9 had completed his training in the year 1998 itself, i.e., much prior to the appointment of the petitioner. Thus, after having discharged his onus of getting training, he cannot be allowed to suffer for the inaction of the State in not taking the examination after such training. In such view of the matter also, the decision of the State Government to grant Matric Trained Scale to the respondent no. 9 and similarly situated persons with effect from 05.09.1999 is reasonable and justified. Further contention of learned counsel for the petitioner that the term notional grant of Matric Trained Scale from 05.09.1999 to 30.09.2003 would mean that no benefit of such grant can be taken by the respondent no. 9 as such benefit can be taken by him only with effect from 01.10.2003 when actual payment of such scale was granted to him, is being noticed only for the sake of rejecting the same. Grant of benefit, even notionally, has to be taken for all purposes, except what is indicated in such order



itself. In the present case, the notional element is only limited to the actual payment which has been made admissible from 01.10.2003. Thus, except for actual payment to which the respondent no. 9 has been held entitled being 01.10.2003, all other benefits flowing from such grant of Matric Trained Scale undoubtedly would stand conferred on the respondent no. 9, without any other limitation. Thus, in the eyes of law, once the respondent no. 9 came into the grade of Matric Trained Teacher with effect from 05.09.1999, obviously, he would be senior to the petitioner, who came into the same grade and cadre only on 09.12.1999, i.e., after over three months. For the matter of *inter se* seniority, the respondent no. 9 having entered the grade and cadre of Matric Trained Teacher three months prior to the petitioner would make him senior to the petitioner. Thus, consequently, for the matter of promotion also, such seniority of respondent no. 9, over the petitioner has to be taken and the same having been done by the authorities is justified in the eyes of law.

8. Before parting, the Court would also refer to the contention of learned counsel for the petitioner that in terms of Rule 13 (3) of the 1991 Rules, an untrained teacher may be given Grade 1 from the date on which he becomes trained, if interpreted, would mean that the person has to be trained to be given Grade 1. In the present case on facts which are not in dispute that the respondent n. 9



had completed his training in the year 1998 itself and further, for the purposes of promotion, a person has to be in Grade 1, once the respondent no. 9 had attained the eligibility of being in Grade 1 and which was followed up by a conscious policy decision of the State Government conferring him such grade with effect from 05.09.1999, and that too, in light of the orders of the Division Bench of this Court and the Hon’ble Supreme Court, the action of the State cannot be called to be beyond jurisdiction or illegal.

9. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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