

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5918 of 2015

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Ramchandra Prasad Sharma S/O Amir Singh resident of village- Daulatpura,
P.O.- Chotipali, P.S.- Sitamarhi, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Govt,of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt,of Bihar, Vikash Bhawan, Patna.
3. The Secretary Primary Education,Vikash Bhawan, Patna
4. The Director, Primary Education,Vikash Bhawan, Patna
5. The Regional Dy. Director of Education, Magadh Division, Gaya.
6. TheD.S.E. / D.E.O., Nawada.
7. The Block Education Officer, Narhat, Nawada.
8. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binay Bihari Singh, Advocate
For the Respondent/s	:	Mr. Aag12 R.N.Dubey
For the Accountant General:	:	Mr. Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 27-11-2018 Heard learned Counsel for the petitioner and counsel
appearing on behalf of the State as well as Accountant General.

Mr. Bankey Bihari Singh, counsel for the petitioner
admits that petitioner is not entitled to 3rd ACP. He has confined
his prayer to grant of relief in terms of the decision in CWJC
No. 5769 of 2007 dated 07.03.2011. The relevant part of the
order in CWJC No. 5769 of 2007 reads as follows:



“Learned counsel for the petitioners contended that the relevant Rules, Bihar Taken Over Elementary School Teachers’ Promotion Rules 1993 (hereinafter referred as “the Rules”) came into existence on 8th of July 1993 and was made effective from 1st of January 1986. It is contended that since it was made effective from 1st of January 1986, the petitioners were entitled to be promoted to the Trained Selection Grade-3 pay scale after counting their services from the date of their appointment. Learned counsel drew attention of this Court towards the Rules 5 and 7 thereof. It is contended that the authorities concerned have committed error in stating that the petitioners were entitled to be promoted in the Grade-3 scale only after completion of 12 years of service from 1st of January, 1986 which is the date from which the relevant Rule has been made effective by sub-rule (2) of Rule 1. Learned counsel appearing on behalf of the petitioners further contended that the earlier promotion granted to them from the date as he has been described in Annexure-1 itself should be the



actual date of their promotion as per the Rules.

On the other hand, learned counsel appearing on behalf of the State submit that sub-rule (1) of Rule 5 clearly stipulated the required educational and training qualifications and minimum tenure of service for promotion in Grade-3. If the incumbent is trained graduate, then he should have rendered 12 years of service in Grade-2 and if Matric trained, then the minimum tenure of service should be 18 years. Thus, learned counsel submits that the decision taken vide Annexure-1 is in accordance with law as the Grade-2 scale was not in existence prior to 1st of January, 1986 as the same has also come into existence by the Rules concerned itself. For granting benefit to the employees, the Rules which have come into force in the year 1993 have been made effective from 1st January, 1986. Learned counsel drew attention of this Court towards Annexure-1, wherein it is stated that the Director, Primary Education vide his letter dated 19.12.1996 has also clarified that Grade-2 pay scale has come into existence only from



01.01.1986 itself. Thus, for getting such benefit of promotion in Grade-3, the petitioners who are Trained Graduates should have at least 12 years of tenure of service and those who are Matric Trained should have minimum 18 years of tenure in service from 1.1.1986 itself.

Learned counsel for the petitioners could neither point out any infirmity in the aforesaid contention raised on behalf of the State nor could he point out the real dates of grant of Grade-2 scale in their favour, if that was not on 1.1.1986.

As a result, to that effect this writ application fails, as it appears that since Grade-2 came into existence on 1.1.1986 itself after coming of the Rules, it is logical and reasonable as per provisions as contained in Rule 5, that the petitioners for getting promotion in Grade-3 scale should have completed minimum 12 years and 18 years for Graduate trained and Matric trained respectively of service in Grade-2 18 years of service from 1.1.1986. Thus, promotion in Grade-B has rightly not been granted from earlier date.



Accordingly, this application is dismissed.

However, it is made clear that in the impugned order itself, it has been stated that all the graduate trained teachers were entitled to get the Grade -3 scale from 1.1.1998 thus, it is should be verified within six weeks from the date of receipt or production of this order as to whether any recovery has been made in excess. If the same is found to be made in excess then that should be immediately refunded back to the petitioners within three months from the date of such verification. If the same is not refunded to them within the period aforesaid, the petitioners would be entitled for interest upon it at the rate of 8 per cent per annum.”

Accordingly, the present writ application is disposed of with a direction to the respondents to examine the entitlement of petitioner for grant of Grade 3rd Scale w.e.f. 1.1.1989 and after verification decision may be taken by the respondents within a maximum period of six weeks from the date of receipt/ production of a copy of this order. On determination of the entitlement of the petitioner respondents have to take



appropriate decision as to post retiral dues payable to the petitioner on the basis of such decision.

With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

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