

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21165 of 2012

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Bhushan Prasad Singh Son Of Late Laxmi Prasad Singh Resident Of Village-
Malhani, Police Station- Supaul, District- Supaul

... .. Petitioner/S

Versus

1. The State Of Bihar
2. The District Education Establishment Committee, Supaul Through The District Magistrate, Supaul
3. The District Superintendent Of Education, Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binoy Kumar Singh, Advocate
For the Respondent/s : Mr. Ajit Kumar, GA-9

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 22-11-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner has filed the present writ application for quashing the order contained in Memo No. 1023 dated 27.05.2010, whereby the claim of the petitioner was rejected on the ground that no promotion can be granted with retrospective effect. The Director while passing the order has lost sight of the hard fact that thrice the petitioner has to approach the court for the same relief and due to the reluctance of the respondents the matter of promotion of the petitioner was not considered and when contempt petition was filed after three rounds of litigation, the Director passed the order contained in Annexure 1 holding that



promotion cannot be granted with retrospective effect, hence, the present writ application is the fourth round of litigation.

3. This writ petition was filed after service of two advance copies of the writ petition to the office of the Advocate General on 07.11.2012 but even after six long years no attempt has been made for filing counter affidavit.

4. Learned counsel for the petitioner submits that in the earlier round of litigation also respondents had not filed any counter affidavit. The present case is celebrated example of failure on the part of the respondents not only in deciding the claim of eligible teachers within time but at the same time it also manifest their approach towards the pending litigation. Even after six long years, if the respondents have not bothered to file counter affidavit, the Court is constrained to decide the present writ petition on the basis of the pleadings available on the record.

5. The petitioner was appointed in 1968 by the Managing Committee of the middle school in question. The school was taken over on 12.02.1981 and the services of the petitioner was taken over on 30.03.1986. The petitioner was directed to undergo training along with other teachers under the orders of the Deputy Director. The petitioner completed the training on 01.05.1988 and as such he became graduate trained teacher. It is



true that for grant of graduate trained scale not only acquiring qualification of B.A trained is enough but availability of post is also required but the petitioner obtained qualification of training on 01.05.1988 which entitles him to consideration on account of date of entry in service on 01.03.1968. At the relevant time the respondents have granted graduate trained scale only on the basis of acquisition of training certificate and passing graduation. Since the petitioner has acquired qualification on 1.5.1988, he claims that he should be granted the trained scale from the date he acquired training certificate. His representation remained pending and as such he filed CWJC No. 6374 of 1990 which was disposed of on 16.9.1991 with a direction to the respondents to consider the grievance of the petitioner on filing fresh application before the District Education Establishment Committee (Annexure-3). The Respondents have considered the case of similarly circumstanced other teachers and granted the benefit of trained scale. Instances of such teachers were cited by the petitioner in paras 14 and 15 of the writ petition. However, no corrective measure was adopted with regard to the claim of the petitioner pursuant to the direction of this Court in CWJC No. 6374 of 1990. In the meanwhile, the District Supaul was created after bifurcation from Saharsa. The petitioner was constrained to file CWJC No. 11559 of 1995 for a



direction to the respondents to grant him the graduate trained scale. CWJC No. 11559 of 1995 was disposed of on 6.3.1997 in second round of litigation and the direction issued by the Court could not fetch any result. The petitioner was compelled to file CWJC No. 1616 of 2004 for the same relief. Once again this Court has granted indulgence and directed to consider the case of the petitioner but the respondents made delay in taking decision pursuant to the order passed in CWJC No. 1616 of 2004, the petitioner has filed MJC No. 3473 of 2008 and the show cause notice was issued in contempt proceeding. The Director, Primary Education vide letter dated 4.1.2010 has rejected the claim of the petitioner saying that the committee has decided to delete the name of the petitioner from gradation list as the petitioner has now superannuated and will not be granted graduate trained scale with retrospective effect. The petitioner under the aforesaid circumstances filed the present writ petition.

6. The Court is required to decide the issue, firstly, whether the respondents can take advantage of their own wrong. The petitioner who has approached this Court in the very first round in CWJC No. 6374 of 1990, can be made to suffer on account of reluctance of the respondents in deciding the claim of the petitioner. As indicated hereinabove, time and again this Court



has also directed the respondents to consider the case of the petitioner but they failed to decide the claim of the petitioner and after two decades they rejected the claim of the petitioner saying that the petitioner has now superannuated and no promotion can be granted with retrospective effect. The Court does not approve the action of the respondents taking advantage of their own wrong. This case is eye opener for the Education Department as this Court is of the considered view that if the petitioner approached the Court regularly for his grievance the authority of the Education Department is responsible for not doing justice to the teachers. In the present proceeding as noted above, even after six years no counter affidavit has been filed. This shows that the Education Department has answer to the issue raised in the present writ petition and as such their action deserves to be condemned. It is contemned accordingly. The second reason for entering into the present dispute by this Court is that similar circumstances others have been granted the benefit but the petitioner has been denied the benefit which is discrimination and prohibited under Articles 14 and 16 of the Constitution of India. There is no denial of the fact that similarly circumstanced others have been granted such benefit. The Court has to appreciate the averments made in paras 14 and 18 of the writ petition as they are admitted position in view



of the settled doctrine of non travers and the judgment of the Apex Court in the case of **Smt. Naseem Bano vs State Of U.P. and Others: AIR 1993 SC 2592**, the action of the respondents is illegal as it is the obligation of the State authorities to grant promotion in accordance with law. A citizen cannot be nonsuited on the ground that authority has failed to decision in decision making process and therefore the right of citizen stands defeated. In fact, this aspect of the matter has been discussed by the Chief Justice M.C. Chhagla in **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom. 232**. The relevant passage of the celebrated judgment is quoted below:-

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of [Section 24](#). In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person--we take it that the Income-tax Department is included in that definition--can put forward his own default in defence to a right assert -ed by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."



7. In view of the discussions made above, the Court is constrained to hold that the order as contained in Annexure- 7 cannot sustain. It is, accordingly, quashed. The respondents are directed to grant benefit to the petitioner which was extended to similarly circumstanced other teachers whose names have been cited in para 14 and 15, namely, Narendra Kumar and Shambhu Narayan Sinh who have been granted such benefit by the then District Superintendent of Education. Necessary decision granting benefit of graduate trained scale and other consequential benefits may be taken by the respondents within four months.

8. Let a copy of this order be forwarded to the Principal Secretary, Education Department for appropriate action in the matter of litigation management in the High Court.

9. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2018
Transmission Date	NA

