

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.49 of 2016

In

Civil Writ Jurisdiction Case No.3689 of 2010

=====

Krishna Nandan Prasad Son of Late Narayan Prasad, Resident of Village and P.O. Dumari, Police Station - Barahiya, District – Lakhisarai, at present posted and working as an Assistant teacher in Govt Middle School Mahsauni, Anchal - Kajra, District - Lakhisarai.

... .. Appellant

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Finance Pay Fixation Department, Government of Bihar, Patna.
5. The Director, Primary Education, Bihar, Patna.
6. The Special Director, Primary and Adult Education, Bihar, Patna.
7. The Regional Deputy Director of Education, Munger Division, Munger.
8. The District Magistrate, Lakhisarai.
9. The Deputy Development Commissioner - cum - Chairman, District Education Establishment Committee, Lakhisarai
10. The District Superintendent of Education, Munger.
11. The District Superintendent of Education, Lakhisarai.
12. The District Treasury Officer, Lakhisarai.
13. The District Accounts Officer, Munger.
14. The District Accounts Officer, Lakhisarai.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Umesh Kumar Mishra, Adv.
For the Respondent/s : Mr. Md. Nasrul Hoda Khan, SC-1

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 15-07-2019

It is feeling aggrieved with the judgment and order dated

11.9.2013 passed in C.W.J.C.No. 3689/2010 which was heard



analogous with several other writ petitions, whereby the writ petition has been dismissed that the petitioner as an appellant is before this Court.

We have heard learned counsel for the parties and have perused the records.

The short issue which falls for consideration is the interpretation of Notification No. 6022 dated 18.12.1989 in so far as it deals with those who were appointed in service as an Assistant Teacher after 1.1.1986. Be it noted that the circular of the State Government in its Education Department purported to revise scales in view of the 5th pay revision recommendations as well as the Fitment Committee Report and made it effective from 1.1.1986.

A cursory glance of the notification would confirm that it deals with those who were in service as on 1.1.1986 differently as against those who came into service since after 1.1.1986 and until announcement of publication of the notification on 18.12.1989. The pleadings would confirm that while those who were already in service as on 1.1.1986 on having obtained their increments etc. in the basic scale of Rs.730-1080, had been given pay protection in terms of fundamental Rule 22 as applicable in the Central Government and thus were treated as a class apart, those who came in service after 1.1.1986, were granted a scale of Rs.730-1080 simplicitor with admissible allowance. It is on account of confusion prevailing in the



department as regarding implementation of the notification in so far as it deals with those who were appointed after 1.1.1986 that it led to error in fixation of pay scales of those like the petitioner who came into service after 1.1.1986 and being treated at par with those who were in service prior to 1.1.1986 that they were granted higher pay scale. The mistake was detected later on when the matter was examined and orders passed when these petitioners alongwith some others approached this Court in C.W.J.C.No. 6420/2007 which was heard analogous with a batch of writ petitions. Since the foundation for these Assistant Teachers to contest the order of correction in the pay fixation which brought them at a lower stage, rested on a Single Bench decision rendered in the case of **Shiva Kant Jha v. the State of Bihar & ors.** arising from C.W.J.C.No. 8333/1999 that the learned Single Judge considering the claim advanced by the petitioner and others disposed of the matter allowing these petitioners to espouse their grievance before the Director, Primary Education, Bihar, Patna who on consideration of the grievance has rejected the claim and it is feeling aggrieved by such rejection that the petitioner came before this Court in the writ petition in question which has been dismissed and hence, this appeal.

We have heard Mr. Umesh Kumar Mishra, learned counsel for the petitioner and Mr. N.H.Khan, learned SC-1 for the State and the only issue which we have already noted is whether fixation of



pay scale of the petitioner and some others required a correction and whether the case of **Shiva Kant Jha** (supra) has been correctly decided in so far as it interprets the notification dated 18.12.1989.

In our considered opinion, while there is absolutely no error in refixation carried out in the pay scale of the petitioner and others who were appointed after 1.1.1986, the judgment and order passed by learned Single Judge in the case of **Shiva Kant Jha** (supra) does not lay down the correct legal position. We have gone through the judgment of **Shiva Kant Jha** (supra) to notice that the learned Single Judge while considering the matter has gone into error in drawing parity in between those who were appointed after 1.1.1986 with those who were appointed prior to 1.1.1986 and were granted the benefit of pay protection/ stepping up by following fundamental Rule 22(c) as it existed. It is proceeding on such wrong premise and relying upon Schedule III which in fact was not even meant for those who came into service after 1.1.1986 that the learned Single Judge accorded benefit to **Shiva Kant Jha** at par with those who were in service as on 1.1.1986.

Mr. Mishra, learned counsel for the appellant, has very strongly placed reliance on paragraph-8 of the notification dated 18.12.1989 to espouse the case of the appellant- petitioner as well as to the subsequent paragraphs of the notification but which in our considered opinion, in no manner comes to the aid of the petitioner



because the very language of paragraph-8 of the notification dated 18.12.1989 simply by a deeming fiction, fits the petitioner who was undisputedly appointed after 1.1.1986, at a proper stage in the revised scale of Rs.1200-2040.

The petitioner entered service as an Assistant Teacher on 8.4.1987 and his appointment letter is at Annexure 1 to the writ petition. It is because at the time of appointment, the old pay scale of Rs.730-1080 was prevailing at the relevant time that he was fitted in the said pay scale and it is on a complete misappreciation of the notification dated 18.12.1989 which was made effective from 1.1.1986 that the petitioner was placed at par with those appointed as until 1.1.1986 although in terms of paragraph-8 of the notification dated 18.12.1989, the petitioner simply had to be placed at the appropriate stage in the revised pay scale of Rs.1200-2040 as if the said scale was in existence on the date of his appointment on 8.4.1987. The concerned respondent authorities under some confusion placed the petitioner at parity with those who were already in service by misapplication of Schedule III which in fact was not even available to those who came into service after 1.1.1986.

The learned Single Judge while deciding the case of **Shiva Kant Jha** (supra) has overlooked this relevant aspect of the matter that Schedule III was not meant for those who came into service after 1.1.1986 rather it gave protection to those who were already in



service as on 1.1.1986. Obviously this important aspect of the notification having eluded learned Single Judge in the case of **Shiva Kant Jha** (supra) the outcome of the judgment which allows relief to a teacher who came into service after 1.1.1986 at parity with those who were in service on 1.1.1986 cannot be extended to the petitioner nor he can draw advantage of an erroneous decision which completely fails on the foundation and has been correctly recognized by the learned Single Judge to dismiss the writ petition.

We find no infirmity in the opinion of learned Single Judge warranting any indulgence rather we hold that the judgment and order of learned Single Judge in the case of **Shiva Kant Jha** (supra) does not lay down correct legal position. Since it is informed that the said judgment has been implemented by the respondents, our opinion herein, would not prejudice the relief so granted to the said petitioner but it cannot act as a precedent for other cases.

The appeal is dismissed with the observations above.

(Jyoti Saran, J)

(Partha Sarthy, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2019
Transmission Date	NA

