

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5679 of 2020

Vinay Kumar Son of Late Suryadeo Prasad Residing at Sumitra Sadan, Gate No- 90, Makhdumpur, Dinapur-cum-Khagaul, Police Station- Digha Makhdumpur, District- Patna, At present posted as a Headmaster in Govt Middle School Dhandiha, Anchal- Koilwar, District- Bhojpur, Ara.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary -cum- the Principal Secretary Education Department, Govt. of Bihar, Patna.
3. The Principal Secretary Finance Department, Government of Bihar, Patna.
4. The Director Primary Education, Bihar, Patna.
5. The Joint Secretary Education Department, Bihar, Patna.
6. The District Education Officer Bhojpur.
7. The District Programme Officer (Establishment) Bhojpur.
8. The Block Education Officer Koilwar, District- Bhojpur, Ara.
9. The Drawing and Disbursing Officer- cum- the Headmaster Govt. Middle School Koilwar, Bhojpur.
10. The District Accounts Officer Bhojpur.
11. The District Treasury Officer Bhojpur.

... .. Respondent/s

For the Petitioner/s : Mr Umesh Kumar Mishra, Advocate
For the Respondent/s : Mr Khurshid Alam, AAG XII

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 21-05-2020

The matter was mentioned for listing on urgent basis, which was allowed by Hon'ble the Chief Justice.

2 Accordingly, the same has been listed today for consideration through Video Conferencing in view of the Nationwide lock down on account of the COVID 19 Pandemic.

3 Learned counsels are appearing and making submissions from their residence. The Court Master and Secretary



are also part of this virtual Court proceedings with the aid of audio visual technology.

4 Heard Mr Umesh Kumar Mishra, learned counsel for the petitioner and Mr Khurshid Alam, learned AAG XII for the State.

5 Petitioner claims to have been appointed as Matric Trained Teacher, while he was possessing the higher qualification of Graduate, though he was untrained.

6 It is his case that he was appointed on 12.06.1996 and joined on 15.06.1996 as Matric Trained Teacher. After completing 12 years service as a Teacher, he was granted senior pay scale with effect from 15.06.2008 vide Memo No 746 dated 27.02.2019.

7 On 20.04.2020, the Director, Primary Education brought out an order that contemplates grant of senior pay scale to Untrained Teachers who were appointed on the post of Matric Trained Teachers, and possessed higher qualification, and were appointed prior to 31.12.1995. Pursuant to order dated 20.04.2020, an office order dated 09.05.2020 has also been issued by the District Education Officer, Bhojpur, Ara directing for recovery of excess amount paid on account of senior scale pay.

8 It is submitted by the petitioner's counsel that as a result of the two orders dated 20.04.2020 and 09.05.2020, the



benefit of senior pay scale granted to the petitioner on 27.02.2019 with effect from 15.06.2008 is likely to be withdrawn and monetary recovery is also likely to be made from the petitioner. petitioner's counsel submits that the benefit of senior pay scale granted to him with effect from 15.06.2008 is due and legal in view of subsequent decision of this Court in CWJC No 6139 of 2007 in the case of *Ram Ashish Tiwary & Others -Versus- State of Bihar & Others*, in respect of others similarly situated which was decided on 31.03.2011. It is his case that the decision has been affirmed upto the Hon'ble Apex Court. The petitioner's case is, therefore, a "covered matter" in terms of Clause 4.C (1) of the Bihar State Litigation Policy, 2011 (for brevity, *2011 Litigation Policy*). It is also his submission that senior pay scale was granted by the Competent Authority long back on 27.02.2019. There is no allegation whatsoever that senior pay scale was granted to the petitioner on account of any misrepresentation or fraud by the petitioner. In the circumstances, he submits that the Authorities are not justified in withdrawing the scale and effecting any recovery on account thereof from the petitioner.

9 Mr Khurshid Alam, learned AAG XII submits that without raising these issues before the Authority, the petitioner has directly rushed to this Court. Only if the petitioner's claim is a



“covered matter” in terms of Rule 4.C (1) of 2011 Litigation Policy by judgment in the case of *Ram Ashish Tiwary (supra)*, the benefit of senior pay scale may be continued in his favour. If the petitioner had approached the Authority raising the grievances, which he has raised before this Court today, the same would have been considered. He submits that the claim of the petitioner was never raised before the Authority including the Director who has issued the impugned order.

10 Considering the rival submissions, this Court would also agree with the submission of the learned State Counsel in so far as he raises an objection regarding the petitioner rushing directly to this Court without raising his grievance before the Authority. This Court, however, would also not overlook the fact that the petitioner has been receiving the benefit since long. Petitioner’s counsel has also specifically asserted that grant of material on record does not even suggest that the grant of benefit to the petitioner on 27.02.2019 with effect from 15.06.2008 was not given on any misrepresentation or fraud.

11 This Court, therefore, is of the opinion that interest of justice would be served if the petitioner’s claim is considered by the Director, and a reasoned and speaking order is passed thereon.



12 Petitioner's counsel submits that to facilitate such consideration, he would be submitting his detailed claim/representation within a week before the Director.

13 Mr Khurshid Alam submits that if such representation is filed within a week, the Authority would consider the petitioner's claim and pass a reasoned and speaking order thereon within three weeks thereof, under intimation to the petitioner.

14 In view of such submission, this Court would only observe that if the reasoned and speaking order is likely to have any pecuniary consequences on the petitioner, the same would only come into effect two weeks after its communication to the petitioner.

15 This Court would clarify that all issues are left for the Authority to decide.

16 Writ petition stands disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2020
Transmission Date	NA

