

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5719 of 2020

1. Ranjan Kumar Son of Dinesh Kumar Singh Resident of Shamsher Nagar, PS-Daudnagar, Dist-Aurangabad
2. Raj Kumar Prasad Gupta Son of Rameshwar Sao Resident of Durga Chouk AT and P.O.-Madanpur P.S.-Madanpur Dist.-Aurangabad.
3. Pankaj Son of Kauleshwar Prasad Resident of At-Shahpur, PS and Dist-Aurangabad.
4. Sanjeev Kumar Gupta Son of Late Motilal Prasad Resident of Moti Mahal Old Gt Road Sinha Callege More. Aurangabad,
5. Shailendra Kishore Jaruhar, Son of Nawal Kishore Prasad Resident of Sinha College Road, Aurangabad.
6. Ramesh Kumar Son of Munindra Kumar Sinha Resident of At-Hirdyachak, PS- Kaler, Dist-Arwal.
7. Ramranjan Singh Son of Mohan Singh Resident of AT-Jamhor Dist. Aurangabad
8. Uma Shankar Baitha, Son of Judagir Baitha, Resident of At- Kataiya, P.S. Deo, Dist.-Aurangabad.
9. Yamuna Kumar Azad, Son of Rambilas Ram, Resident of Jamhore, Aurangabad.
10. Yogendra Kumar, Son of Shivilal Prasad, Resident of Vill-Navner, P.O.-Dihra, Dist-Aurangabad.
11. Vijay Kumar Singh, Son of Saryu Singh, Resident of At-Ratnaur, P.O.-Pauthu, Barun, Aurangabad.
12. Bijendra Mistry, Son of Ramesh Mistry, Resident of At-Pipra, P.O.-Jaygovind Nagar, Dist-Aurangabad.
13. Rambilash Singh, Son of Jagmohan Singh, Resident of Vill-Teri, P.O.-Sone Nagar, Barun, Aurangabad.
14. Anil Kumar, Son of Rampravesh Ram, Resident of At-Janpur, PS-Barun, Dist-Aurangabad.
15. Satish Kumar, Son of Shivshankar Ram, Resident of Vill and P.O. and P.S.-Barun, Dist-Aurangabad.
16. Md. Farmanullah, Son of Shafique Ahmad, Resident of Vill and P.O.-Kara, P.S.-Obra, Dist-Aurangabad.
17. Alauddin Ansari, Son of Jalaluddin Ansari, Resident of Vill and P.O.-Kara, P.S.-Obra, Dist-Aurangabad.
18. Dharmendra Kumar, Son of Ram Ekbal Ram, Resident of Vill-Labadna, P.O.-Dihra, P.S.-Obra, Dist-Aurangabad.
19. Ajay Kumar, Son of Ramswarup Das, Resident of Vill and P.O. and P.S.-Khudwan, Dist-Aurangabad.
20. Ajit Kumar Singh, Son of Krishna Prasad Singh, Resident of Vill-Kochar, P.S. Sone Nagar, P.S.-Barun, Dist-Aurangabad.



21. Upendra Kumar Singh, Son of Lalan Kumar Singh, Resident of At and P.O. and P.S.-Jamhor, Dist-Aurangabad.
22. Samrendra Kumar Singh, Son of Ran Vijay Singh, Resident of At-Bhaskar Nagar Police Line, Karma Road, Dist-Aurangabad.
23. Dharmendra Kumar Singh, Son of Madan Singh, Resident of Vill and P.O.-Ibrahimpur, P.S.-Phesar, Dist-Aurangabad.
24. Yogendra Kumar Pal, Son of Ram Naresh Pal, Resident of Vill and P.O.-Bairiya, P.S. Mali, Dist-Aurangabad.
25. Nandkeshwar Baitha, Son of Ram Prasad Baitha, Resident of Vill-Simrahua, P.O-Dosma, P.S.-Phesar, Dist-Aurangabad.
26. Amod Kumar, Son of Ram Kripal Ram, Resident of At Bhaskar Nagar Police Line, Karma Road, Dist-Aurangabad.
27. Nandkishore Prasad, Son of Dwarika Prasad, Resident of Vill-Pateya, P.O. P.S.-Madanpur, Dist-Aurangabad.
28. Ajit Kumar, Son of Amrit Choudhary, Resident of At -Jai Prakash Nagar Behind Electric Office Karma Road, Dist-Aurangabad.
29. Ashok Kumar, Son of Ram Bachan Das, Resident of Vill-Khudwan, P.O. and P.S.-Khudwan, Block-Obra, Dist-Aurangabad.
30. Santosh Kumar, Son of Mathura Chaudhary, Resident of At-Mahua Shahid Near Dharmshala More, P.O. and P.S and Dist-Aurangabad.
31. Zainul Abeddin, Son of Md. Zahir, Resident of Vill-Amarpura (Qazi Chak), P.O. and P.S.-Rafiganj, Dist-Aurangabad.
32. Dharmendra Kumar Singh, Son of Jagdish Singh Yadav, Resident of Vill and P.O.-Patanwan, P.S.-Jamhore, Dist-Aurangabad.
33. Sateesh Prakash, Son of Raghubansh Pathak, Resident of Barki Reganiya, Nabinagar, Aurangabad.
34. Md. Reyaz Ahmed, Son of Mushtaque Ahmed, Resident of Kabir Mohalla, Nawadih Road, Aurangabad.
35. Md. Minhajul Islam, Son of Md. Abusaleh Hussain, Resident of Ali Nagar, Tikri Road, Aurangabad.
36. Chandra Shekhar Singh, Son of Ramji Prasad, Resident of Phesara, Pokhraham, Aurangabad
37. Lav Kumar, Son of Deonandan Prasad, Resident of Khiriyawan, Madanpur, Aurangabad
38. Pankaj Kumar Singh, Son of Rameshwar Singh, Resident of War, Madanpur, Aurangabad
39. Ajay Kumar Diwakar, son of Kuldip Narayan Singh, Resident of Jiwabigha, Kutumba, Aurangabad
40. Krishna Kumar Keshari, Son of Manki Prasad Yadvendu, Resident of Karma, Rafiganj, Aurangabad
41. Ajay Kumar Ranjan, son of Rambilas Prasad, Resident of Sheonath Bigha, Madanpur.
42. Atiqur Rahman, son of Md. Kalam, Resident of Vill-Kosdihra, P.O.-



Padrawan, P.S.-Jamhor, Dist-Aurangabad.

43. Bharat choudhary, son of Ramshray Choudhary, Resident of At Nawadih, P.O. and P.S. and Dist-Aurangabad.
44. Jitendra Kumar Gupta, son of Baijanath Prasad, Resident of Vill Dasauti, P.O. and P.S.-Amba, Dist-Aurangabad.
45. Shami Ahmed, Son of Md. Khalil, Resident of Vill-Bishnupur, P.O. B, Chatti, P.S. Deo, Dist-Aurangabad.
46. Babu Lal Ram, Son of Bindeshwari Ram, Resident of Vill and P.O.-Khadiha, P.S. Deo, Dist-Aurangabad.
47. Mritunjay Kumar Singh, Son of Yugal Kishor Singh, Resident of Vill and P.O.-Kunda, P.S. Deo, Dist-Aurangabad.
48. Dilip Kumar, Son of Ramsewak Mistri, Resident of Vill-Kajichak, P.O. and P.S.-Rafiganj, Aurangabad
49. Vivek Kumar, son of Balram Singh, Resident of Vill-Taradih, P.O.-Umga, Madanpur, Aurangabad
50. Mahesh Paswan, Son of Lakhan Paswan, Resident of Vill Gahna, P.O. and P.S.-Haspura, Dist-Aurangabad
51. Ashok Kumar, Son of Ram Charitra Paswan, Resident of Vill Srichandpur, P.O. and P.S. Asthawan, Dist Nalanda.
52. Sunil Kumar, Son of Basant Chaudhary, Resident of At Ward No. 26, Sahpur, Aurangabad.
53. Rajesh Kumar Chaudhary, Son of Lalan Choudhary, Resident of Vill and P.O.-Singhari, P.S. Goh, Dist-Aurangabad.
54. Chandan Kumar Son of Dineshwar Pathak, Resident of Vill and P.O.-Barpa, P.S. Pauthu, Rafiganj, Dist-Aurangabad.
55. Rahul Kumar, Son of Devendra Kumar Sharma, Resident of At Sarvoday Nagar Karma Road, P.O. and P.S and Dist-Aurangabad.
56. Dhananjay Prasad, Son of Lalan Prasad, Resident of At-Badarour, PO-Kutumba, Dist-Aurangabad.
57. Rizwan Ahmed, Son of Qeyamuddin, Resident of At Mohalla Nawadih, P.O. and P.s. and Dist-Aurangabad.
58. Savita Kumari Chourasia, Son of Dasarath Prasad Chourasia, Resident of Teju Bigha, Ketaki, Deo, Aurangabad.
59. Md. Sarhad Alam, Son of Allahrakhui Miyan, Resident of Millat Nagar, Near Ajmer Nagar, P.O. and P.S. and Dist-Aurangabad.
60. Rampukar Sharma, Son of Yamuna Sharma, Resident of Vill and P.O.-Barpa, Block-Rafiganj, Dist-Aurangabad.
61. Vikas Paswan, Son of Kali Paswan, Resident of Vill-Bangre, P.O.-Umga, P.S.-Madanpur, Dist-Aurangabad.
62. Manju Kumari, Son of Bhuwaneshwar Prasad Singh, P.O. and P.S.-Aurangabad, Dist-Aurangabad.
63. Ram Pati Ram, Son of Ramashish Ram, Resident of Vill Pithanua, P.O. Rampur, P.S. Barun, Dist-Aurangabad.



64. Mrityunjay Kumar Singh, Son of Ram Bilas Singh, Resident of Vill Kamat, P.O. War, P.S. Madanpur, Dist-Aurangabad.
65. Rajiv Kumar Ranjan, son of Balindra Ram, Resident of Vill and P.O.-Manika, P.S. Madanpur, Dist-Aurangabad.
66. Jyoti Bhushan, Son of Ramcharitra Prasad, Resident of Vill-Sanda, P.O. Matpa, P.S.-Amba, Dist-Aurangabad.
67. Reena Kumari, Son of Ramcharitra Prasad, Resident of Vill-Sanda, P.O. Matpa, P.S.-Amba, Dist-Aurangabad.
68. Binay Kumar, Son of Jagdish Prasad Singh, Resident of Vill -Madhubana, P.O. Sakaldiha, P.S.-Pipra, Dist-Palamu (Jharkhand).
69. Kumari Indu, Son of Kalyan Baidya, Resident of Vill and P.O. Matpa, P.S. Kutumba, Aurangabad.
70. Kedar Prasad Sah, Son of Shiro Mani Sah, Resident of At English Pattam Pattam, Dist Munger.
71. Manoj Prasad, son of Panchu Ram, Resident of Vill and P.O.-Salaiya, P.S. Madanpur, Dist-Aurangabad.
72. Chandra Shekhar Prasad Sahu, Son of Sheodayal Sahu, Resident of Vill and P.O.-Kutumba, P.S. Kutumba, Dist-Aurangabad.
73. Bhim Prasad Gupta, Son of Lakshman Saw, Resident of Vill-Pola, P.O. Matpa, P.S. Kutumba, Dist-Aurangabad.
74. Jairam Kumar, Son of Brijnandan Das, Resident of Vill-Chandaut, P.O. Chandaut Dhongra, P.S. Amba, Dist-Aurangabad.
75. Brajesh Kumar Paswan, son of Charitra Paswan, Resident of Vill-Telhara, P.O.-Amba, P.S. Amba, Dist-Aurangabad.
76. Raju Chowdhary, son of Charitra Chowdhary, Resident of At Mohalla-Biratpur, P.O. and Dist-Aurangabad.
77. Md. Tauhid Alam, son of Md. Reyazuddin Ansari, Resident of At Vill Azad Nagar, Tikari More, P.O. and Dist-Aurangabad.
78. Md. Shakil Ahmed, Son of Md. Sharif, Resident of At Mohalla-Islam Toli, P.O. and Dist-Aurangabad.
79. Ambuj Kumar, son of Madan Prasad Singh, Resident of Vill, P.O.-Kutumba, P.S. Kutumba, Dist-Aurangabad.
80. Dinesh Paswan, Son of Deonandan Paswan, Resident of Pirthu, Madanpur, Aurangabad.
81. Sanjay Kumar, Son of Rajaram Paswan, Resident of Madanpur, Aurangabad.
82. Tapeswar Kumar, Son of Bipat Ram, Resident of Sheonath Bigha, Madanpur.
83. Lalmohan Das, Son of Indradev Prasad, Resident of Kansopur, Baidrabad, Arwal.
84. Jay Prakash Mehta, Son of Bangali Mehta, Resident of Dadhapi, Madanpur, Aurangabad.
85. Sinesh Ram, Son of Sunarik Ram, Resident of Sondih, War, Madanpur.
86. Anirudh Prasad, Son of Sahadur Mehta, Resident of At Mahathu, P.S.-Obra,



Dist-Aurangabad.

87. Nand Kishor Singh, Son of Gopal Prasad Singh, Resident of At Mahuaon, P.S.-Obra, Dist-Aurangabad.
88. Hiranman Ram, son of Ramdeni Ram, Resident of Vill-Chapra, P.O.-Narayanpur, P.S.-Obra, Dist-Aurangabad.
89. Sudhir Kumar Diwakar, Son of Suraj Mistry, Resident of At-Soni, P.O. Khairadeep, P.S. Daudnagar.
90. Vishnudev Narayan Singh, Son of Arjun Singh, Resident of Vill and P.S. Bharub, Obra, Dist-Aurangabad.
91. Rajendra Prasad, Son of Vishwanath Prasad, Resident of At-Daulatpurganj, P.S.-Obra, Dist-Aurangabad.
92. Mithlesh Kumar, Son of Kailash Singh, Resident of At-Rupchand Bigha, P.S.-Daudnagar, Dist-Aurangabad.
93. Nirmal Kumar Sinha, son of Ramdhyan Prasad Sinha, Resident of At-P.H.D. Colony, P.S. and Dist-Aurangabad.
94. Naresh Ram, Son of Sheonandan Ram, Resident of At and P.O.-Akauni, P.S. Daudnagar, Dist-Aurangabad.
95. Surendra Kumar Singh, Son of Jagnarayan Singh, Resident of At-Dugul, P.S. and Dist-Aurangabad.
96. Parshuram Prasad, Son of Narayan Prasad, Resident of At Purana Shahar, Daudnagar, Dist-Aurangabad.
97. Sunil Kumar Singh, Son of Gopal Prasad Singh, Resident of Gokhul Bigha, Obra, Aurangabad.
98. Vijay Kumar Vidya, Son of Dipu Ram, Resident of Vill-Labadba, P.O. Dihara, P.S.-Obra, Dist-Aurangabad.
99. Mithilesh Kumar, son of Laxman Singh, Resident of At-Manora, P.S.-Obra, Dist-Aurangabad.
100. Mirtunjay Kumar, Son of Bindeshwari Prasad Singh, Resident of Sadipur Takeya, Obra, Aurangabad.
101. Rajeshwar Singh, Son of Late Mahadeo Singh, Resident of At Majhiawan, P.O. Chechadhi, Dist Aurangabad.
102. Ashok Kumar Vicharak, Son of Motilal Singh, Resident of At Imamganj, P.O. Bel Obra, Dist Aurangabad.
103. Mithlesh Kumar, Son of Motilal Singh, Resident of At Imamganj, P.O. Bel Obra, Dist Aurangabad.
104. Pandav Prasad Gupta, Son of Rajaram Saw, Resident of At Chauk Bazar, P.S. Rafiganj, Dist Aurangabad.
105. Prabhat Ranjan, Son of Govind Prasad, Resident of At and P.O.-Kaswan, Ratni Faridpur, Dist-Jehanabad.
106. Shyam Kumar, Son of Rajendra Singh, Resident of At Pathra, P.S.-Guraru, Dist-Gaya.
107. Rajesh Kumar, Son of Sri Bigan Ram, Resident of Vill and P.O. and P.S.-Daudnagar, Muhalla-Patawa Toli, Ward No. 20, Dist Aurangabad, Bihar.



- 108 Shukdeo Ram, Son of Rajgir Ram, Resident of Vill-Ambedkar Nagar, Ward No. 03, Purana Shahar, P.O. and P.S.-Daudnagar, Dist Aurangabad, Bihar.
- 109 Md. Ainul Haque, son of Late Md. Khalil, Resident of Afim Kothi, Ward No. 23, Daudnagar, Dist Aurangabad.
- 110 Renu Lata, Son of Deolal Ram, Resident of Vill-Kharanti, P.S.-Obra, Dist Aurangabad, Bihar.
- 111 Ambuj Kumar Singh, Son of Meghnath Singh, Resident of Vill-Akbarpur, P.O. Shamsheernagar, P.S.-Daudnagar, Dist Aurangabad, Bihar.
- 112 Ranjit Kumar Ratna, Son of Late Ramanand Singh, Resident of Vill-Ahiyapur, P.O. Khutahan, P.S. Haspura, Dist Aurangabad.
- 113 Suresh Prasad, Son of Late Ramdas Singh, Resident of Vill-Ankorha, P.O.-Pilchhi, P.S. Daudnagar, Dist Aurangabad.
- 114 Ashok Kumar, Son of Gupteshwar Singh, Resident of Vill and P.O.-Babu Amouna, P.S.-Daudnagar, Dist Aurangabad, Bihar.
- 115 Sanjay Kumar, Son of Ramdas Sharma, Resident of Vill and P.O.-Arai, P.S.-Daudnagar, Dist Aurangabad, Bihar.
- 116 Ramanuj Kumar Suman, son of Kamlesh Kumar Suman, Resident of Vill-Karmahi, P.O. Sansa, P.S.-Daudnagar, Dist Aurangabad, Bihar.
- 117 Pramod Kumar, son of Gopal Singh, Resident of Vill-Uchhahal Bigha, P.O. Dhamni, P.S. Haspura, Dist Aurangabad.
- 118 Dharmendra Kumar, Son of Rishi Kishor Ram, Resident of Vill and P.O.-Babu Amouna, P.S. Daudnagar, Dist Aurangabad, Bihar.
- 119 Ravindra Kumar, Son of Late Dhaneshwar Prasad, Resident of Ward No. 12, Shuk Bazar, P.O. and P.S. Daudnagar, Dist Aurangabad.
- 120 Ushakant Bachan, Son of Radhakant Sharma, Resident of Vill and Post-Shamsher Nagar, P.S. Daudnagar, Dist Aurangabad, Bihar.
- 121 Bindhyachal Chaudhary, Son of Late Munshi Chaudhary, Resident of Ward No. 13, Kucha Gali, Daudnagar, P.O. and P.S. Daudnagar, Dist Aurangabad, Bihar.
- 122 Rajesh Kumar Singh, Son of Bhuneshwari Singh, Resident of Basan Bigha More, Nabinagar.
- 123 Rajbihari Kumar, son of Lakshman Ram, Resident of Thengo, Naur, Nabinagar.
- 124 Om Prakash Agrawal, son of Ramanand Prasad, Resident of Durga Chowk, Sanichar Bazar, Nabinagar.
- 125 Siradhwaj Kumar Singh, Son of Ram Teerath Singh, Resident of Jaipur, Nabinagar.
- 126 Dilip Kumar, son of Maheshwar Ram, Resident of Ambedkar Nagar, Nabinagar.
- 127 Ajay Kumar Mishra, Son of Bishwanath Prasad Mishra, Resident of Ward No. 7, Nabinagar.
- 128 Mahendra Mochi, Son of Laxman Mochi, Resident of Tandwa, Tandwa, Aurangabad.



- 129 Abhay Kumar Singh, son of Sheopujan Singh, Resident of Moharkarma Simaridhamani, Nabinagar.
- 130 Jaichand Ram, Son of Ramsamujh Ram, Resident of Khiri Dayal, Sattar, Nabinagar.
- 131 Surendra Kumar, Son of Krishna Prasad Gupta, Resident of Deo Road, Amba.
- 132 Santosh Kumar, Son of Brijnandan Ram, Resident of Jamuhara, Chechadhi, Obra.
- 133 Rajendra Kumar, Son of Kameshwar Ram, Resident of Sattar, Mali, Nabinagar.
- 134 Vijay Kumar, Son of Ramresh Ram, Resident of Khajuri-Mahesh, Pandu, Tandwa, Nabinagar.
- 135 Shivpujan Kumar Singh, Son of Kripa Narayan Singh, Resident of Dhanaw, Sattar, Nabinagar.
- 136 Madan Kumar, Son of Yamuna Ram, Resident of Vill-Ashkhap, P.O. Jamhore, Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar.
3. The Principal Secretary, Finance Department Government of Bihar.
4. The Joint Secretary, Education, Department of Bihar.
5. The Director Primary Education, Education Department, Government of Bihar.
6. The Regional Deputy Director, Primary Education, Education Department, Government of Bihar.
7. The District Education Officer, Aurangabad.
8. The District Programme Officer (Establishment). Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V.Giri Sr. Adv. with Mr. Pranav Kumar, Adv.
For the Respondent/s : Mr.Ashutosh Ranjan Pandey AAG-XV

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT



Date : 08-07-2020

The matter has been listed today for consideration through Video Conferencing.

Learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard Mr. Y.V. Giri learned senior counsel for the petitioners and Mr. Ashutosh Ranjan Pandey AAG XV for the State.

The petitioners' claim in the writ proceedings is for quashing of memo no. 645 dated 05.05.2020 issued by the District Education Officer, Aurangabad recalling the senior scale granted to the Teachers appointed after 31.12.1995. Basis of the said decision is the letter issued by the Director (Primary Education) to all the District Education Officer under memo No. 20.04.2020 bearing no. 432. The same is also challenged in the instant proceedings.

Over the past several dates, parties have argued at length. In today's proceedings, however, they have found common ground. The stand taken by Mr. Pandey, counsel for the State, was that the petitioners were appointed against Matric Trained



Teacher posts having the higher qualification of Intermediate or Graduation etc. Their appointment, however, was without training, which petitioners have acquired subsequently on different dates. He further submits upon instructions that on completing 12 years from the date of acquiring training petitioners would be entitled to the next higher scale of pay, and consequential payments.

Mr. Y.V. Giri, learned senior counsel has drawn attention of the Court towards the chart containing the date of completion of teachers training in respect of all the petitioner which is contained at Annexure R/3. He submits that in view of the submissions of the State Counsel regarding entitlement of the petitioners to next higher scale 12 years after acquiring the qualification of training, the petitioners, now would anyway be entitled to the next higher scale as they have completed 12 years service subsequent to the date on which they acquired training. Petitioners are agreeable to avail such benefits, he, therefore, does not wish to press the instant writ proceedings in respect of the relief for quashing of the memo dated 05.05.2020 or 20.04.2020, impugned in the instant writ proceedings.

In view of the aforesaid submissions, the situation that emerges is that petitioners and State are in agreement that the



petitioners will receive the next higher scale with effect from the date they have completed, or shall complete 12 years service, post acquisition of training. To this extent, there is no dispute and, therefore, in terms of this consensus between the parties entitlement of the petitioners for grant of next higher scale/senior scale is resolved and the authorities, consequently, would be under an obligation to work out entitlement of the petitioners as per details in respect of the date of acquisition of training contained in Annexure R/3 to the rejoinder filed by the petitioners, and consequential payment of dues that may be found admissible.

The dispute is only whether the financial benefits of senior scale which has been granted in terms of the earlier Finance Department Resolution dated 18.12.1989 bearing Resolution no. 6022, which was not applicable to the petitioners, can be recovered from the petitioners, or not.

Mr. Giri submits that for some periods the petitioners were granted the senior scale under the office order dated 17.05.2019 issued by the District Programme Officer (Establishment) Aurangabad (Annexure-8). The said grant was without any misrepresentation or fraud by the petitioners and, therefore, the recovery of amounts paid pursuant to Annexure-8,



would burden the petitioners for no fault on their part. It is also submitted that petitioners have not been afforded any opportunity of hearing before the recovery was made under office order dated 30.04.2020 issued by the District Education Officer, Aurangabad. He, thus, submits that the recovery made under the office order dated 30.04.2020 is grossly illegal and unsustainable.

For refund of the amounts that has already been recovered under order dated 30.04.2020, the petitioners have filed I.A. No. 1 of 2020. Submissions have been advanced by the learned senior counsel in support of the relief of refund prayed for in the I.A. No. 1 of 2020.

Learned senior counsel Mr. Giri submits that even after this Court had passed orders on 29.05.2020 restraining further recoveries from the petitioners, the State authorities have made recoveries from the petitioners. As per the petitioner's claim recoveries have been made to the tune of more than 95% amount from the salary for the months of April and May, 2020. Some part of the said amount of 95% has been recovered on 29.05.2020 itself on which date this Court had passed orders restraining further recoveries.

Mr. Y.V. Giri, learned Senior counsel, appearing for the



petitioners, has drawn the attention of the Court towards Annexure-9, dated 20.04.2020/27.04.2020. He submits that this is the communication from the Director (Primary Education) which forms the basis of withdrawal of grant of senior scale; as well as the recovery effected by the impugned order dated 30.04.2020/05.05.2020 (Annexure-10). Apparently, the Director was conscious of the fact that grant of senior scale under Finance Department Resolution no. 6022 dated 18.12.1989, was not on account of any fraud or misrepresentation played by the petitioners and that they could not be burdened with recoveries, on account of rectification of the fault, for which, they were, in no manner, responsible. Mistake, if any, was committed by the State Authorities, namely, District Programme Officer, who had issued office order dated 17.05.2019 (Annexure-8).

In this connection, he has referred to the decision of the Director (Primary Education) dated 20.4.2020 (Annexure-9). It is submitted that by this decision the mistake was sought to be rectified. Even this decision of the Director does not contemplate any recoveries. Relevant extract relied upon reads as follows:

“यहां यह भी अंकनीय है कि उक्त कोटि के शिक्षकों को पूर्व में मैट्रिक प्रशिक्षित का वरीय वेतनमान स्वीकृत है और उक्त आदेश में मैट्रिक प्रशिक्षित का वरीय वेतनमान के तिथि में संशोधन अपेक्षित है। इस क्रम में यह स्पष्ट किया जाता है कि संशोधन आदेश संगत नियमावली के नियम-13 के आलोक में जिला कार्यक्रम पदाधिकारी



(स्थापना) एवं जिला शिक्षा पदाधिकारी के संयुक्त हस्ताक्षर से निर्गत किया जा सकता है।”

The submissions are based on decision of the Apex Court in the case of ***Syed Abdul Qadir and others vs. State of Bihar and others*** reported in **(2009)3 SCC 475**. He has relied upon the paragraphs 57, 58 and 59, which reads as follows:-

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Ganga Ram v. Director, Col. B.J. Akkara [Retd.] v. Govt. of India Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bahadur.

59. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter



affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

He has also relied upon judgment of the Apex Court in the case of ***Nand Kishore Sharma and others. vs. State of Bihar and others*** reported in ***1995 Supp (3) SCC 722***. This Court would consider it useful to reproduce relevant portion of paragraph no.2 of the said judgment relied upon by the petitioners:

“.....:We agree with the High court that unless there was an order of the Government sanctioning and granting revised pay scales to the appellants, they were not entitled to claim the same. But at the same time, we are of the view that the appellants cannot be blamed. The Anomaly Committee recommended grant of higher pay scales to them. The Finance Department also concurred with the same and as a result thereafter the appellants were given the pay scales and were disbursed the arrears as a lump sum. Having paid the arrears to the appellants, the State Government could not have reversed the same specially without complying with the rules of natural justice. It is not disputed that no opportunity was afforded to the appellants before passing the order of recovery. We, therefore, grant limited relief



to the appellants to the extent that we quash the order directing recovery of the amount paid to the appellants in the year 1981. The State Government shall not effect recovery of the arrears in the revised pay scale for the period from 1.1.1976 to 1.1.1981. We, however, agree with the high court that the appellants were not entitled to the revised pay scaled and as such we hold that it was rightly withdrawn from them.”

He has also relied upon decision of the Apex Court in the case of **State of Punjab versus Rafiq Masih (WHITE WASHER) & others** reported in **(2015) 4 SCC 334**.

In support of the recovery, and opposing the prayer for refund State counsel Mr. Ashutosh Ranjan Pandey has submitted that since the petitioners were not legally entitled to grant of senior scale under the Finance Department Resolution bearing No. 6022 dated 18.12.1989 payments made thereunder have rightly been recovered.

The AAG XV, Mr. Pandey submits that Clause 3 of Annexure-8, by which, the senior scale was granted itself contemplated that the grant was subject to verification of entitlement and with a clear stipulation that if it was found otherwise that any of the beneficiaries (petitioners) was not entitled to grant of the same, the Authorities would be at liberty to recover the same. This Court would consider it useful to reproduce Clause 3 of the office order dated 17.05.2019



(Annexure-8) which reads as follows:-

“किसी भी शिक्षक के संदर्भ में प्रतिकूल स्थिति पाये जाने पर विभाग/कार्यालय अत्यधिक भुगतेय राशि की वसूली हेतु स्वतंत्र होगा।”

Mr. Pandey, has relied upon on a decision of the Apex court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** reported in (2016)14 SCC 267. The paragraphs, on which, the State counsel places reliance are being reproduced:

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp.334-35)

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above



cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.”

This Court has to consider the prayer of the petitioners made in Interlocutory Application No. 1 of 2020, keeping in background judgments of the Apex Court relied upon by the parties, and the fact that parties today are in agreement that the petitioners are entitled to the benefit of the next higher scale, from a date 12 years after acquiring training. In other words, after completing 12 years of service as Matric trained teachers. It is agreed that entitlement of the petitioners has to be accordingly worked out by the State Authorities and payments found due and admissible are to be paid. The entitlement is to be worked out, as per the dates of acquisition of training contained in Annexure- R/3.

Once the entitlement is worked out by the State Authorities, it is possible that some of the petitioners, may be entitled to payments, which may, or may not be equal to what has already been paid to them under the order dated 17.05.2019



(Annexure-8).

Some of the petitioners may not be entitled to and/or paid amounts as much as the amount that had been paid pursuant to the earlier order of the District Programme Officer, dated 17.05.2019. They may have an actual entitlement less than what they have received pursuant to the order dated 17.05.2019. In such circumstance, some recovery may be necessitated from these petitioners limited to the excess amount that may have been paid under the order dated 17.05.2019.

The order dated 17.05.2019, under which, the excess payments were made to the petitioners, clearly stipulated recovery, in case it was found to have been paid in excess of entitlement of the respective petitioners. Petitioners, therefore, had been put on notice regarding the Authorities retaining their right to make recoveries in these circumstances.

The Authorities, within a short span of less than one year from undue grant of higher scale under order dated 17.05.2019, have realized that the payments were in excess of the entitlement. Accordingly, the order for recovery dated 30.04.2020 was issued. The time lapse between grant of undue/excess benefits and the order rectifying the same is less than even one year. It is also not the case of the petitioners that



they have been made to discharge the duties of teachers (senior scale), of any higher post.

Further it is relevant to note that petitioners are still in service. It is not the case of any of the petitioners that they are on the verge of retirement or that any of them have retired.

The factual circumstances therefore do not even suggest that recovery would in any way be iniquitous, arbitrary or harsh. The five situations contemplated in judgment of the Apex Court in the case of **Rafiq Masih (supra)** i.e. the judgment relied upon by petitioners under which, recovery by the employer would be impermissible in law, factually does not exist in the instant case.

This Court would also take note of the fact that the admitted case of the petitioners is that substantial amounts paid in excess of entitlement has already been recovered. In view of the consent regarding entitlement of the petitioners, being otherwise, a very small portion may now remain to be recovered.

There is a clear stipulation in the order of the District Program Officer (Establishment) Aurangabad, dated 17.05.2019 regarding payments being made, reserving the right to recover, if subsequently found to be undue. Petitioners have accepted



payments on these terms without raising any objection to such terms, and infact have accepted the payments along with such conditions. This Court is of the opinion that facts of the instant case is fully covered by decision of the Apex Court in the case of **Jagdev Singh (supra)**, more specifically para 11 and 12 of the said judgment, which has been reproduced above.

When the petitioners were granted senior scale under the order of the District Program officer (Establishment) Aurangabad, dated 17.05.2019, they were conscious that it was subject to recovery, if found to be in excess of entitlement. While accepting the senior scale, they had not raised any objection to such condition. In fact, by accepting such conditional payment. They had, by their conduct accepted the fact that it was subject to recovery. Petitioners, in the instant case, have also conceded in respect of entitlement to grant of next higher scale on completion of 12 years service as Matric Trained Teachers. Thus, they are conscious that payment of senior scale under order dated 17.05.2019 (Annexure-8) was undue.

It is, in these circumstances, that the petitioners have fairly not pressed the relief originally prayed in the writ petition for quashing of the memo dated 05.05.2020 issued by the



District Education Officer, Aurangabad, recalling the senior scale granted to the petitioners as also letter of the Director (Primary Education), under memo dated 20.04.2020.

The fact that grant of senior scale to the petitioners was undue is not disputed. Legal implication thereof, including recovery also cannot be disputed by the petitioners, more so, in view of the fact that the order dated 17.05.2019 (Annexure-8), by which, senior scale was granted to the petitioners was accepted by the petitioners with a specific stipulation that in case grant was found to be undue, petitioners would be liable for recovery of the amounts paid. The fact that the petitioners were not entitled to the senior scale being admitted, the irresistible legal implication would be withdrawal of senior scale. This is the only conclusion possible in the circumstance.

If only one conclusion is possible a writ would not be issued only because there was a violation of principle of Natural justice. Such opportunity would be nothing short of an empty formality for arriving at the same conclusion. This Court is placing reliance on paragraph no.17 of decision of the Apex Court in the case of *Punjab National Bank vs. Manjeet Singh* reported in **(2006)8 SCC 647**. The said judgment has also been relied upon by the Apex Court in the subsequent case of *Ashok*



Kumar Sonkar vs. Union of India and others reported in ***(2007)4SCC54***. The Apex Court has in the judgment of **Ashok Kumar Sonkar (supra)** emphasized that *audi alteram partem* is one of the basic pillars of natural justice and no persons should be condemned unheard. Principle of natural justice have been placed on a very high pedestal by Courts repeatedly. At the same time, it has also been stated by the Apex Court in the judgment of ***Ashok Kumar Sonkar (Supra)*** that a court of law does not insist on compliance with a useless formality. Where the result of compliance with principle of natural justice would result in no change, and where no prejudice is shown to be caused by non- compliance with principle of natural justice, the same may also not be applied. The settled law that the principle of natural justice cannot be put in a straight jacket formula has been stated by the Apex Court in the judgment of ***Ashok Kumar Sonkar (supra)***.

The law stated therein squarely covers the facts of the instant case, which have been taken note of hereinabove. Here also, the conclusion whether the senior scale granted to the petitioners, under order dated 17.05.2019, was to be withdrawn would remain the same, even if this Court were to issue a direction to give an opportunity of hearing to the petitioners and



comply with principle of natural justice. The fact that they can claim grant of next higher scale only after working for 12 years as Matric trained teacher is an admitted position. Fact that grant of senior scale was undue, now in these proceedings is an admitted and indisputable fact, which would remain the same irrespective of the fact that natural justice is complied or not complied.

It is, in such circumstances, apparently that the Apex Court in the case of *Nand Kishore Sharma (supra)* has not interfered with withdrawal of the revised pay scale inadvertently granted to the petitioners therein.

The Apex Court in the case of *Nand Kishore Sharma (supra)*, however, has interfered with recovery of amounts paid in excess of entitlement to the petitioners therein due to withdrawal of the revised pay scale on account of a mistaken grant of the same by the Anomaly Committee. The excess payment in that case had been made on account of revised pay scale after prior concurrence even by the Finance Department. For five years (from 01.01.1976 to 01.01.1981) the petitioners therein had received the undue benefit of revised scale, granted by the pay Anomaly Committee under the concurrence of the Finance Department as has been taken note of in paragraph 2 of



the judgment.

In the case of ***Rafiq Masih (supra)*** also the Apex Court has reiterated that grant of undue benefit for a period in excess of five years, before order of recovery is issued would be one of the relevant considerations, for holding recovery of excess amounts paid to be impermissible. In the instant case, however, we have seen that the excess payment has been made for less than a year, before the same was withdrawn and order of recovery was issued. Facts of the instant case, therefore, are distinguishable.

Considering the legal position arising from the judgment in the case of ***Nand Kishore Sharma (supra)***, ***Ashok Kumar Sonkar (supra)*** as well as judgment in the case of ***Rafiq Masih (supra)*** this Court would arrive at a conclusion that based on the distinguishable facts of the instant case, no case is made out for issuing a direction to refund the amounts already recovered.

This Court would also take note of the fact that in the instant case there is no issue of recovery. Substantial recovery has already been made even as per the case of the petitioners. It is, in these circumstances, that petitioners have made a prayer in I.A. No. 01 of 2020 for refund of the amounts already recovered. The various judgments relied upon by the learned



senior counsel for the petitioners are not in respect of refund of amounts recovered, but are on a different issue whether recovery is permissible or not.

So far as judgment of the Apex Court in the case of **Syed Abdul Qudir & Ors (supra)** relied upon by the petitioners, this Court, having noticed the facts of the instant case, would find it a fit case to be covered by paragraph 58 of the said judgment in so far as it contemplates recovery of the amount paid in excess.

This Court, therefore, does not find any occasion to direct for refund of the excess payments already recovered from the petitioners. I.A. No. 1 of 2020, accordingly, stands rejected.

Authorities, in terms of their own stand as expressed by the learned AAG regarding entitlement of the petitioners to next higher scale after 12 years service as Matric Trained (12 years from the date of acquisition of training as per Annexure R/3) are directed to calculate entitlement of the petitioners and to make payment of the amounts found due.

Both arrears and current due must be paid along with a statement showing calculation of the amounts found payable. This entire exercise must be completed within a period of 3 months from the date of receipt/production of a copy of this



order.

Only after calculation and payment of entitlement of the petitioners, if the authorities find that any of the petitioners are still liable for recovery any amount, they would be at liberty to make such recovery in equated monthly instalments, spread over a reasonable period.

Writ petition is disposed off in the aforesaid terms.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.09.2020
Transmission Date	

