

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8556 of 2021

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Kapil Kumar Singh, Son of Mundrika Singh, resident of village- Baijnath Bigha, ward no. 31, P.s.- Aurangabad, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Education Officer, Aurangabad
5. The District Programme Officer, Establishment, Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent/s : Mr. Kameshwar Kumar (GP-17)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-11-2022

Heard Mr. Sanjeev Kumar Singh, learned counsel for the petitioner and Mr. Kameshwar Kumar, learned GP-17, for the State.

2. By filing the present writ application, the petitioner seeks the following reliefs:

“(i) For issuance of a writ of mandamus seeking direction to respondent authorities to make payment of post-retiral dues i.e. pension, gratuity, earned leave, group insurance as well as arrear of salary for the period from December, 2018 to November, 2019 with statutory interest, which have not been paid by the authorities till date, on non-est grounds,



(ii) For further issuance of writ of certiorari quashing part of letter no. 552 dated 22.06.2020 and the consequent orders contained in memo no. 1261 dated 19.10.2020 and letter no. 135 dated 27.01.2021, whereby direction has been issued to recover the alleged excess payment made to the petitioner in trained scale for the service period, while the petitioner has already superannuated from the service on 30.11.2019 itself,

(iii) For any other writ/writs, order/orders which the petitioner may found to be entitled in the facts and circumstances of the case.”

3. The necessary details for proper adjudication of this case, in short, is that in terms of the 1991 Recruitment Rules and on the recommendation of Bihar Public Service Commission, the petitioner was appointed as Assistant Teacher vide office order, as contained in memo no. 1832 dated 31.08.1994. It is further submitted that the petitioner was granted trained scale on the basis of the B.Ed. Degree obtained from Sogra College of Education, Bihar Sharif, Nalanda and he had been continuously discharging his duties for the last 25 years without their being any interference, till his superannuation.

4. It is further contended that a large number of persons have obtained trained degree from Sogra College of Education, Bihar Sharif, Nalanda were appointed in the year 2012-14, as



Assistant Teachers against the Advertisement No. 210 of 2010 inviting application for 34540 posts. However, after enquiry, their services have been terminated in the year 2014, on being found the teachers training degree of Sogra College of Education, Bihar Sharif, Nalanda not valid. The termination order was challenged in the writ petition bearing CWJC No. 14138 of 2014 and in the light of the observations made by this Court, the Department of Education started taking action against the persons appointed on the basis of B.Ed. degree of Sogra College of Education, Bihar Sharif, Nalanda. Some of the Assistant Teachers, who were appointees of 34540 posts apprehending the action on behalf of the Department, filed interlocutory applications in the said writ petition, which was heard and allowed by this Court vide order dated 20.11.2018 clarifying the position that the appointees, who have been appointed on the recommendation of Bihar Public Service Commission Recruitment Rules, 1991 and has been granted trained scale on the strength of degree from Sogra College of Education, Bihar Sharif, Nalanda, no defect can be taken in their initial appointment.

5. It is made clear that if their degrees are invalid, then the Education Department may withdraw the benefit of trained scale and that cannot be a ground for removal of the intervenor and



for the said purpose the respondents may take appropriate steps with regard to trained scale after opportunity of hearing to the applicants of interlocutory applications.

6. In the light of the aforesaid order dated 20.11.2018, passed by Coordinate Bench of this Court, as contained in Annexure-2 to this writ application, the District Programme Officer, Aurangabad vide letter no. 2250 dated 06.12.2018 directed the petitioner to submit his testimonials/certificates within three days and in pursuance thereof, the petitioner submitted the certificates/ testimonials.

7. It is submitted that all of a sudden without issuing any notice to show-cause or any opportunity of hearing, the District Education Officer, Aurangabad vide his office order, as contained in Memo No. 2785 dated 27.12.2018 terminated the services of the petitioner.

8. The petitioner being aggrieved by his termination order filed interlocutory application (I.A. No. 08 of 2019) in CWJC No. 14138 of 2014. However, Coordinate Bench of this Court having considered the matter and disposed of the writ petition vide order dated 20.02.2019 permitting the petitioner to withdraw the interlocutory application with a permission to file a



substantive application for contempt for violation of the order passed by this Court.

9. In the light of the liberty as granted by this Court, the petitioner filed contempt application, bearing M.J.C. No. 1046 of 2019 and in the meantime during the pendency of the said contempt application, the petitioner attained the age of his superannuation on 30.11.2019. Subsequently, the respondent authorities realizing their mistake came out with letter no. 552 dated 22.06.2020 issued by the Director, Primary Education, Government of Bihar rectifying the earlier mistake and held that the termination of the petitioner was not in accordance with law, as the petitioner was appointed on the recommendation of the Bihar Public Service Commission and further directed to maintain the continuity of the services of the petitioner and make payment of pensionary benefits after cancelling the trained pay scale, which was based on the degree issued by the Sogra College of Education, Bihar Sharif, Nalanda.

10. Learned counsel for the petitioner further contended that after about one year from the date of superannuation, the District Education Officer, Aurangabad vide his office order, as contained in Memo No. 1261 dated 19.10.2020 directed for re-fixation of pay in untrained scale and for recovery of excess



payment made to the petitioner. Further a consequential orders, impugned in the writ application, have also been issued directing the petitioner to deposit Rs.19,97,318/- within three days, which is said to have been received excess on account of trained pay scale. It is strongly contended on behalf of the petitioner that the recovery of excess payment made after his retirement is not only illegal and arbitrary, rather the same is in the teeth of the mandate of the Hon'ble Supreme Court passed in various cases. Reliance has been made on a judgment passed in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.**, reported in **(2015) 4 SCC 334**.

11. Learned counsel for the petitioner also submits that the petitioner has neither misrepresented nor committed any fraud to gain monetary benefit on account of fixation of pay, apart from the fact that the impugned order directing for recovery of alleged excess payment from the petitioner has been made in violation of the principles of natural justice. Further reliance has also been made on a judgment rendered by the Hon'ble Supreme Court in the case of **State of U.P. Vs. Dayanand Chakrawarty & Ors**, reported in **(2013) 7 SCC 595**, that if an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no pay no



work” shall not be applicable to such employee. He submitted that the very termination order of the petitioner was wholly misconceived and as such the respondents having realizing this fact himself rectified the mistake and cancelled the termination order and directed to maintain the continuity of the services of the petitioner, hence the petitioner is also entitled for the salary for the period, he was prevented for performing his duties.

12. A counter affidavit has been filed on behalf of respondent nos. 4 and 5 and submission has been made on behalf of the learned counsel for the State that the petitioner has obtained his B.Ed. Degree from Sogra College of Education, Bihar Sharif, Nalanda, which is *per se* not valid and pursuant thereto the service of the petitioner was terminated in view of the letter issued by the Director, Primary Education, Bihar, Patna. It is next submitted that however on being found that the appointment of the petitioner was made on the recommendation of the Bihar Public Service Commission, his service has been restored and direction has been given to maintain the continuity of the services of the petitioner and cancelled the benefit of trained teacher pay scale provided to him during the service period and further to make recovery of the amount received by him as a trained teacher during the service period vide letter no. 552 dated 22.06.2020 and further



consequential order has also been issued to deposit the excess amount. He also submits that the entire action of the respondent is taken in the light of the order of this Court passed in C.W.J.C. No. 14138 of 2014 whereby this Court has held that if their degree are invalid, then the Education Department may withdraw their trained scale and that cannot be a ground for removal of intervenors.

13. In response to the aforesaid submissions, learned counsel for the petitioner further submits that recently one Surendra Prasad Sinha, who was appointed as Assistant Teacher in Project Girls High School, Nawada in the year 1985 and then regularized in the year 2008 on the basis of a degree from Sogra College of Education, Bihar Sharif, Nalanda preferred writ petition, bearing C.W.J.C. No. 864 of 2020 for payment of post retiral benefits and due salary, this Court disposed of the writ application directing the concerned authority to take a final decision. The State of Bihar preferred Letters Patent Appeal, bearing L.P.A. No. 280 of 2021 and the learned Division Bench of this Court has been pleased to observe that the remuneration earned for services rendered is a right that cannot be denied once the condition imposed in 2008 office order regarding verification from the institution was satisfied and the petitioner's services were continuously utilized for more than three decades cannot be disregarded. Finally the Hon'ble



Court directed for payment of pending salary and retiral dues along with statutory interest.

14. Having heard the parties at length and having seen the materials available on record carefully, this Court finds that the petitioner was appointed on 31.08.1994 on the recommendation of the Bihar Public Service Commission in terms of the Recruitment Rules, 1991 and on the basis of B.Ed. Degree obtained from Sogra College of Education, Bihar Sharif, Nalanda was given the benefit of trained teachers and at the time of appointment the certificates were duly furnished before the concerned authority and on being duly verified, the appointment of the petitioner was accepted and later on confirmed. The petitioner has been regularly paid his salary and he continued to discharge his duty for more than two decades without any complaint whatsoever.

15. So far the issue, with regard to the non-payment of retiral dues/salary for working period on account of his appointment based on a degree provided by an unrecognized institution, namely, Sogra College of Education, Bihar Sharif, Nalanda, is concerned, the same has recently dealt with by the learned Division Bench of this Court in the case of the **State of Bihar & Ors. Vs. Surendra Prasad Sinha** (L.P.A. No. 280 of 2021) wherein the learned Division Bench of this Court while



allowing the Letters Patent Appeal vide order dated 06.04.2022
has been pleased to hold as follows:

“15. The remuneration earned for services rendered is a right that cannot be denied. In the present case, the delay in disbursement of dues takes on the character of undisputed/admitted dues and, therefore, the employee is entitled to timely disbursement. A five-Judge Bench of the Hon’ble Supreme Court in State of **Madhya Pradesh v. Ranjojirao Shinde & another**, AIR 1968 SC 1053 has observed that “It is obvious that a right to a sum of money is property.

16. The State’s action of not paying the retiral dues of a teacher has deprived of a person of his hard earned money but also put into question the good service of imparting education to the next generation. After all, a man may use his income for purposes other than the three basic needs which have been mentioned in **Shantistar Builders v. Narayan Khimalal Totame & Others (1990) 1 SCC 520**, particularly in their retirement when the pension and other associated benefits are the sole source of sustenance. Thereby the State prevented the welfare of its own citizens which goes against the core objectives of a welfare state like India.

19. Pension, as is well established, is the deferred portion of the compensation for rendering long years of service. It is a hard-earned benefit, accruing to an employee in the nature of property. [**State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; Veena Pandey versus Union of India & Others, 2021 SCC Online SC 1078**]



20. Emphasizingly, the Hon'ble Supreme has held that pensionary provisions must be given liberal construction more so as a social welfare measure. It is not a bounty to be dispersed contrary to the rules, but very basis for grant of such pension is to facilitate a retired government employee, live with dignity, in the winter of his life. This fundamental principle must be kept in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities. [V. **Sukumaran v. State of Kerala, (2020) 8 SCC 106; State of W.B. v. Haresh C. Banerjee and others, (2006) 7 SCC 651**]

21. It must also be noted that in the present case, the State does not have entirely clean hands for its action to be considered to be in entirely in good faith. It is borne out from the record that the 2008 office order impose conditions which each person has to satisfy in order for recognition of service, i.e. all educational certificates/degrees be verified from the issuing institution by the concerned officer- which was purported to have been done and by the 2012 office order contingent upon the conditions being satisfied, arrears being paid. In approaching this Court, the writ petitioner has asked for salary and other dues starting from February, 2018 and from July, 2018 till his retirement in January, 2019. This implies that all other arrears and dues were paid to him on time. Well, it is now after twice being deemed eligible and duly recognized that the petitioner's employment is being claimed as having been done on unsound basis, and the only ground, i.e. his educational certification was from a un-recognized institution. Further, it is also noted that it was not post



retirement when the factum of the petitioner's degree being from an un-recognized institution came to light. As noted in the facts above, one round of litigation has travelled all the way up to Hon'ble the Supreme Court for inclusion of that institution into the list of duly recognized one, which has been dismissed by the Court in 2015.

22. Therefore, from the date of the order dated 15.09.2015 passed by the Hon'ble Supreme Court in **Md. Bashar Faruque** (supra) till that of superannuation on 31.01.2019, the appellant, i.e. State, was in the know of the status of the institution and even then, the writ petitioner's services were continually utilized and proceedings under Rule 43(b) of the Rules were initiated well after retirement- nine months, i.e. vide memo dated 09.10.2019.

23. Therefore, the State's grounds taken in this LPA cannot be sustained. Writ petitioner's service of more than three decade as a teacher cannot be disregarded, especially after the State itself must be held accountable for lax attitude in enforcing standards of employees in educational institutions.

24. It is surprising that a person with improper qualifications passed scrutiny initiated upon an order of Hon'ble the Apex Court and was duly recognized and paid arrears in accordance thereof. Such an action of a State cannot be construed lightly and steps must be taken to ensure that such glaring errors do not become repeated occurrences.

25. It is in the interest of justice that the writ petitioner's services be recognized and the money he has earned be paid to him. If at this point,



the appellants' argument is acceded to, a life time dedication to a noble profession of teaching will be unfairly maligned."

16. It is also the case of the petitioner that before passing the impugned order of recovery or the consequential orders dated 22.06.2020, 19.10.2020 and 27.01.2021, at no point of time any show-cause notice or opportunity of hearing has been given to the petitioner. In this regard, this Court also deems it necessary to quote the judgment of the Hon'ble Supreme Court in the case of **State of Orissa vs Dr. (Miss) Binapani Dei & Ors**, since reported in **1967 SCR (2) 625**. What is a civil consequence has been answered by the Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr Vs. The Chief Election Commissioner, New Delhi & Ors.**, reported in **(1978) 3 SCR 272** wherein Krishna Iyer, J. speaking for the Constitution Bench observed:

"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

17. Further the reliance of the petitioner on a judgment rendered in the case of **State of Punjab Vs. Rafiq Masih (White Washer)** (supra) also covers the case of the petitioner in the facts



of the present case, as the petitioner was getting the benefit of trained pay scale right from very beginning for more than two decades and there has never been any misrepresentation or fraud on the part of the petitioner, who has now already superannuated.

18. This is also the fact that the respondent himself admitted this fact that the petitioner was wrongly terminated from his service by treating him the Assistant Teacher of the list of the teachers of 34540 and hence the Director, Primary Education, Bihar, Patna vide his letter no. 552 dated 22.06.2020 directed to make payment of post retiral benefits after maintaining the continuity of the petitioner in service, hence the petitioner was kept out of service illegally and, as such, he cannot be denied the benefit of back wages/salary on the ground that he had not worked for the period.

19. For the proper appreciation of the issue, it would be apt to quote para. 8 of the judgment rendered by the Apex Court in the case of Shiv Nandan Mahto Vs. The State of Bihar & Ors., reported in (2013) 11 SCC 626.

“8. Having heard the learned counsel for the parties, we are constrained to observe that the High Court failed to examine the matter in detail in declining the relief to the appellant. In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not



even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service.”

20. Before coming to the final conclusion, it is needless to observe that this Court is conscious of the fact that the B.Ed. Degree from the Sogra College of Education, Bihar Sharif, Nalanda was/is not a valid degree and this issue has also set at rest by the judgment rendered by the Apex Court Special Leave to Appeal (C) No. 23619 of 2015, titled as **Md. Bashir Faruque & Ors. Vs. State of Bihar & Ors.** vide order dated 15.09.2015 but the petitioner has been allowed to discharge his duties without any interruption till the date of his superannuation. Hence, the State itself must be held accountable for lax attitude in enforcing the standards of employees in educational institution. On the aforesaid score also, this Court finds the impugned order of recovery and further consequential orders are unjustified, unsustainable and against the settled proposition of law, as discussed hereinabove, hence the orders dated 22.06.2020, 19.10.2020 and 27.01.2021 are hereby set aside and the respondents are directed to make payment



of post retiral dues as well as arrears of salary for the period
December, 2018 to November, 2019 forthwith, as early as possible
preferably within a period of eight weeks, from the date of
receipt/production of a copy of this order.

21. Accordingly, the present writ application stands
allowed. However, there shall be no order as to costs.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.11.2022
Transmission Date	NA

