IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10681 of 2017

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Tej Pratap Son of Mangani Prasad, Resident of Village-Khadda, P.O. Ahirauli Bazar, P.S. Kasya District-Kushinagar, Uttar Pradesh.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Finance Department, Government of Bihar, Patna.
3. The Director, Primary Education Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The District Education Officer, Gopalganj, District-Gopalganj.
6. The District Programme Officer, Establishment, Gopalganj, District-Gopalganj.
7. The Accountant General A and E, Bihar, Patna.
8. The Senior Account Officer, A.G. Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10758 of 2018

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1. Sri Nath Singh and Ors Son of Late Ram Bilash Singh, resident of Village-Bhagwati Ganj, Police Station- Bikramganj in the district of Rohtas.
2. Baban Pathak, Son og Late Surendra Nath Pathak, resident of Village-Motha, Police Station- Karakat in the district of Rohtas.
3. Haridwar Prasad Seth, Son of Late Indrajeet Seth, resident of Village-Shivan Police Station- Kargahar in the district of Rohtas.
4. Shiv Datt Singh @ Sheo Datt Singh, Son of Baiju Singh, Resident of Village Medinipur, Police Station- Nasriganj in the District of Rohtas.
5. Kamal Prasad Gupta, Son of late Shiv Janam Sah, Resident of Village-Dharkandha, Police Station- Dinara in the District of Rohtas.
6. Tetari Kumari, Wife of Ram Narayan Prasad, Resident of Village-Mathurapur, Police Station- Dehri in the district of Rohtas.
7. Smt. Chandrawati Devi, Wife of Ram Pyare Singh, resident of Village-Makrain, Police Station- Dehri in the district of Rohtas.
8. Shakuntala Pandey, Daughter of Sri Baban Tiwary, Resident of Village-Manik Parasi, Police Station- Karakat in the district of Rohtas.
9. Geeta Devi, Wife of Moti Lal, Resident of Mohalla- Krishna Bhola Katra, Old G.T Road, Police Station- Dehri in the district of Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Rohtas at Sasaram.
5. The District Program Officer Establishment, Rohtas at Sasaram.

6. The Accountant General, Bihar, Patna.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 12197 of 2018

1. Ram Bachan Sahu Son of late Ram Nath Sahu Resident of Village- Karma, Police Station- Dawath in the district of Rohtas.
2. Bimla Kumari Daughter of late Kunwar Singh Resident of Village- Jamoti, Police Station- Bikramganj in the district of Rohtas.
3. Lakshaman Singh Son of late Daroga Singh Resident of Village- Basdiha, Police Station- Karakat in the district of Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar,Patna.
4. The District Education Officer, Rohtas at Sasaram.
5. The District Program Officer Establishment, Rohtas at Sasaram.
6. The Accountant General, Bihar, Patna.

... ... Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 10681 of 2017)
For the Petitioner/s : Mr.Sri Krishna Ranjan, Advocate
For the Respondent/s : Mr. Shahsi Shekhar Tiwary, AC to AAG-13
(In Civil Writ Jurisdiction Case No. 10758 of 2018)
For the Petitioner/s : Mr.Sunil Kumar, Advocate
For the Respondent/s : Mr. Amit Bhushan, AC to GP-17
(In Civil Writ Jurisdiction Case No. 12197 of 2018)
For the Petitioner/s : Mr.Sunil Kumar, Advocate
For the State : Mr. Rajesh Kr. Sinha, AC to GP-23
For the A.G. : Mr. Arun Kr. Arun, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date : 26-07-2022

Regard being had to the commonality of the controversy in the aforesaid batch of writ petitions, it was thought apposite to hear them analogously and accordingly they were heard together with the consent of the parties and are being disposed off by the present singular order.

2. As far as the second writ petition i.e. CWJC No. 4176 of 2017 is concerned, it has been submitted by the learned counsel for the petitioners that the issue involved therein is the same as is involved in the other two writ petitions.

3. The aforesaid batch of writ petitions are directed against the decision of the Senior Account Officer, office of Accountant General, (A & E), Bihar, Patna as also the action thereupon by the State Government authorities whereby and whereunder one financial increment equal to 3 per cent of the sum of the pay in the pay-band has been denied. The petitioners have further prayed for directing the respondents to fix the pension of the petitioners on the basis of their last pay drawn and refund the curtailed amount of pension.

4. For the sake of convenience, the facts of the first case i.e. CWJC No. 10681 of 2017 (Tej Pratap Vs. The State of Bihar & others), is being taken up.

5. The case of the petitioner of the said writ petition bearing CWJC No. 10681 of 2017 is that he was appointed as Assistant Teacher under the Matric Trained scale on 10.05.1988 and was posted in the Girls Middle School, Narwar, Baikunthpur, whereafter he was granted promotion in the B.Sc.

trained scale of Rs. 1640-60-2000 by the District Education Establishment Committee vide Memo dated 18.06.1996. While the petitioner was working in graduate trained pay-scale of Rs. 5500-175-9000/-, he was granted senior selection Grade-II in the pay-scale of Rs. 6500-200-10500/-, after completion of 12 years of service, with effect from 18.06.2008. On the basis of 6th Pay-Revision, the scale of the petitioner was revised to Rs. 9300-34800 with grade pay of Rs. 4800 and an order to the said effect was issued by the District Programme Officer, Gopalganj vide Memo dated 02.05.2013. Subsequently, in view of coming into force of the Bihar Primary School Teacher Promotion Rules, 2011, the District Primary School Promotion Committee held its meeting on 11.04.2013 and the name of the petitioner along with others was considered for promotion whereafter promotion was granted to the petitioner on the post of Headmaster Grade-III in the pay-scale of Rs. 9300-38400/- with grade pay of Rs. 4800/- in the pay band-II vide office order dated 01.05.2013 and finally he superannuated from service with effect from 31.03.2015. The pension papers of the petitioner was sent to the office of the Accountant General, however, the Senior Account Officer, Bihar, Patna raised an objection, with regard to the benefit of 3 per cent increment given to the petitioner and with the said objection, the service book of the petitioner was returned back to the District Programme Officer, Establishment, whereafter the District Programme Officer, Establishment, Gopalganj removed the said objection by mentioning it in the service book of the petitioner that he was promoted from senior selection grade to the post of Headmaster on 01.05.2013 in view of the Departmental Promotion Rule, 2011, hence he is entitled for three per cent increment and then the pension papers of the petitioner along with his service book was again sent back to the office of the Accountant General.

Thus, in nutshell the objection raised by the office of the Accountant General is that the grade pay of Rs. 4800/- is the same for senior selection grade as also for the post of Headmaster, hence the petitioner is not entitled for 3 per cent increment. It is a matter of record that the office of the Accountant General had again raised the same objection and returned the pension papers along with the service book of the petitioner, whereafter the petitioner had filed a representation, however, to no avail. In this regard, reliance has also been placed on clause 12(a) of the resolution of the Finance Department, Government of Bihar dated 21.01.2010, however, the entire clause 12 is being quoted herein below for ready reference:-

> *"**12. Fixation of pay on promotion on or after 01.01.06**.- In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-*
>
> *One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing **pay in the pay band** (as defined in para 4(v)). The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.*
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> > *Note:-On promotion from one grade to another/financial up gradation under ACP, a Government servant has an option under FR22(1)(a)(1) to get his pay fixed in the higher post either from "the date of his promotion, or from the date of his next increment, viz 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:-*

(a) In case the Government servant opts to get his pay fixed from his pay band shall continue unchanged, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment i.e. Ist July. On that day, he will be granted two increments on annul increment and the second on account of promotion. While computing these two increments basic pay, prior to the date of promotion shall be taken into account. To illustrate, if the basic pay prior to the date of promotion was Rs. 100, first increment would be computed on Rs. 100 and the second on Rs. 103.

(b) In case the Government servant opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment in the higher grade on the next 1st July if he was promoted between 2nd July and 1st January. However, if the was promoted between 2nd January and 30th June of a particular year he shall get his increment on 1st July of next year. "

6. It is the further case of the petitioner that the office of the Accountant General, Bihar, Patna without considering the representation of the petitioner issued an authority slip dated 29.02.2016 fixing the pension of the petitioner in the lower pay-scale of Rs. 24,190/- instead of Rs. 24,900/-. The learned counsels for the aforesaid writ petitioners have relied on clause 12(a) of the aforesaid resolution dated 21.01.2010 to submit that

the petitioners are definitely entitled to 3 per cent increment on account of their promotion from senior selection grade to the post of Headmaster.

7. Per contra, the learned counsel for the accountant General has referred to the counter affidavit filed in CWJC No. 10681 of 2017 and has submitted that on verification of the service book of the petitioner namely Shri Tej Pratap, it was noticed that he was promoted in the same pay band and grade-pay i.e. from graduate trained pay-scale of Rs. 9300-34800/- in the grade pay of Rs. 4800/- to the promotional post of Headmaster in the pay-scale of Rs. 9300-34800/- in the grade pay of Rs. 4800/- and was given 3% increment, however, the same was not in consonance with paragraph no. 12 of the aforesaid resolution dated 21.01.2010, hence the pension/family pension/gratuity was authorized to the petitioner on the basis of the admissible last pay i.e. a sum of Rs. 24170/-.

8. Per contra, the learned counsel for the respondent-State has submitted by referring to the supplementary counter affidavit filed on behalf of respondent no. 1 in CWJC No. 4176 of 2017, which has been annexed as Annexure-R-2/1 to the counter affidavit filed on behalf of the respondent no. 2 in CWJC No. 10758 of 2018 that the writ petitioners of the

aforesaid cases were appointed initially on the post of Assistant Teacher, whereafter they were granted benefit of first financial progression in the next higher grade pay (which is also the pay scale of first promotional post of matric/intermediate trained teacher i.e. of graduate trained teacher) after completion of 12 years of service. Subsequently, the petitioners were promoted on the post of Graduate Trained Teachers in the year 2013 as per their cadre rules. The pay scale of promotional post of Graduate Trained Teachers is also in the grade pay of Rs. 4800/- which they have already got with one additional increment as stated above prior to their promotion. Since, pay scale of regular promotion is similar to that of first financial upgradation, therefore, pay will not be re-fixed. So far letter no. 6245 dated 18.06.2013 and letter no. 447 dated 23.01.2017, issued by Finance Department are concerned, it has been clarified that letter no. 6245 dated 18.06.2013 was issued by the Finance Department in reply to the letter no. 795 dated 09.11.2012, by which simple guideline was sought for by the District Account Officer Vaishali from the Finance Department with regard to grant of fixation benefit on account of first upgradation w.e.f. 01.09.2011 to the teachers in light of resolution no. 630 dated 21.01.2010. In the said letter dated 09.11.2012, no query had been made on the point of providing the fixation benefit to those who have been promoted on the post of graduate trained teachers and have already got the benefit of pay fixation with one additional increment by way of first financial upgradation after completion of 12 years of their service. Whereas, letter no. 447 dated 23.01.2017 was issued by the Finance Department in reply to letter no. 582 dated 30.12.2016, by which the Account Officer Vaishali again sought guideline with regard to admissibility of fixation benefit on account of regular promotion on the post of graduate trained teacher, who have already got the benefit of fixation after grant of first financial upgradation in pay scale of Grade Pay of Rs. 4800/- after completion of 12 years of service. In the above circumstances, the Finance Department has rightly advised to the District Account Officer, Vaishali vide letter dated 23.01.2017 that same benefit is not admissible to such graduate trained teachers, who have already been given same benefit after completion of 12 years of service. It has also been reiterated that it is evident from clause-12 of resolution contained in Memo No. 630 dated 21.01.2010 that in case of promotion from one grade pay to another revised pay structure, the fixation will be done by adding one increment equal to 3 percent of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. Since the petitioners have already got same fixation benefit during the upgradation from one grade pay to another next higher grade pay structure, they are not entitled to get same benefit twice taking shelter of promotion on the post of the graduate trained teachers inasmuch as the policy decision of the State Government and norms of pay fixation does not permit the same.

9. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the petitioners have already been granted the benefit of financial upgradation/increment/benefit of pay fixation by grant of one additional increment, after completing 12 years of service in the pay scale of senior selection grade-II i.e. prior to their regular promotion, hence the writ petitioners are not entitled to get the same benefit/additional increment twice inasmuch as it is evident from clause-12 of the aforesaid resolution dated 21.01.2010 that in case of promotion from one grade pay to another in the revised pay structure, the fixation will be done by adding one increment equal to 3 per cent of the sum of the pay in the pay band and the existing grade pay will be computed and rounded of to the next multiple of ten,

however, in the present case the grade pay of the aforesaid writ petitioners, upon promotion has remained the same as was before promotion, thus they will not be entitled to an increment equal to 3% again.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the aforesaid writ petitions, hence the aforesaid writ petitions are dismissed, however, considering the law laid down by the Hon'ble Apex Court in the case of ***State of Punjab & others versus Rafiq Masih & others*** reported in ***(2015)4 SCC 334*** as also the judgment dated 02.05.2022, rendered by the Hon'ble Apex Court in the case of ***Thomas Daniel versus The State of Kerala & others*** (Civil Appeal No. 7115 of 2010), the respondents are directed not to recover the amount paid in excess to the writ petitioners on account of grant of one additional increment due to wrong interpretation of rules, inasmuch as there has been no misrepresentation on the part of the writ petitioners.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	28.06.2022
Uploading Date	26.07.2022
Transmission Date	N/A