

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10474 of 2022

1. Mohammad Seraj S/o Mohammad Anas, Resident of Village Anchal Motipur Tola Fatuha, P.S.- Kathaiyan, District- Muzaffarpur.
2. Ravi Shankar Kumar S/O- Ram Kathin Bhakta, Resident of Village- Hasilpur, P.S. Nayagaon, District- Saran.
3. Shail Singh W/O Braj Kishore Singh, Resident of Village- Kasturichak Naya Gaon, P.S. Nayagaon, District- Saran.
4. Bishwanath Singh Son of Ram Nagina Singh, Resident of Village Raghapur Dumri Bujurg, P.S. District- Saran.
5. Rinki Kumari D/o Sanjay Singh, Resident of Village- Akilpur, P.S. Sonepur, District- Saran.
6. Kumari Pramila Sinha, W/O Late Krishna Kumar, resident of Village Narayanpur, P.S. Mahua, District Vaishali.

... .. Petitioner/s

Versus

1. The Union of India represented through the Secretary, Department of School Education and Literacy, Ministry of Human Resources Development, New Delhi.
2. The Secretary, Department of School Education and Literacy, Ministry of Human Resources Development, New Delhi.
3. The Secretary, Legislative Department, Ministry of Law and Justice, New Delhi.
4. The Additional Secretary, Department of School Education and Literacy, Ministry of Human Resources Development, New Delhi.
5. The National Council of Teachers Educations, New Delhi represented through its Director.
6. The Regional Director, National Council of Teachers Education, Eastern Regional Committee, 15 Nilkanth Nagar, Nayapali Bhuvneshwar, Orissa.
7. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna.
8. The Principal Secretary, Education Department, Government of Bihar, Patna.
9. The Director, Primary Education, Govt. of Bihar, Patna.
10. The Bihar School Examination Board, Patna through its Secretary.
11. The Chairman, Bihar School Examination Board, Patna.
12. The Secretary, Bihar School Examination Board, Patna.
13. The State Council for Education Research and Training, Bihar, Mahendru, Patna through its Director.
14. The Director, State of Council for Education Research and Training Bihar, Patna.



15. The District Magistrate, Saran, District- Saran.
16. The District Education Officer, Saran, District- Saran.
17. The District Programme Officer Establishment (Education), Saran, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Soni, Adv.
For the U.O.I. : Mr. Anshuman Singh, Adv. C.G.C.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

- 2 23-12-2022
1. Heard the parties through Video Conferencing.
 2. Learned counsel for the petitioners submits that the writ petition may be disposed of in terms of the Judgment dated 19.10.2022, passed in **C.W.J.C. No. 16214 of 2019 (Ataur Rahman & Ors. Vrs. The Union of India & Ors.)**, Category, **A, B, and G**.
 3. The observations made in the **C.W.J.C. No. 16214 of 2019 (Ataur Rahman & Ors. Vrs. The Union of India & Ors.)** in category **A, B and G** shall apply mutatis mutandis of the present case, which is as follows:-

“ Category-A

01. Heard the parties.

02. Out of the petitioners present before this Court in the aforesaid bunch of writ petitions some are those who have been appointed as untrained teachers on compassionate ground (C.W.J.C. No.8984/2020) and others are those who have been appointed as untrained teachers by the concerned panchayat. All these teachers were asked to complete their training within a period of six years. For



the reason that before 30.03.2019 they did not clear the course, or that they had improved their ranking, their services were sought to be terminated. However, all of them have passed DI.Ed course from N.I.O.S. conducted by the State Government after 31.03.2019. It is also informed that few of the petitioners have acquired training of B.Ed/DI.Ed from other recognized institutions after 31.03.2019. In order to reduce the voluminousity of the judgment, individual facts of each and every petitioners are not being mentioned. However, keeping view of the common facts mentioned in each writ petitions as above they are being generally noticed in the present order.

03. All the petitioners are aggrieved of the general orders passed by the Director, Elementary Education dated 22.10.2019, whereby in terms of the directions issued by the Union of India referring to Section 23(2) of the Right to Education Act, has directed for obtaining information relating to termination of service of such teachers, who did not acquire their training qualification up to 31.03.2019. By individual orders, some of the petitioners have been directed to be removed from their post as they have acquired their training after 31.03.2019. Such order has also been challenged by moving I.A. in the respective petitioners.

04. Learned counsels led by Mr. P. N. Shahi, Senior Advocate, have argued that the action of the respondent State is illegal and unjustified. The observations of the Central Government for not allowing teachers, who are untrained as on 01.04.2019 to perform duties, cannot be treated as a direction to terminate the services of the teachers, who have already acquired the training subsequently. Learned Senior counsel appearing for the teachers, who have been appointed on compassionate ground submits that their appointment was made subject to acquiring training within a period of six years. The



appointment orders have been issued in the year 2018. Thus, they could as per their conditions of appointment complete their training within a period of six years from 2018. Their appointments being special category, on compassionate grounds, could not be governed by the provisions of Section 23(2) of the R.T.E. Act so as to terminate their services. Learned counsel submits that since they are all trained, they should be allowed to continue.

05. Per contra, counsels appearing for the State Government, in the respective petitions, have commonly argued that the provisions of R.T.E. are binding on the State Government for the purpose of teaching at the level of elementary schools. Only those teachers were required to be appointed, who were trained as per the original R.T.E Act of Section 23 (2). As a special gesture, the Union of India granted relaxation by adding a proviso to Section 23(2), whereby further four years time from 31.03.2015 was granted to complete the training by making an amendment vide notification dated 09.08.2017.

06. Keeping in view thereto, all these petitioners were required to complete their training up to 31.03.2019. Learned counsel submits that even if the conditions have been mentioned in the appointment letter, the same cannot give any advantage to the petitioners as any condition contrary to the provision of the Act would not bind the State Government or the Central Government and no benefit can accrued to the petitioners on account of the same. The petitioners, therefore, have no right to continue on the post.

07. I have considered the submissions. It would be relevant to notice the amendment made on 09.08.2017 by which Section 23 of the R.T.E. Act was amended by the notification reads as under :

“23. Qualifications for appointment and terms and conditions of service of teachers. -



(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be



prescribed.”

08. From the aforementioned perusal it is noticed, the amendment Act has come into force with effect from 01.04.2015, although the notification is dated 09.08.2017. Thus, if four years are to be computed, they shall be computed from 01.04.2017 so as to mean that a person must acquire his training as on 31.03.2019 in order to continue as a teacher in the elementary schools.

09. From the facts, which have come on record, none of the teachers who may have been appointed on the basis of orders of the Court or on the basis of compassionate ground or on account of any other reason, acquired qualification of training as on 31.03.2019. Thus on plain reading of the provisions of the Act (supra), no untrained teacher could continue in employment after 31.03.2019.

10. However, the fact remains of that they all were allowed to remain by the Government of Bihar till it dawned upon them by issuing an order on 22.10.2019, and thereafter, on 30.11.2020 directing for taking steps for removing such untrained teachers.

11. While the action of the State Government is found to be in consonance with the basic concept of the proviso added to section 23(2) of the R.T.E., this Court notices that as on today all of them had acquired the training. In several of the cases, interim orders have been passed protecting their services and it is noticed that they are all working on the post except few where no interim order was passed.

12. In ordinary course, this court would not have interfered with the orders of the State Government directing for terminating the services of the petitioners. However, the petitioners have already acquired the training and they are now eligible to teach students in terms of



Section 23(2) of the R.T.E. Act of 2009. Their appointment was made in accordance with law as it existed in State of Bihar by following due process.

13. The purpose of the Act of 2009 is to provide teachers to the primary classes who are all trained. The delay in acquiring the training may have been attributed to the teachers or on account of delayed sessions by the respective institutions or on account of lack of infrastructures. However, this court would not go into the said aspect but the fact remains that all of them have acquired the training as of now.

14. In the circumstances, while their earlier services rendered with the State Government may not be treated to be a regular one, no purpose at the same time would be served in terminating the services and conducting fresh selection on the same post which will also take a long time, keeping in view that the selection process itself as a long cumbersome process.

15. In order to protect the students, whose education might be affected on account of creating vacancies by terminating services of the teachers, who are already trained, this court considering the fact that the education being a subject matter in the concurrent list and also considering that the State Government has a right to frame its own rules relating to appointment directs that the petitioners shall be allowed to continue on their respective post. However, considering the provision of Section 23(2) of the Act, as amended vide Amendment Act of 2017, all of them shall be treated to be freshly appointed only from the date they have acquired the training and not from an earlier date as their appointment prior to acquiring training which has been done only after 31.03.2019 was not in conformity with the provisions of the R.T.E. Act of 2009. More so as their continuance in services after 31.03.2019 even by Government was dehors the Act of 2005 and therefore



cannot be regularized.

16. Accordingly, it is directed that the petitioners shall be treated as freshly appointed elementary school teachers and their services shall be counted for all purposes from the date they acquired their training. The period of service rendered prior to acquiring training, shall not be counted for any other purpose.

*17. Keeping in view, the law laid down by the Apex Court in the case of **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors. reported in (2009) 3 SCC Page 475** and subsequent judgment in the case of **State of Punjab & Ors Vs. Rafiq Masih & Ors. Reported in (2015) 4 SCC Page 334**. The salary which they have drawn for the said period shall not be recovered.*

18. It is made clear that those who have failed and have not acquired training till date would not be allowed to continue as they are ineligible to teach and their services shall be terminated in terms of the order of the State Government. As and when they acquire training, they will be free to participate in the subsequent selection which may be conducted by the State Government and considering their part service of the State Government may grant them one time age relaxation

19. The writ petitions are disposed of accordingly.

“CATEGORY ‘B’

01. The petitioners in Category ‘B’ and ‘F’ are those who have applied for training and have already been registered with the N.I.O.S. and S.C.E.R.T., but have not completed their training up to 31.03.2019 on account of different individual reasons. Category F are those teachers, who



have completed their training but their result has been withheld or were those who have failed in one or two papers and their supplementary examination result is awaited or not held.

02. There are also teachers who were registered with the N.I.O.S., but not called for training on account of not having 50% minimum marks in the Intermediate. There were teachers who could not be called for training as either they were lower in the seniority or that they had not applied within time or that the number of seats were not available at that relevant time. Some of the teachers, who have completed their training, their result has not been declared on account of their not having 50% marks in the Intermediate examination. The writ petitions have been filed on behalf of the teachers jointly in a manner where in one petition there are several teachers with different facts in one petition. Therefore, I am not referring to facts of each individual but broadly they are in the aforesaid category.

03. Mr. Tej Bahadur Singh, Learned Senior Counsel, who is appearing in some of these cases submits that the result of training was declared by the respondents N.I.O.S. and S.C.E.R.T. after the cut off date that is in May, 2019, but some of the candidates result was withheld on account of not having 50% marks in the Intermediate examination, which they have acquired by way of improvement subsequently.

04. The other counsels, who have



*appeared for the teachers, who could not complete their training up to 31.03.2019, submits that the requirement of providing training was obligated on the State Government in terms of Rule 15 of the **Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012**. The duty to provide training was cast upon the Officers of the State Government, to allow the petitioners to participate in the training timely and on account of their inaction in sending them for training timely, they could not complete their training before 31.03.2019. Learned counsel submits that on account of fault of the State Authorities, the petitioners should not be made to suffer and their right to livelihood cannot be taken away on account of the same.*

05. On the other hand, learned counsels appearing for the State Government have referred to the provisions of R.T.E. Act of 2009, which obliges all the untrained teachers to acquire training one way or other within a stipulated three years period as it existed even prior to the amendment made in 2017. Learned counsel submits that while it is true that the Rules of 2012 also mentions of the State Government to provide training to the said teachers, it in no manner restrained the teachers to obtain training at their own level and the fault of the petitioners in not completing their training cannot be put on the State Government.



06. With regard to the requirement of 50% at the Intermediate level, learned counsel appearing for the N.I.O.S. has stated that the said requirement has already been done away with by the N.I.O.S. and a related affidavit has been filed in this regard, therefore, those results which have been withheld on account thereto, shall be now declared and the teachers those who have passed shall be provided certificate of training. Similarly, the candidates who could not participate in the training on account of their not possessing 50% marks at the Intermediate level shall now be allowed to participate in the training.

07. Learned counsel appearing for the State submits that so far as opportunity of two chances for clearing the training as per the regulations is concerned, it is for the S.C.E.R.T. to lay down its schedule of examination and the supplementary examination as and when held, the petitioners shall be allowed to participate.

08. I have reflected on the submissions made and the submissions as recorded hereinabove, the **Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012** provide as per **Regulation 15** as under for training:-

**“15. Service
Conditions of Niyojit
teachers.-**

(a) Consolidated



pay- (i) the panchyat elementary teachers will get the consolidated pay as follows:-

* Trained teachers (basic grade) - 7000/- per month

* Untrained teachers (basic grade) - 6000/- per month

* Trained teachers (Graduate grade) - 8000/- per month

* Untrained teachers (Graduate grade) - 7500/- per month

* Trained teachers (H.M. Middle School) - 14000/- per month

(ii) The instructors will get 4000/- consolidated pay per month.

(iii) If in future, the state government takes a decision to revise their consolidated pay, they will get the pay accordingly.

(iv) No other allowances like dearness allowance, house rent allowance, medical allowances, transport allowance etc. will be given to the Panchyat elementary teachers and instructors employed under these rules.

(b) Pay increase:-

(i) The evaluation



("efficiency test") of Niyojit teachers as directed by the government according to Employment Rules, 2006 will be taken. Based on evaluation (efficiency test), the trained teachers securing 45% in general category and 40% in reserved category will get Rs. 500 increase in their consolidated pay and untrained will get Rs. 300/- increase in their fixed pay after three years.

(ii) After that, the previously Niyojit trained teachers will get an increment of Rs. 170/- (one hundred and seventy) and untrained teachers Rs. 100/- (one hundred) every year. There will be no any increment to the teachers securing less mark than the prescribed. Increment shall not be given to the teacher securing less than determined marks. The teachers of general category securing less than 45% marks and the teachers of reserved categories securing less than 40% marks will be given one additional chance to improve their marks. Any teacher who get less marks than the



prescribed minimum marks after the 2nd evaluation, he or she will be removed by the Niyajan Samiti from his/her post after serving show-cause notice.

(iii) The teachers employed as trained graduate teachers will get Rs. 300/- (three hundred) increase in their pay every year. The teachers employed as untrained graduate teachers will get Rs. 200/- (two hundred) increase every year.

(iv) The teachers employed in basis grade according to the provisions of this Rule will not have to take efficiency test (except the teachers employed on the compassionate ground) and they will get the enhancement of pay as mentioned in sub rule (ii) above.

(v) The part time instructors will also have to appear in the efficiency test after three years. Lump-sum Rs. 300/- (Three hundred) shall be enhanced in consolidated pay to the efficiency test passed instructor. After that they will get Rs. 100 increase in their



pay every years.

(c) Age of retirement:- *The employed teachers and instructor will retire on the date of completing 60 years of age.*

(d) Training:- (i) *The state government shall provide the facility of training as prescribed by the N.C.T.E. to the untrained teachers. On successful completion of training, the teachers will get the trained fixed pay from the date of the publication of result.*

(ii) *In service period training for trained and untrained teachers will be organised on regular basis.”*

09. *The amended provisions takes into account, the provision as stood under Section 23 (2) of the **R.T.E. Act of 2009**, for ready reference provisions of **Section 23 (2)** of the Act of 2015 deserves to be quoted:-*

“(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down



under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

10. After the said proviso vide Amended Act of 2017, further proviso was added as under:-

“[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of



commencement of the Right of Children to Free and compulsory Education (Amendment) Act, 2017.]”

11. The same was made effective from 01.03.2015. The Central Government has in terms of the Amendment mention about the qualification of any teacher to be trained as on 31.03.2009. As stated, I have already held (supra) in cases relating to Category ‘A’ that the provisions of the Act will have to be implemented for the purpose of allowing teachers to teach at the Elementary School level and those who do not have the training, cannot be allowed to perform duties of a Elementary School Teacher.

12. Learned counsel for the petitioners have also submitted that their earlier period of service prior to acquiring a training should also be counted. However, this Court finds that the provisions of the Regulations of 2012 are subject to the provisions of the Act of 2009 and the Regulations of 2012 have to be read in conjunction with the provisions of the Act of 2009 in terms of Article 254 of the Constitution of India and, therefore, even though the education subject may fall in the concurrent list, the provision of Act of 2009 cannot be given a go by.

13. Thus, in view of the Act of 2009, the petitioners, who were working on the post after 2019 were without any



authority. In view thereof, their earlier period of service before acquiring training cannot be counted for any purpose.

14. It is made clear that those whose services were dispensed with during the pendency of the writ petition, shall be appointed afresh from the date they have acquired the training.

15. In one of the case bearing C.W.J.C. No. 16790 of 2021 (Anita Kumari Vrs. The State of Bihar through the Principal Secretary), learned counsel has prayed that he should be allowed to continue as it is the fault of the N.I.O.S. and the State Government in not sending him for training.

16. In the opinion of this Court, no benefit can arise in favour of the petitioner as there is no estoppel against the law. The N.I.O.S. has taken a decision only now for allowing the candidates, who have not scored 50% marks in the Intermediate examination. Merely, because the petitioner was reinstated in 2017 and the training has already started in 2015, no right accrues to the petitioner on account of reinstatement in 2017 to claim that he should be allowed to continue even though he has not been trained. The petitioners would always be free to obtain training and thereafter apply afresh against new vacancies which may arise in future. Services of the petitioners cannot be continued on the said basis.

17. Those, who were disallowed to join training on account of not having 50% marks in Intermediate level, also



cannot claim any benefit because of a subsequent decision taken now for dispensing with the 50% requirement. The decision taken by the N.I.O.S. is prospective and will apply for those who are to acquire training in future and also would apply of course on these cases where the result has been withheld. In those cases, the result shall be declared as already directed hereinabove.

18. Keeping in view above, the present bunch of petitioners, who have not acquired their training as on 31.03.2019 are held to be ineligible to hold the post of teacher after 31.03.2019 in the Primary Schools.

19. Amongst the present bunch of teachers, those who have already undergone the training and their result has been withheld for one reason or the other, shall now become eligible only if they have passed the training course. In view of candid statement made by the learned counsel for the N.I.O.S. pointing out that the requirement of obtaining 50% at the Intermediate level has been done away with, it is expected from the N.I.O.S. to declare the results of the teachers within a period of 15 days henceforth and if the teachers have already passed the training course, they shall be given the same benefit as given to the teachers of category 'A' namely that they shall be treated as freshly appointed teachers from the date they have acquired the training and from the date result is declared and have passed the examination



and will be allowed to continue. Their earlier period of service shall not be counted for any purpose at the same time no recovery shall be made from the salary which they have drawn.

20. As regard the teachers, who have failed in the examination, the view taken as above, shall apply to them and, their services are liable to be terminated. However, it is for the State government to take a view whether those who passed the supplementary examination should be allowed to continue as freshly appointed teachers or not or otherwise they shall be allowed to participate in the fresh selections which may be conducted by the State Government. Such teachers who would be allowed to participate, in fresh selections will be given benefit of age relaxation considering that they were working on the post with a promise that they will be allowed to complete their training rendered out by the State Government.”

3. The writ petition is accordingly dismissed.

CATEGORY G

01. Teachers do not possess fifty per cent marks the category G teachers. The issue relating to this category stands already decided as above.

02. In view of the statement by the N.I.O.S. authority counsel that the fifty per cent requirement of marks at the Intermediate Level has been done away with.

03. However, the same is to be treated as prospective and only with relation to future training and



*those whose result has been withheld or whose certificate
has not been issued.”*

(Sanjeev Prakash Sharma, J)

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