

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12418 of 2016

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Bimla Violet Mark D/o Emmanuel Mark, At present C/o Jagdish Prasad,
Advocate, Mohalla - Kannulal Road, Mithapur, Poli

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Bihar, Patna
3. The District Education officer, Patna
4. The District Programme officer Establishment , Patna
5. The Treasury Officer, Patna
6. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate Mr. Jagdish Prasad, Advocate.
For the Respondent/s	:	Mr. Ajit Kumar, Advocate Mr. Vikash Jha, S.C

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 31-10-2023

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant writ application
praying for quashing of clause (3) of the letter no. 3080 dated
1.4.2015 issued by the District Programme Officer
(Establishment), Patna, to grant to the petitioner benefits of
second financial progression with effect from the year 2001
when the petitioner completed 24 years of satisfactory service
and for other reliefs.



3. The case of the petitioner in brief is that she was appointed in the year 1976 and by order dated 2.6.1977 was granted matric trained scale with effect from 1.4.1977. On completion of 12 years of satisfactory service, the petitioner was granted first financial progression with effect from 1.4.1989 vide order contained in memo no. 8 dated 26.8.1989 of the District Superintendent of Education, Patna. In spite of the petitioner becoming entitled for grant of second financial progression with effect from 1.4.2001 in terms of the Rule 7 of the Elementary School Teachers Promotion Rule, 2011, the same has not been granted. The petitioner retired from service on 31.1.2012 while working as an Assistant Teacher from Government Boys Middle School, Adalatganj, Anchal Gardanibagh, Patna.

4. Learned counsel for the petitioner submits that a letter bearing no. 3080 dated 1.4.2015 was written by the District Programme Officer (Establishment), Patna, to all the Block Education Officers and Sub Inspectors of Schools. Clause (3) of the said letter was to the effect that those teachers who were entitled for the second financial progression prior to 1.9.2011, their case for the grant may be recommended provided they gave an affidavit to the effect



that they would not be making a claim for grant of selection grade.

5. Learned counsel for the petitioner submits that by order dated 25.4.2018 passed in the instant case this Court directed the respondents to explain by filing an additional counter affidavit as to how they could impose such a condition that the petitioner has to forego his right for grant of benefit.

6. Learned counsel for the respondents submits that a supplementary counter affidavit has been filed on behalf of the respondent nos. 3 and 4 wherein it is stated that clause (3) of the letter no. 3080 dated 1.4.2015 has been repealed/withdrawn and that as and when the process for consideration of grant of selection grade is started after preparation of the gradation list, the case of the petitioner shall also be considered.

7. Paragraph nos. 6 to 9 of the above counter affidavit is reproduced hereinbelow for ready reference:-

“6. That it is humbly stated that the provision under clause-3 was incorporated with an intention that a teacher cannot be allowed to claim selection grade in terms of old Rules, 1993 as well as 2nd financial up



gradation under Rules, 2011 both however, in terms of order of this Hon'ble Court, the contents of annexure-2 was re-examined and after due consideration, clause-3 of the letter no. 3080 dated 01.04.2015 as contained in annexure-2 has been repealed/withdrawn vide office order contained in memo no. 6460 dated 19.08.2019 and in that view of the matter, the claim & contention raised by the petitioner has been addressed.

A photocopy of office order contained in memo no. - 6460 dated 19.08.2019 is annexed as Annexure-B which will form part of main counter affidavit.

7. That it is not in dispute that in view of provisions under the old Rules, 1993, the case of petitioner is entitled to be considered for grant of benefits of grade-3/matric trained selection scale. It is relevant to state here that rule-5 of the Rules, 1993 provides that the Trained Graduate with minimum 12 years of service in Grade-2 or Matric Trained with minimum 18 years of service in Grade-



2 are entitled to be considered for promotion to Grade-3.

8. That it is further stated that under the then prevalent rules i.e. Promotion Rules, 1993 it has also been specifically provided that establishment committee shall calculate for each year the vacant posts as on 1st of April of that year for promotion as also calculate the vacant posts for SC, ST and General category according to the rules of reservation and it has further been provided that for promotion from Grade-2 to Grade-3, 20% posts of the total number of teachers working in Grade-2 on 31st March, shall be available and the process of consideration of grant of selection grade has not been started and it is needless to say that when the process for consideration of grant of selection grade shall be started after preparation of gradation list, the case of the petitioner shall also be considered and if the petitioner was coming within the zone of 20%, the same shall also be extended to her.

9. That in view of facts stated hereinabove, it would be evident that the corrective measure has been taken



at the level of the answering respondents and the objection with regard to stipulation under clause-3 of the letter contained in annexure-2 has now been withdrawn vide annexure-B of this counter affidavit and accordingly, the issue raised in the writ application has been addressed”.

8. At this stage learned counsel for the petitioner submits that from the stand taken by the respondents in their counter affidavits referred to hereinabove and the petitioner having successfully completed 24 years of satisfactory service in the year 2001, she should be granted the second financial progression as per the Rules of 2011.

9. The Court finds substance in the submissions made by learned counsel appearing for the petitioner.

10. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, this writ application is allowed with a direction to the respondents to pay to the petitioner within a period of three months of receipt of a copy of this order the second financial progression as per the Rules of 2011, to which the petitioner became entitled for in the year 2001. Further, the respondents shall also abide by their statements made in the counter



affidavit quoted hereinabove with respect to grant of selection grade to the petitioner.

11. The writ application stands allowed.

(Partha Sarthy, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A
Uploading Date	02/11/2023
Transmission Date	N.A.

