

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7563 of 2017

Parivartankari Madhyamik / Uchhtar Madhyamik Sikshak Sangh Bihar represented through its Convenor Sri Arun Kumar @ Arun Kranti Kushwaha, S/o Sri Akhileshwar Prasad Singh, R/o Village- Rasulpur, P.S.- Mahua, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Human Resource Development, Bihar, Patna.
3. The Joint Secretary, Department of Education, Government of Bihar, Patna.
4. The Director, Primary Education, Department of Human Resource Development, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Manoj, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha, Advocate
		Mr. Apurva Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-08-2023

The petitioners are *Niyojit* teachers, who were later appointed as *Panchayat* teachers and regularized in the service of the Government. The petitioners were given only a fixed pay in their post as honorarium. The State Government by a resolution bearing Memo No.-11/vii-08/2013-1530, dated 11.08.2015, implemented a regular pay-scale with respect to both trained and untrained teachers. Insofar as the trained teachers are concerned they also introduced a grade-pay. While



the pay-scale was granted to the trained teachers from the date of the order, the grade-pay was withheld for two years.

2. Learned counsel for the petitioner submits that there was no logic in so withholding the grade-pay for two years. It has also been contended that the Government had taken a very curious reasoning insofar as the denial of grade-pay for two years by stating that two year period is a probation period for the trained teachers. It is pointed out that these teachers were continuing from 2006 and were trained teachers and has been granted the pay-scale as per the 2015 order in which event, the denial of the grade-pay was not proper.

3. The learned Government Pleader, however, relied on the counter affidavit to specifically point out that the persons, who were appointed on honorarium were later made *Panchayat* teachers by the Bihar Panchayat Elementary Teachers (Employment and Service Condition) Rules, 2012. The qualification procedure for selection was framed and the teachers so appointed as *Panchayat* / Block teachers were provided a fixed salary as *Niyojit* teachers. Later, the 2015 order came, wherein additional financial benefits were granted to the teachers but, the grade-pay was withheld, not only treating them as probationers for two years but also because of financial



reasons and other constraints. The learned Government Advocate also relies on the judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 8329 of 2011*** titled as ***Union of India Indian v. Navy Civilian Design Officers Association and Another; 2023 SCC OnLine SC 173***, wherein it is categorically declared that the grant of equal pay for equal work, conferment of scales etc. are in the exclusive domain of the State and there can be no judicial orders passed interfering with the same.

4. We specifically notice the decision of the Hon'ble Supreme Court in ***State of Bihar v. Bihar Secondary Teachers Struggle Committee, (2019) 18 SCC 301***, wherein the question of equal pay for equal work in two cadres existing within the State of Bihar was agitated before the Hon'ble Supreme Court. The Hon'ble Supreme Court specifically took into account the financial constraints as pleaded by the State to find that there is no question of such equal pay being granted to persons, who are appointed as *Niyojit* teachers, who are not equally situated as the regular teachers in the Government schools with a regular scale of pay.

5. It is trite that grant of scales of pay is the prerogative of the employer-the State and in this case, the benefit of a regular scale of pay was granted by the order in



2015; till which time the teachers were entitled to only a fixed pay. When such scales of pay were granted, the Government also thought it fit to give a grade-pay to trained teachers as distinguished from untrained teachers. However, the grade-pay was withheld for initial two years for which the specific ground taken in the counter affidavit is the paucity of financial resources and other constraints.

6. We are of the opinion that there cannot be a challenge raised to the withholding of the grade-pay for two years, especially when the benefit itself was conferred by the notification, which the petitioner challenged before the Court.

7. We dismiss the writ petition.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
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