

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14939 of 2022**

Chandeshwar Narayan Singh Son of Late Japat Narayan Singh, Resident of Damyanti Sadan, T.P.S. College Road, Chiraiyatand, P.O.- G.P.O., P.S.- Kankarbagh, District- Patna, Retired Assistant Teacher, High School, Neura, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
4. The Director, Secondary Education, Govt. of Bihar, Budh Marg, Patna.
5. The Regional Deputy Director of Education, Patna Division, Patna.
6. The District Education Officer, Patna.
7. The District Programme Officer (Establishment), Patna.
8. The Accountant General, Bihar, Veer Chand Patel Marg, Patna.

... .. Respondents

**Appearance :**

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|---------------------|---|---------------------------------------------------------------------|
| For the Petitioner  | : | Mr. Bipin Bihari Singh, Advocate<br>Mr. Shyama Kant Singh, Advocate |
| For the Respondents | : | Mr. Prabhakar Jha, GP-27<br>Mr. Umesh Narayan Dubey, AC to GP-27    |
| For Resp No. 8      | : | Mr. Binod Kumar Labh, Advocate                                      |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

3      14-09-2023                      Heard learned counsel for the petitioner and learned counsel for the State as also learned counsel for the Accountant General.

2. The petitioner in the present case is a retired Assistant Teacher from High School, Neura, Patna who has moved this Court with a prayer to set aside the order as contained in Memo No. 1026 Patna dated 07.07.2020 passed by the Director, Secondary Education, Government of Bihar



whereby and whereunder he has instructed all the District Education Officers and the District Programme Officers (Establishment) for verification of pay in Senior Scale or Selection Grade to the Teachers of Nationalized Secondary Schools in the light of the letter of Finance Department, Government of Bihar in the Letter No. 3349 dated 23.06.2020 with reference to the benefits of increments. It is further directed in the said letter that if it is found that the grant of increment is to be cancelled and the excess amount is to be recovered, the same should be recovered. A copy of the letter issued by the Director (Secondary Education), Bihar has been enclosed as Annexure '3' to the writ application.

3. Learned counsel for the petitioner submits that the Finance Department's Office order dated 16.11.2000 providing fixation of pay scale on promotion of Assistant Teachers of the Government taken over schools (the nationalized schools) in the State of Bihar had fallen for judicial review in the Court of law. The matter travelled up to the Hon'ble Supreme Court in the case of **Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors. (Civil Appeal Nos. 3351-3354 of 2023)** which was finally disposed of vide judgment dated 16.12.2008.

4. Learned counsel submits that in course of judicial



review of the Finance Department's letter, it was held that the matter relating to fixation of pay scale on promotion of the Assistant Teachers shall be governed by the Fundamental Rule 22(1)(a)(2) instead of Fundamental Rule 22-C. The submission is that the Hon'ble Apex Court, in the case of **Syed Abdul Qadir and Others** (Supra) categorically held that the excess amount that had been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants had also no knowledge that the amount that was being paid to them was more than what they are entitled to. In the said case, the Finance Department in its counter affidavit had admitted that it was a bonafide mistake on their part and the excess amount was paid due to wrong interpretation of the Rule that was applicable to the appellants.

5. In the said judgment, the Hon'ble Supreme Court categorically held that Fundamental Rule 22(1)(a)(2) shall apply to the Teachers of the Secondary Schools also with effect from 20.02.1993.

6. Learned counsel for the petitioner submits that the impugned order has been issued by the Director, Secondary Education to give effect to the Finance Department's Letter No. 3349 dated 23.06.2020 despite knowing the judgment of the



Hon'ble Apex Court in the case of **Syed Abdul Qadir and Ors.**  
**(Supra).**

7. Learned counsel for the State has, though, filed a counter affidavit, as usual, from paragraphs '1' to '6' of the counter affidavit only the prayer and submissions of the writ petitioner have been reiterated. This is a common trend which this Court has been noticing in almost all the counter affidavits which are being filed on behalf of the State. The counter affidavit is only a half-hearted answer to the issues raised in the writ application as this Court notices from the averments made in the counter affidavit that there is no specific answer to the issues raised in the writ application.

8. Having regard to the kind of pleadings available on the record, this Court grants liberty to the petitioner to file a consolidated representation before the Director, Secondary Education within a period of 30 days from today raising all such issues which are raised in the writ application which will be considered by the Director (Secondary Education) keeping in view the judicial pronouncements on the subject particularly the judgment of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir and Ors. (Supra).**

9. The Director (Secondary Education) shall after



giving an appropriate opportunity of hearing to the petitioner  
pass a reasoned order.

**10.** Till such time, the impugned order as contained in  
this writ application shall not be given effect to.

**11.** This writ application stands disposed of  
accordingly.

**(Rajeev Ranjan Prasad, J)**

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