

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3717 of 2019

Payal Singh W/o Sri Amit Denis Resident of Christian Quarters Bettiah, P.S.-
Bettiah Town, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary, Education Department, Government of Bihar, Patna
2. Director (Secondary Education), Human Resources Development Department, Government of Bihar, Patna
3. District Programme Officer, District Education Office, West Champaran District, Bettiah

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. K.M.Joseph
For the Respondent/s : Mr. Prabhakar Jha (Gp27)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 14-03-2024

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

2. The petitioner has prayed for following reliefs:

(i) That this Hon'ble Court may be pleased to issue a writ in the nature of Certiorari or any other appropriate writ, order or direction to quash that part of the order contained in letter no. 768 dated 10.09.2014 issued by the Director Secondary Education Bihar, Respondent No. 2 herein, basing himself on Education Department Memo no.921 dated 8.8.2013, to the extent it directs fixation of salary of teachers appointed in aided minority schools on par with teachers appointed in Govt taken over schools under the Teacher appointment Rules 2006; and,

(ii) further be pleased to quash the Department Resolution /order contained in Education Department Memo No. 921 dated 8-8-2013 in that it, wholly ignoring the nature of appointment made against existing vacancy in sanctioned existing post and directing fixation of pay of teachers appointed in minority schools on par with Niyोजन



teachers appointed under Teacher appointment Rules 2006 as it infringes right of minorities under article 30 of the Constitution of India; and

(iii) Be pleased to direct the state Respondents to re-fix the pay scale of the petitioner under the 6th pay scale as applicable to the Assistant Teachers appointed against vacancy in sanctioned post of teachers in aided Minority Secondary Schools which is to be on par with the pay scale of assistant teachers under regular appointment against post of teachers in Government Secondary Schools; and

(iv) Further be pleased to direct the state respondents to pay the Arrears of salary due to the petitioner from 2-04.2012 the date of appointment of petitioner up to date with interest for the period of delay in actual payment.”

3. The case, in short, is that an advertisement was published by St. Teresa's School in the daily News Paper Hindustan on 14.01.2002 calling for applications from eligible candidates for appointment as Assistant Teachers in the school. The petitioner applied to Secretary of St. Teresa's Girls High School for appointment as Assistant Teacher in Mathematics and, after written and practical test, she was selected and appointed by the management for the post of Assistant Teacher in Mathematics against existing vacancy in sanctioned post. Pursuant to the appointment of the petitioner, he joined duty as Assistant Teacher at St. Teresa's Girls High School on 02.04.2012. The petitioner's appointment as Assistant Teacher was forwarded by the Secretary of the school to the Director (Secondary Education) Bihar on 18.03.2012 for approval as per Section 18 (3) (b) of the Bihar Non Government High Schools



(Take Over of Management and Control) Act, 1981. The Director (Secondary Education) by his order dated 10.09.2014 was pleased to accord his approval to the appointment of the petitioner as Assistant teacher made by the management of St. Teresa Girls High School, Bettiah, with effect from 02.04.2012. The Director passed in the order that the petitioner will be paid salary on par with the salary paid to teachers appointed under the Teacher Appointment Rules, 2006 and also directed that the Qualification Certificates of the petitioner shall be verified by the competent authority before release of the due salary to the teacher. The District Programme Officer (Establishment) West Champaran by his order dated 31.7.2015 verified the Qualification Certificates of the petitioner and by his order dated 18.04.2016 fixed the salary of the petitioner on the basis of Notification No. 1530 dated 01.07.2015 which dealt with the matter of fixation of salary of teachers appointed under the Teacher Appointment Rules, 2006.

4. Learned counsel for the petitioner further submits that the State respondents have acted arbitrarily in violation of mandate of law and in infringement of the right of the minorities guaranteed under clause (2) of Article 30 of the Constitution of India by Department Resolution directed



fixation of pay of Minority School Teachers appointed against vacancy in regular sanctioned post on par with *ad-hoc* Niyojit teachers, who are not appointed against sanctioned regular employment. The salary of petitioner ought to be fixed on par with that of regularly employed Secondary School Teachers in Government Schools. The Director of Secondary Education, issued a letter bearing No. 144 dated 17.02.2017 to District Education Officers, to issue of payment of salary to teachers in minority schools under Government resolution no. 1530 dated 11.08.2015 is under review. He further submits that without any sanction or notification, the respondents have arbitrarily stopped payment of the salary as directed by the pay fixation order since January 2018 and have been paying to the petitioner only a consolidated sum of Rs. 11,000/- (Rupees eleven thousand only). The respondents have not till date paid the arrears of salary due to the petitioner from 02.04.2012, the date of appointment till March 2016.

5. Learned counsel for the petitioner further submits that as the petitioner was appointed against existing vacancy in sanctioned post and joined duty from 02.04.2012 and petitioner's appointment was approved by the competent authority with effect from the date of appointment, the



notification no. 1530 dated 11.08.2015 cannot govern the fixation of salary of the petitioner who entered service on 02.04.2012. He further submits that the petitioner has got a right to receive his salary under the regular pay scale under PB-2 Band of 9,300-34,800 equal to salary of teachers under regular employment in Government Department run schools and equal to other teachers appointed against sanctioned post from the date of petitioner's appointment and the St. Teresas Girls High School, Bettiah. Respondents have acted arbitrarily in fixing the petitioner's pay at Niyojan teacher's pay scale under a notification issued long after petitioners entering service.

6. A supplementary affidavit has been filed on behalf of the petitioner in which it is stated that in the year 1993, the Parliament enacted National Council for Teacher Education Act establishing the National Council for Teacher Education which came into force on 7th July 1995. Clause (d) Section 12 of the Act vested in the NCTE the Authority to prescribe minimum qualification for a person to be appointed as teacher in a school. In the year 2001, the National Council For Teacher Education notified Minimum Qualification For Recruitment of Teachers in Schools Regulations 2001, under which the prescribed minimum qualification for recruitment of teacher in



Secondary School is Graduate with Bachelor of Education (B.Ed.) or its equivalent. In the year 2002, the Parliament passed the 86th Constitution amendment act inserting Art 21A in Part III of the constitution making the right of children to free and compulsory education until the age of 14 years a fundamental right. Under the existing approved system of education in the country the state had established separate schools for imparting education to children at primary, middle and Secondary school levels, each school having a Head Master and number of Assistant Teachers based on the number of students at the ratio of 1:40. The duty of providing for free and compulsory education to all children being responsibility of the State, the State Government found that the State managed Primary Schools (classes I-V) and Middle Schools (Classes VI-VIII) and High Schools (Classes IX- XII) were inadequate in number and most schools were considerably short of the prescribed/required number of teaching staff at the prescribed teacher student ratio (1:30) to impart elementary education to all the eligible children of the neighborhood and resolved to appoint Shiksha Mitras in schools through the Panchayat Institutions. The State Government by Departmental Resolution No. 336 dated 21st June 2002, provided for selection and appointment by



Panchayats of 'Shiksha Mitras' on a contract basis for 11 months each on a monthly pay of Rs. 1,500/- per month during the period against existing vacancy of Assistant Teachers in the elementary schools. In the year 2009, the Parliament enacted Right of Children to Free and Compulsory Education Act providing for the manner in which children of age 6 to 14 years are to be provided free and compulsory elementary education (Class I- Class VIII) in schools including aided or unaided private schools. Section 18 of the said Act directs that no school was to impart elementary education to children unless they are registered under the provisions of the Act within specified period. Section 21 of the said Act provided for establishment of School Managing Committee to supervise the functioning of the school and/or advice the management. Section 23 of the Act authorized the Central Govt. to designate the Agency which was to determine the minimum qualification for appointment of teachers in schools for imparting elementary education to children under the Act. Article 32 of the Constitution and a Constitution Bench of Supreme Court by order dated 06.05.2014 passed in *Pramati Educational and Cultural Trust vs. Union of India* reported in (2014)8 SCC 1 was pleased to hold that the provisions of Right of Children to Free and



Compulsory Education Act are not applicable to both aided and unaided minority educational institutions. The State Government by Resolution no. 787 dated 03.09.2010 extended the benefit of 6th pay revision to the employees of minority schools.

7. Learned counsel for the petitioner further submits that petitioner who fulfilled the required qualification and Teacher in criteria for appointment was selected and appointed as Assistant teacher in St. Teresa's Girls High School by the Management of the Minority School and joined duty w.e.f. 02.04.2012. However, the application for approval of the appointment of the petitioner as Assistant teacher against existing vacancy in sanctioned post and fixation of salary was kept arbitrarily pending by the State Respondents. On 08.08.2013, the Department of Education, Govt. of Bihar, wholly on the basis of misconceived and erroneous reading of the amended provision of Bihar Act 5 of 2011, issued notification no. 921 dated 08.08.2013 directing that persons appointed in minority schools against vacancy in sanctioned post after 27.05.2011 is to be paid their salary on par with that approved by state for payment to Niyojit teachers appointed in Government taken over High Schools. He further submits that



the respondents have erred in directing of fixation and payment of Niyojit Teacher's salary to petitioner on the claimed ground i.e. the amended provision of law contained in subsection (3) of Section, as the amended provision of law contained in Section 18(3)(b) provided for same eligibility criterion for appointment of person as assistant teacher in minority school, as that provided in District Board Secondary Schools teacher Appointment Rules, 2006. Section 18 of the Bihar Non-Government High Schools (Taking Over of Management and Control) Act 1981 as amended by Bihar Non-Government High Schools (Take Over of Management and Control) Amendment Act 2011 does not contain any provision that directs/demands payment of salary to teachers appointed in minority school against vacancy in sanctioned post on par with salary paid to Niyojit Teachers appointed by Panchayat Raj Institution (District Board) in Nationalized (Taken Over) High Schools.

8. Learned counsel for the petitioner further submits that as the Supreme Court has upheld the pleading of the State of Bihar in ***State of Bihar vs Bihar Secondary School Teachers Struggle Committee*** reported in (2019) 18 SCC 301 that the persons appointed in Government Schools and in Government taken over schools against sanctioned post form a



different class from those selected and appointed as Niyojit teachers by Panchayati Raj Institutions in schools and dismissed the plea of Niyojit Teachers for salary scales on par with Assistant Teachers working against sanctioned post. He lastly submitted that the impugned Resolution contained in memo no. 921 dated 08.08.2013 and the consequential order contained in letter no. 1530 dated 11.08.2015 are arbitrary and without due application of mind to the facts of the case and evidence on record and the same may be set aside and he prays that the respondents be directed to revise and fix petitioner's salary as per the pay scale notified Assistant Teacher w.e.f. 02.04.2012 i.e. the date of petitioner's joining the service.

9. A detailed counter affidavit has been filed on behalf of the respondents in which it is stated that it has been asserted that the service of the petitioner was also accorded approval by the Director, Secondary Education vide Memo No. 768 dated 10.09.2014 contained in Annexure- 8 of this writ application with a clause that she will be paid her salary at par with the salary paid to the teachers appointed under the Teacher Appointment Rules, 2006. It was also directed that after due verification of certificate by the competent authority the salary of the petitioner shall be released. The Education Department,



Government of Bihar, taking into consideration the demand of the employees of Minority Schools as well as verdict of the Hon'ble Court in various cases, the State Government has been making every endeavour to bring them at par with the employees of Nationalized/Govt. Schools so far as service condition, emoluments, perks etc., are concerned. In 2006, Teacher Employment Rules, 2006, came into effect in which the State Government took a decision to recruit teachers on the fixed emoluments and, accordingly, the recruitment of teachers in Government/Nationalized Schools are being done on the basis of fixed salary. The Education Department, Government of Bihar, in order to implement the concept of fixed salary in all institutions on uniform basis issued a Government resolution No. 921 dated 08.08.2013 by which it was provided to ensure payment to the teachers of Minority Schools in fixed salary. It may be pointed out at this stage that similar provision was framed vide letter No. 970 dated 31.08.2013 by which it was decided to pay fixed salary to the teaching/non-teaching staffs of Non-Govt, recognized Sanskrit School w.e.f. 15.02.2011.

10. Learned counsel for the respondents further submits that in fact the fixation of salary etc., is the policy decision of the State Government and hence the petitioner has



got no *locus-standi* to challenge the same. So far as the grievance of the petitioner in respect of Govt. Notification No. 1530 dated 11.08.2015 in respect of fixation of salary is concerned the same is being implemented in the light of Government resolution No. 921 dated 08.08.2013 and hence the same is legal, valid and based on policy decision of the State Government. It is well settled by the Hon'ble Supreme Court in Civil Appeal No. 4312/1998 disposed of on 16.07.2003 in case of ***S.B.I. Vs. K.P. Subbaiah*** reported in (2003) 11 SCC 646, that "The fixation of pay scale is essentially function of the executive which depends of various factors mentioned therein" and hence the petitioner have got no locus standi to challenge the same.

11. A Counter affidavit is filed on behalf of the respondent no. 2 (reply to supplementary affidavit). It is stated in the counter affidavit that it appears that the appointment of the petitioner was accorded approval by the Director, Secondary Education, vide dated 10.09.2014 contained in Memo No. 768 with specific assertion in paragraph No.02 which is incorporated herein verbatim (Annexure- of the writ application) :-

"बिहार अराजकीय माध्यमिक विद्यालय प्रबंध एवं नियंत्रण ग्रहण अधिनियम 1981 यथा संशोधित 2011 की धारा 03 ख में किये गये प्रावधानुसार अराजकीय अल्लसंख्यक माध्यमिक विद्यालय की प्रबंध समिति विद्यालय के लिये राज्य सरकार द्वारा



मंजूर किये गये पदों के विरुद्ध बिहार नगर निकाय माध्यमिक एवं उच्चतर माध्यमिक शिक्षक नियोजन नियामावली 2006 समय समय पर यथासंशोधित एवं बिहार जिला परिषद माध्यमिक एवं उच्चतर माध्यमिक शिक्षक नियोजन नियामावली नियुक्ति 2006 समय समय पर यथासंशोधित के द्वारा विहित पात्रता एवं अर्हता के अनुसार शिक्षको की नियुक्ति करेगी जिसका अनुमोदन जिला शिक्षा पदाधिकारी के माध्यम से निदेशक माध्यमिक शिक्षा द्वारा किया जायेगा। विभागीय संकल्प 921 दिनांक 08.08.2023 द्वारा दिनांक 27.05.2011 के पश्चात अल्संख्यक माध्यमिक विद्यालयों में नियोजन नियामावली 2006 के अनुसारनियोजित होने वाले शिक्षको की भांति राज्य सरकार द्वारा अनुमान्य नियत वेतन के समतुल्य नियत वेतन मात्र सहायक अनुदान के रूप में दी जाएगी।"

12. Learned counsel for the respondents further submits that admittedly the petitioner has been getting salary under provisions of Section 3 (ii) Bihar Non-Government Secondary School (Taking over Management (Amendment) Act, 2011, but the petitioner has raised her grievance that she should be paid regular salary w.e.f. 02.04.2012 i.e. the date from which she has been discharging her duty as Assistant Teacher in the school in question. In 2006, the Teacher Employment Rules, 2006, came into effect in which the State Govt. took a decision to recruit teachers on the fixed emoluments and accordingly the recruitment of teachers in Government/Nationalized Schools were being made on the basis of fixed salary. Thus, on the same pattern the State Government made amendment in Bihar Non-Govt. Secondary School (Taking over Management and



Control) (Amendment) Act, 2011, published in the Bihar Gazette on 27.05.2011. Section 3 (b) (ii) of the Amendment, 2011, reads as follows:-

“3 (b)(ii) of "The Managing the minority secondary school may appoint teachers against posts sanctioned by the State Govt, as per eligibility criteria prescribed by Nagar Nikay Higher under the Bihar Secondary and Secondary teachers (Employment) Rules 2006 amended from time (as to time) and The Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules 2006 amended from time to (as time) after obtaining approval of Director Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director^ Secondary Education.”

13. Learned counsel for the respondents further submits that it may be pertinent to state here that the 2011 Amendment of the Act, is still in vogue/existence and intact and hence the authorities are bound to act in accordance with provisions laid down therein and thus the Director, Secondary Education while according approval appointment of the petitioner has rightly taken note of Section 3 (b) (ii) of the Amendment Act, 2011 and brought the petitioner under the purview of fixed salary as was being provided niyojit teachers. He further submits that in fact the petitioner has filed a detailed supplementary affidavit raising various issues being irrelevant



and having no direct nexus with the matter in issue just with a view to mislead this Hon'ble Court and, hence, the said supplementary affidavit is fit to be rejected outright by this Hon'ble Court.

14. Considering the facts and circumstance of the case, argument of the parties and from perusal of the records it is fact that the fixation of salary etc., is the policy decision of the State Government and the Court is not in a position to interfere in the policy decision of the Government, accordingly, this writ petition is dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	26.02.2024
Uploading Date	14.03.2024
Transmission Date	NA

