

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20322 of 2016

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Urmila Devi, Wife of Late Dhananjay Pathak, Resident of Village Laxmipur,
Sevatapur, P.S- Mairwa, District-Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Human Resources Development Department, New Secretariat, Govt. of Bihar, Patna
3. The Secretary, Finance Department, New Secretariat, Govt. of Bihar, Patna
4. The Director, Primary Education New Secretariat, Govt. of Bihar, Patna
5. The District Education Officer, Siwan
6. The District Programme officer (Establishment), Siwan
7. Siya Ram Prasad, Son of Yugal Prasad, resident of Nirhat, at Present Asstt, Teacher, Govt. Middle School, Basantpur, Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Bhushan Verma
For the Respondent/s	:	Mr.Subhash Chandra Mishra- SC16
		Mr. Pramod Kumar Singh, AC to SC 16

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 9 23-09-2024 1. Heard learned Counsel for the parties concerned.
2. The erstwhile petitioner, namely, Dhananjay Pathak, died during the pendency of this writ application on 10.11.2020 and pursuant to the order, dated 23.11.2023, the legal heir (wife) of the deceased erstwhile petitioner, namely, Urmila Devi, has been substituted in his place. For the sake of convenience, the erstwhile petitioner, namely, Dhananjay Pathak, is referred herein after as the petitioner.



3. The petitioner filed the present writ application for a direction to the respondent authorities to grant pay protection to the petitioner on the basis of combined panel prepared in the year 1983 and 1985 and also to grant senior scale of matric trained with effect from the date juniors to the petitioner in the panel were granted matric trained pay scale, i.e. 21.06.2000.
4. Learned Counsel for the petitioner submits that in the year 1983, an advertisement was published for appointment of Assistant Teachers in the elementary schools in the district of Siwan. After following the process of selection, the name of the petitioner was placed in the panel.
5. In the year 1985 also, another advertisement for appointment of Assistant Teachers in the district of Siwan was published and in the advertisement of 1985, it was said that the candidates, who had applied pursuant to the advertisement published in the year 1983, need not apply afresh.
6. The panel prepared in the years 1983 and 1985 were placed before the District Education Establishment Committee, Siwan, from 26.02.1988 to 07.03.1988,



which resolved to appoint 265 candidates on the post of Assistant Teachers, including the petitioner.

7. After due verification of the credentials of 265 candidates, the appointment letters of only 212 candidates, out of 265 candidates, were issued by the District Superintendent of Education, Siwan, but the petitioner and 52 other candidates were not offered appointment.
8. Some of the candidates belonging to the science stream in the panel filed a writ application, bearing CWJC No. 4843 of 1988, before this Court challenging the decision of the respondents by which the respondents had decided to fill up 75 per cent of the vacancies from Arts stream and only 25 per cent of the vacancies from the science stream.
9. A Division Bench of this Court, by order, dated 05.08.1998, stayed further appointment from the panel. However, the stay order was recalled on 08.03.1999, but still the appointment letter was not issued to the 53 left over candidates, including the petitioner.
10. CWJC No. 4843 of 1988 was allowed by this Court on 05.11.1990, and the order of appointment of 212



candidates was quashed on the ground that the condition imposed in the advertisement that the candidates should be the residents of the Siwan district was illegal and unconstitutional.

11. Some of the teachers, amongst 212 teachers, filed Civil Appeal No. 1220 of 1990 before the Supreme Court and the Supreme Court, vide order, dated 13.03.1991, stayed the judgment passed by this Court on 05.11.1990, in CWJC No. 4843 of 1988.
12. The said order, dated 13.03.1991 was modified by the Supreme Court in the case of **Sabita Prasad and Others v. The State of Bihar and Others**, reported in 1994 (1) **PLJR 62 (SC)** and allowed the 212 teachers to continue in the services by granting them concession and remitted the matter back to this Court for taking a decision on the question of seniority and grant of relief in terms of the judgment.
13. The petitioner, along with some other persons, filed CWJC No. 6286 of 1991 for a direction to the respondents to give them appointment, which was ordered to be heard along with CWJC No. 4843 of 1988.
14. CWJC No. 6286 of 1991 was heard by this Court and on



05.12.1995, it was disposed with a direction to the respondents to give age relaxation, however, the Director, vide order, dated 25.03.1996, refused to appoint the petitioner and others.

15. CWJC No. 5723 of 1996 was filed by the petitioner and others for quashing the order of refusal, dated 25.03.1996, passed by the Director, Education, with further direction to the respondents to appoint the petitioner and others.

16. CWJC No. 5723 was allowed by this Court vide order, dated 03.12.1996 and thereafter the petitioner was appointed as Assistant Teacher in the matric trained pay scale in the Government Middle School, Kanhauli, block Darauli, in the district of Siwan, vide letter issued under memo no. 3861, dated 31.12.1996. Pursuant thereto, the petitioner submitted his joining and started working with effect from 01.01.1997.

17. Vide memo no. 2454, dated 06.11.2009, the petitioner was granted matric trained senior scale grade (ii) with effect from 01.01.2009. Subsequently, vide memo no. 7040, dated 31.10.2013, issued by the District Education Officer, the petitioner was granted B.Sc. trained scale. The petitioner retired from service on 31.01.2014 after



attaining the age of 60 years.

18.It has further been submitted that the teachers appointed in the year 1994 from the said panel came before this Court by filing CWJC No. 8644 of 1995 for a direction to the respondents to treat them to have been appointed on 16.06.1988 as Assistant Teachers in the primary schools in the district of Siwan on the basis of their seniority in the panel and demanded pay protection.

19. The writ application was disposed on 12.12.1996 with observation that if it is found that the petitioners are senior to some persons, who were appointed in the year 1988, then taking into note that the petitioners are senior to such persons, appropriate pay protection be given in favour of the petitioners and if it is found that the petitioners are getting lesser salary than juniors, consequential order relating to pay protection should be given to the petitioners.

20.Pursuant to the order, dated 12.12.1996, passed in CWJC No. 8644 of 1995, the District Superintendent of Education, Siwan granted the petitioners of that writ application pay protection and accordingly their pay scale was fixed.



21. The petitioner, along with others, also filed CWJC No. 3971 of 2000 (Sushma Kumari and Others v. The State of Bihar and Others) for pay protection, which was disposed on 10.02.2006 by this Court with a direction to the Chairman of the District Education Establishment Committee to consider and dispose the representation of the petitioner in light of the order passed in CWJC No. 8644 of 1995.
22. The representation filed by the petitioner on 07.04.2006 before the District Superintendent of Education, Siwan and the Chairman of the District Education Establishment Committee is still pending.
23. After ten years of filing of the representation, the petitioner has filed the present writ application for a direction to the respondent authorities to grant the pay protection.
24. Referring to the rejoinder affidavit, learned Counsel for the petitioner submits that a copy of the counter affidavit on behalf of the respondent no. 6, affidavit on 26.08.2017, having oath no. 3303 was served upon the petitioner on 31.08.2017, stating therein that earlier pay protection was given to other teachers after necessary



approval from the department and accordingly necessary guideline has been sought from the Director, vide letter no. 508, dated 13.06.2017. The said counter affidavit, however, was not filed by the respondent no. 6 before this Court.

25. Learned Counsel for the respondents filed a fresh counter affidavit and took a different stand that the impugned order was passed in the year 2003, but the petitioner never challenged the said order before this Court.

26. Having heard learned Counsel for the parties concerned, it is evident from the letter of the District Programme Officer (Establishment), Siwan, dated 13.06.2017, that he had sought a direction/guideline from the Director, Primary Education, Education Department, Bihar, but the matter is still pending at the hand of the Director, Primary Education, in this regard.

27. Taking into consideration the fact that the claim of the petitioner is pending before the Director, Primary Education, as it appears from the letter, dated 13.06.2017, the present writ application is disposed with a direction to the Director (Primary Education), to take a decision on the claim of the petitioner for pay protection in the light



of the order, dated 12.12.1996, passed in CWJC No. 8644
of 1995 within a period of four months from the date of
receipt/production of a copy of this order.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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