

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19439 of 2015

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Vishwanath Patel Son of Ramdeo Rai Patel Resident of Village - Baburban,
P.S. Motipur, District - Muzaffarpur, Presently Posted as Physical Trained
Teacher in Middle School, Motipur, Anchal - Motipur, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Education Department, Government of Bihar, Patna
4. The District Education officer, Muzaffarpur, District - Muzaffarpur
5. The District Programme officer Establishment , Muzaffarpur District - Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, G.P. 16
		Mr. Yatindra Narayan, A.C. to G.P. 16

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 03-05-2024

1. The petitioner has filed the present writ application for commanding the respondent authority to refund the amount which was recovered from the petitioner pursuant to excess payment made towards the Matric Trained Scale to the petitioner and similarly situated teachers. Further prayer of the petitioner is for direction to the respondents to grant 1st A.C.P. to the petitioner and the 2nd A.C.P.

2. Learned counsel for the petitioner submits that petitioner was appointed as Physical Trained Teacher vide Notification No. 307 dated 19.02.1985. The educational



qualification of the petitioner was I.A. with C.P.Ed (Physical). The petitioner started getting the pay scale of Matric Trained Teacher of Rs. 4500-7000. Pursuant to the judgment of this Court reported in 2003 (2) PLJR 599 *Arvind Kumar versus The State of Bihar* and other analogous cases which was approved by Division Bench of this Court recovery of salary paid to the petitioner and other employees in excess was made on the ground that the petitioner was not Matric Trained at the time of his appointment and he was not entitled to be paid the scale of Rs. 4500-7000.

3. As per the case of the respondent the petitioner was entitled to the pay scale of Rs. 3050-4590. Recovery from salary of the petitioner has already been made in twenty installments towards excess payment of Matric Trained scale.

4. The petitioner had approached this Court in C.W.J.C. No. 13243 of 2004 which was dismissed with liberty to the petitioner to file representation before the concerned authority in case the matter pending in the Hon'ble Supreme Court is decided in favour of the affected teachers in full or even in part.

5. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court reported in 2009 (2) PLJR 74 (SC) *Syed Abdul Qadir & Ors. vs. The State of Bihar*



& Ors. and submits that the S.L.P. arising out of the aforesaid judgment of this Court was decided on 16.12.2008 holding that excess amount paid to the appellants was not because of any misrepresentation or fraud on their part and excess payment was the result of wrong interpretation of the rule applicable to them. Accordingly, no recovery of the amount that has been paid in excess to be made from them and the amount recovered has to be refunded.

6. Learned counsel relies upon the circular dated 03.11.2003 and submits that the State Government came out with the circular after interim order passed by the Supreme Court stating that recovery of excess amount has been stayed by the Hon'ble Supreme Court clarifying that payment of salary to the teachers shall be made as per the applicable rule. Accordingly, the teachers of Primary School are entitled to the same salary in the pay scale of Rs. 3050-4590.

7. The salary of the petitioner thereafter has been revised and since 2004 the petitioner is receiving salary in the pay scale of Rs. 3050-4590 and has now retired.

8. After the judgment of the Hon'ble Supreme Court and pursuant to earlier order of this Court passed in C.W.J.C. No. 13243 of 2004 dated 27.09.2006 the petitioner filed



representation for refund of the recovered amount from his salary before the District Education Officer, Muzaffarpur vide Annexure – 9 on 14.10.2009 but no decision has been taken on the representation of the petitioner as yet. The petitioner retired in the year 2013 but during entire service period no financial upgradation and / or promotion has been granted to the petitioner as such after completion of twelve years and twenty four years of service the petitioner is entitled to be considered for grant of 1st & 2nd A.C.P. Relying upon the judgment of this court passed in C.W.J.C. No. 6725 / 2018 dated 17-10-2019 learned counsel submits that the scheme of A.C.P. is applicable and the petitioner is entitled for financial upgradation / A.C.P.

9. On the other hand, learned counsel for the State submits that the petitioner was appointed as Physical Teacher and he was required to complete two years teachers training within two years from the date of his appointment at his own cost and after passing two years training the petitioner was entitled for Matric Trained pay scale but the petitioner did not complete two years teachers training due to which the petitioner was not entitled for Matric Trained Scale and was granted Matric Untrained scale as per Government Notification No. 307 dated 19.02.1985. He further submits that the judgment and order dated 16.12.2008



passed in Civil Appeal No. 3351-3355, 3364 of 2003 passed by the Hon'ble Supreme Court is related to the matter pertaining to fixation of pay scale on promotion in higher pay scale from junior pay scale governed by Rule 22C of the Fundamental Rules but this judgment is not applicable to the case of the petitioner so his claim for refund of amount is not admissible in the eyes of law.

10. Insofar as the grant of A.C.P. is concerned, learned counsel submits that the prayer of the petitioner for grant of A.C.P. either w.e.f. 09.08.1999 or w.e.f. 01.01.2009 is not admissible as per Rule 13 of the Bihar Taken Over Elementary School Teachers Promotion Rule, 1993 as well as Rule 16 of the Elementary School Teachers Promotion Rule, 2011.

11. Upon hearing the rival submissions and upon perusal of the materials on record it appears that the petitioner was given the scale of Matric Trained Teacher from the date of his appointment in 1985 till 2003.

12. As per the judgment of this court rendered in (2003) 2 PLJR 599 and the circular of the State Government the Matric Untrained Teachers were not entitled for the scale meant for Matric Trained teachers and accordingly the High Court approved the stand of the State Government for recovery of the



excess amount paid to those teachers who were Matric Untrained and were getting Matric Trained scale. The matter travelled before this court and this court in the writ application as well as L.P.A. approved the action of recovery of the State Government from such teachers who had received the Matric Trained Scale despite having no training as Matric Trained Teacher. Ultimately this issue was decided by the Hon'ble Supreme Court in the judgment reported in 2009 (2) PLJR 74 (SC) holding that recovery of excess amount paid to the teachers has to be refunded. The petitioner filed representation for refund of excess amount before the District Education Officer, Muzaffarpur in 2009 as per the judgment passed in his case i.e. C.W.J.C. No. 13243 of 2004 but no decision has been taken by the concerned respondent.

13. The respondent / State is not in a position to say the quantum of amount recovered from the petitioner.

14. Taking into account the factual aspect and the judgment passed in the case of the petitioner as well as the judgment of the Hon'ble Supreme Court in Syed Abdul Qadir Case (Supra), the respondent / State is directed to refund the recovered amount from the salary of the petitioner positively within a period of three months from the date of receipt /



production of a copy of this order.

15. If the amount is not refunded to the petitioner within a period of three months, the same shall carry interest @ 6 % per annum.

16. Insofar as the claim of the petitioner for grant of A.C.P. is concerned, liberty is given to the petitioner to file representation before the concerned authority i.e. District Education Officer, Muzaffarpur (respondent no. 4) within a period of one month from today with all supporting documents and if such representation is filed, the D.E.O., Muzaffarpur shall be obliged to dispose the same in accordance with law by a reasoned order within a further period of three months from the date of receipt of the representation.

17. With the aforesaid observation and direction, the writ application is disposed.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-05-2024
Transmission Date	NA

